



CFN 20200354493

OR BK 31767 PG 1095
RECORDED 09/22/2020 14:11:49
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1095 - 1098; (4pgs)

This instrument was prepared by:
Steven R. Braten, Esq.
Rosenbaum PLLC
250 S. Australian Avenue, 5th Floor
West Palm Beach, Florida 33401

**CERTIFICATE OF AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
VILLAGIO DEL MAR AND THE ARTICLES OF INCORPORATION AND BYLAWS OF
VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC.**

WHEREAS, the **Declaration of Covenants, Conditions and Restrictions for Villagio Del Mar** (the "Declaration") has been duly recorded on May 22, 2006 in the Public Records of Palm Beach County, Florida, at Official Records Book **20369**; Page **260** et. seq.;

WHEREAS, the Articles of Incorporation of Villagio Del Mar Homeowners' Association, Inc. (the "Association"), a Florida not-for-profit corporation, are attached to the Declaration as Exhibit "B";

WHEREAS, the Bylaws of the Association are attached to the Declaration as Exhibit "C";
and

WHEREAS, at a duly called and noticed meeting of the membership of the Association, held on June 30, 2020, the attached amendments to the Declaration, Articles of Incorporation and Bylaws were approved by the membership pursuant to the provisions thereof.

NOW, THEREFORE, the undersigned hereby certify that the following amendments to the Declaration, Articles of Incorporation and Bylaws are a true and correct copy of the amendments as approved by the membership:

(See attached Amendments to the Declaration, Articles of Incorporation and Bylaws)

**VILLAGIO DEL MAR HOMEOWNERS'
ASSOCIATION, INC.**

By: Francis O'Neill
Francis O'Neill, President

Kylie Hallinan
Witness No. 1
Kylie Hallinan
(PRINT NAME)

Shannon O'Neill
Witness No. 2
Shannon O'Neill
(PRINT NAME)

Attest: Joseph Bilotta
Joseph Bilotta, Secretary

STATE OF FLORIDA:
COUNTY OF PALM BEACH:

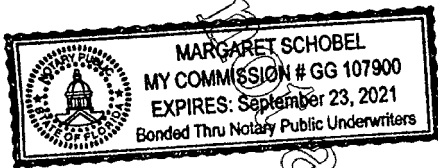
The foregoing instrument was acknowledged before me this 3rd day of September, 2020, by Francis O'Neill and Joseph Bilotta, as President and Secretary, respectively, of **Villagio Del Mar Homeowners' Association, Inc.**, a Florida not-for-profit corporation, on behalf of the corporation by means of ☐ physical presence or ☐ online notarization. They are personally known to me, or have produced FLDL for Francis O'Neil as identification and did take an oath.

0540250570990

Margaret Schobel (Signature)

Margaret Schobel (Print Name)

Notary Public, State of Florida at Large



Certified copy

AMENDMENTS TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VILLAGIO DEL MAR

(Underlined material indicates new language)

(Strikethroughs indicate deleted language)

1. Section 6.5, entitled "Special Assessments" is amended as follows:

Section 6.5. Special Assessments. In addition to the Annual Assessments authorized herein, the Association may levy in any fiscal year a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto; ~~provided, such assessment shall have the affirmative vote or written consent, or combination thereof of at least a simple majority of the votes of each class of Members as evidenced by the result of a vote taken by the Association.~~ The obligation to pay Special Assessments shall be computed on the same basis as for Annual Assessments. Special Assessments shall be payable in such manner at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The Association (by simple majority vote of the Board) may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

AMENDMENTS TO THE
ARTICLES OF INCORPROATION
OF

VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC.
a Florida corporation, Not-for-Profit

(Underlined material indicates new language)
(Strikethroughs indicate deleted language)

2. Article VII, entitled "Board of Directors", Section 7.2 is amended as follows:

Section 7.2. The affairs of the Association shall be managed by a Board of Directors as provided in and subject to the requirements of Article IV of the Bylaws. Such Board of Directors shall consist of three (3) directors. ~~an odd number of directors with a minimum of at least three (3) directors and a maximum of no more than seven (7) directors.~~ Directors must be Members of the Association. ~~Directors need not be Members of the Association and need not be residents of the Association Property.~~ Each Director shall serve for a term from the date of the meeting at which he is elected until the next annual meeting subject to the provisions governing resignation, death, disability, removal and replacement set forth in the Declaration, Bylaws and this instrument.

AMENDMENTS TO THE BYLAWS
OF

VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC.
a Florida corporation, Not-for-Profit

(Underlined material indicates new language)
(Strikethroughs indicate deleted language)

3. Section 4, entitled "Board of Directors", paragraph a., entitled "Number, Term and Qualifications" is amended as follows:

- a. Number, Term and Qualifications. The affairs of this Association shall be governed by a Board of Directors composed of three (3) persons. ~~no fewer than three (3) nor more than seven (7) persons as is determined from time to time by the Members.~~ The term of each Director's service shall extend until the next annual meeting of the Members, and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section h. below.

This instrument was prepared by:
Steven R. Braten, Esq.
Rosenbaum PLLC
250 S. Australian Avenue, 5th Floor
West Palm Beach, Florida 33401
(W-C 195)

CFN 20190029005
DR BK 30382 PG 1602
RECORDED 01/25/2019 15:31:35
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1602 - 1606 (5pgs)

**CERTIFICATE OF RECORDING BOARD RESOLUTION
REPUBLISHING USE RESTRICTIONS**

*Pursuant to Chattel Shipping and Investment, Inc. v. Brickell Place
Condominium Association, Inc., 481 So. 2d 29 (Fla. 3d DCA 1985)*

WE HEREBY CERTIFY THAT the attached Resolution of the Board of Directors of Villagio Del Mar Homeowners' Association, Inc. was duly adopted at a meeting of the Board of Directors on November 13, 2018 republishing the Use Restrictions contained in Sections 9.1, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19, 9.22, 9.24 and 9.26 of Article 9 of the Declaration of Covenants, Conditions, and Restrictions for Villagio Del Mar as originally recorded at Official Record Book **20369** at Page **260** et. seq. in the Public Records of Palm Beach County, Florida (the "Declaration"),

IN WITNESS WHEREOF we have affixed our hands this 13th day of November, 2018, at Hypoluxo, Palm Beach County, Florida.

Walter E. Rosen
Witness No. 1

David E. Rosen
(PRINT NAME)

Gale R. Rosen
Witness No. 2

Robert Routhier
(PRINT NAME)

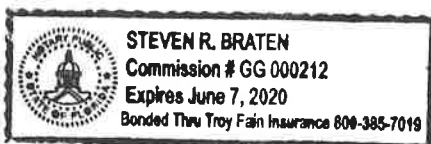
**VILLAGIO DEL MAR HOMEOWNERS'
ASSOCIATION, INC.**

By: F. O'Neill 11-13-18
Francis O'Neill, President

Attest: Joseph Bilotta 11/13/18
Joseph Bilotta, Secretary

STATE OF FLORIDA:
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this 13th day of November, 2018, by Francis O'Neill and Joseph Bilotta, as President and Secretary respectively, of **Villagio Del Mar Homeowners' Association, Inc.**, a Florida not-for-profit corporation, on behalf of the corporation. They are personally known to me, or have produced _____ as identification and did take an oath.



[Signature] (Signature)

(Print Name)
Notary Public, State of Florida at Large

**RESOLUTION OF THE BOARD OF DIRECTORS OF
VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC.**

On the 13th day of November in the year of 2018, the Board of Directors held a duly called Special Meeting of the Board. All formal notice requirements were met.

Whereas, Sections 9.1, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19, 9.22, 9.24 and 9.26, of the Declaration of Covenants, Conditions and Restrictions (the "Declaration") for Villagio Del Mar contain the following language:

Section 9.1. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 9.4. Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Lot, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in Villagio Del Mar or by any other means displayed within Villagio Del Mar without the prior written approval of the Board of Directors, which approval may be arbitrarily withheld, even for aesthetic reasons. Provided, however, nothing contained herein shall prohibit signs or billboards erected and maintained by Declarant.

Section 9.5. Campers, Boats and Recreational Vehicles. No campers, pick-up trucks, boats, boat trailers, recreational vehicles, vans, buses, motorcycles, mobile homes or similar types of non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within the garage located on such Lot, and said vehicles and accessories are in an operable condition. The ARC as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by the ARC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph. No maintenance, dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. No commercial vehicle bearing commercial insignia or names shall be parked on any Lot except within an approved enclosed structure which prevents such view thereof from adjacent lots and streets, unless such vehicle is temporarily parked for the purpose of serving such Lot.

Section 9.6. Animals, Pets, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that cats, dogs or other generally recognized domestic household pets may be kept in a Unit, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, that no more than one (1) adult animal weighing not more than twenty-five (25) pounds, may be kept on a single Lot. All such animals shall be kept in strict accordance

with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. Under no circumstances shall any pit bulls, or other dogs deemed potentially dangerous, as determined by the Association, in its sole and absolute discretion, be permitted in Villagio Del Mar, including as a pet of a Lot Owner. It is each Lot Owner's responsibility to immediately clean up all pet waste from the Property.

Section 9.7. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but shall be removed from view before the following day.

Section 9.8. Parking. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas not intended for vehicular access or on any easement unless in use for maintaining such Common Areas. No vehicles, trailers, or other apparatus may be parked overnight, other than in a garage on a Lot, within Villagio Del Mar. No on-street parking or parking on lawns shall be permitted.

Section 9.9. Business, Commercial or Institutional Use. No trade, business, profession, or commercial activity, or any other non-residential use, shall be conducted by a Lot Owner or resident of a Lot, if in connection therewith customers, patients, deliveries, or the like come to the Lot or if such nonresidential use is otherwise apparent from the exterior of the Lot. The foregoing shall not apply to construction offices, model homes and sales offices of Declarant as set forth in this Declaration, and shall not preclude Declarant's activities associated with the construction, development and sale of Lots within Villagio Del Mar.

Section 9.14. Window Treatment. All window or door coverings within a Lot which are visible from the exterior of the improvements, the Common Areas or any other portion of Villagio Del Mar shall be white two inch (2") blinds which shall conform to the standards provided by the Declarant, unless otherwise approved in writing by the Association. No sheets, paper, aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

Section 9.15. Lighting. No exterior lighting shall be permitted except as originally installed by the Declarant or otherwise approved by ARC.

Section 9.16. Bicycles and Personal Property. All bicycles and personal property shall be kept, stored and placed in an area not visible from outside the dwelling.

Section 9.17. Garages and Garage Doors. No garage shall be permanently enclosed or converted to use other than the purpose intended. All garage doors shall be kept closed at all times except when opened to permit vehicles to enter and exit the garage.

Section 9.18. Awnings. No awnings, canopies or shutters, including hurricane or storm shutters, shall be attached to or affixed to the exterior of any building unless such awnings, canopies or shutters have been approved by the ARC.

Section 9.19. Artificial Vegetation. No artificial grass, plants or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ARC.

Section 9.22. Sports Equipment, Athletic and Recreational Facilities. Outdoor athletic and recreational facilities such as basketball goals, swing sets and sport courts of either a permanent or temporary nature shall not be placed on any Lot in Villagio Del Mar, unless approved in writing by ARC. No permanently installed basketball poles and backboards are permitted. No portable basketball backboards may be kept outside of a Lot overnight or when not in use.

Section 9.24. Exterior Holiday Decorations. Lights or decorations may be erected on the exterior of Lots in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations that are not permanent fixtures of the Lot which are part of the original construction or have been properly approved as permanent improvements by the ARC shall be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 15th of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday. The Association shall have the right, upon thirty (30) days prior written notice to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion or damages of any kind except intentional misdeeds and gross negligence.

Section 9.26. Maintenance of Premises and Landscaping. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Lot. All lawns, landscaping and irrigation systems, and any property, structure, improvement and appurtenance shall be kept in good, safe, clean, neat and attractive condition. All areas not covered by structures, walkway or paved parking facilities shall be maintained as lawn or landscape areas, with underground irrigation systems, to the pavement edge of any abutting streets and to the water line of any abutting lakes, canals or water bodies. No stone, gravel, or paving of any type shall be used as a lawn unless approved as part of the final landscape plan.

Whereas, the foregoing restrictions may not have been previously enforced uniformly by the Association.

Whereas, the Board of Directors desires to make clear, and place all owners on notice, that the restrictions contained in Sections 9.1, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19, 9.22, 9.24 and 9.26 of the Declaration remain in place, and that said restrictions shall be strictly and uniformly enforced from this point forward.

It is hereby resolved that the Board of Directors has voted and approved the republication of Sections 9.1, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19, 9.22, 9.24 and 9.26 of the Declaration of Covenants, Conditions, and Restrictions for Villagio Del Mar.

It is hereby further resolved that this Resolution shall be recorded in the official records of Palm Beach County, Florida.

0 The Board of Directors for the Association approved by a vote of 3 For and Against the adoption of the above resolution.

13th IN WITNESS WHEREOF, this Resolution has been approved and executed this day of November, 2018.

**VILLAGIO DEL MAR HOMEOWNERS'
ASSOCIATION, INC.**

By: FJ O'Neill
Francis O'Neill, President

Attest: Joseph Bilotta
Joseph Bilotta, Secretary

CFN 20160419295
OR BK 28730 PG 1678
RECORDED 11/29/2016 11:44:29
Palm Beach County, Florida
AMT
Sharon R. Bock
CLERK & COMPTROLLER
Pgs 1678-1682; (5Pgs)

Prepared By:
Steven R. Braten, Esquire
4800 N. Federal Highway, Suite D307
Boca Raton, FL 33431
T. 561/368-9200
F. 888/202-1679
Email: sbraten@gadclaw.com

After Recording Return To:
Steven R. Braten, Esquire
4800 N. Federal Highway, Suite D307
Boca Raton, FL 33431

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
VILLAGIO DEL MAR HOMEOWNERS ASSOCIATION, INC.

1. WHEREAS, the Declaration of Covenants, Conditions, and Restrictions of Villagio Del Mar Homeowners has been duly recorded on May 22, 2006 in Official Records Book 20369, Page 0260, et. seq., of the Public Records of Palm Beach County, Florida, (the "Declaration");

2. WHEREAS pursuant to a resolution of the Board of Directors approving the proposed amendments to the Declaration and authorizing the membership to vote on said amendments by written consent in lieu of a meeting in accordance with the Association's Bylaws, the aforementioned Declaration was amended pursuant to the provisions of said Declaration.

3. NOW, THEREFORE, the undersigned hereby certify that the following amendments to the Declaration of Covenants, Conditions, and Restrictions, are true and correct copies of the amendments as amended by the membership:

[See Exhibit "A" Attached]

WITNESS my signature hereto this 16 day of November, 2016 at Lake Worth, Palm Beach County, Florida.

[Signatures Follow on Next Page]

WITNESSES:

Villagio Del Mar
Homeowners Association, Inc.

[Signature]
Witness Signature

By: F. O'Neill
Francis O'Neil, as President

Brian Holmes
Print Name of Witness

Attest By: Joe Bilotta
Joe Bilotta, as Secretary

Margaret Schobel
Witness Signature
MARGARET Schobel
Print Name of Witness

STATE OF FLORIDA)
)ss
COUNTY OF PALM BEACH)

The foregoing instrument was sworn to and subscribed before me this 16 day of November, 2016 by Francis O'Neill and Joe Bilotta as President and Secretary, respectively, of VILLAGIO DEL MAR HOMEOWNERS ASSOCIATION, INC. They are personally known to me, or have produced Drivers License as identification.



[Signature]
(Signature of Notary Public - State of Florida)
Gabriela Mena
(Print, Type, or Stamp Commissioned Name of Notary Public)

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Exhibit "A"

AMENDMENTS TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS VILLAGIO DEL MAR

(Underlined material indicates new language)
(Strikethroughs indicate deleted language)

1. Article I, entitled "Definitions" is amended as follows:

Definitions. The following words and terms when used in this Declaration or any Supplemental Declaration hereto (unless the context shall clearly indicate otherwise) shall have the following meanings:

* * *

Section 1.2. "Area(s) of Common Responsibility" shall mean and refer to the Common Areas together with any other area, for which the Association has or assumes maintenance or other responsibilities pursuant to the terms of the Declaration, and Supplemental Declaration, or other covenants, contracts, permits or agreements. For purposes of this Section 1.2, "Party Roofs" shall be deemed part of the responsibilities of the Association to maintain, repair, and replace for which it may assess the Members pursuant to this Declaration.

Section 1.7.1. "Chapter 720" shall mean and refer to the Homeowners' Association Act, and as Chapter 720 may be amended from time to time. With regard to the Association's rights to collect assessments from first mortgagees, including Institutional Lenders, and third party purchasers at foreclosure sales, Chapter 720 shall govern the Association's rights regardless of whether Chapter 720 conflicts with another provision of the Governing Documents of the Association. This provision shall not apply to first mortgages of record as of the date this amendment is recorded.

Section 1.24. "Party Roof" shall mean any roof built as part of the construction of two or more Lots all of the Townhomes in the Community, which Lots and townhomes thereon are connected by one or more Party Walls

2. Section 6.4.4 is added to Article VI, Assessments, as follows:

Notwithstanding anything else set forth in this Declaration to the contrary, including Section 6.5, the Board of Directors is hereby empowered to establish and fund reserves for deferred maintenance and capital expenditures related to the Party Roofs for which it is responsible to maintain, repair and replace. In addition, the Board of Directors may establish such other reserve accounts for those Areas of Common Responsibility that may

result in deferred maintenance and/or capital expenditures, as confirmed by a reserve study performed by a third party qualified to perform such studies.

3. Section 9.29.2(a) and (b) of Article IX, "Use Restrictions", is hereby amended, as follows:

Section 9.29 Party Roofs

* * *

9.29.2 Sharing of Repair, Replacement and Maintenance for Party Roofs.

(a) General. The cost of reasonable repair and maintenance and the replacement of Party Roofs ~~shared on a pro-rata basis based on the air-conditioned space sharing such party Roof without prejudice, however, to the right of the Owner to call for a larger contribution from the other under any rule of law regarding liability or willful acts or omissions~~ is hereby deemed an "Area of Common Responsibility", as that term is defined in Section 1.2 of this Declaration. The Association shall include within the Annual Assessment, and as part of the annual budget, the cost to maintain and repair the Party Roofs.

(b) Failure to Contribute. In the event that an Owner shall fail or refuse to pay his pro-rata share of costs of repair, maintenance, or replacement of a Party Roof (whether or not through his own fault or the failure of his insurance company to pay any claim), then and in that event, the Owner advancing the monies therefor shall have a right to file a claim of lien for such monies advance in the Public Records and shall have the right to foreclose said lien in accordance with the same procedural requirements as now provided for in Florida Statutes fore foreclosure of a construction lien, provided, however, such claim of lien shall be filed within ninety (90) days from date repairs or replacements are made to the Party Roof and suit thereon shall be commenced one (1) year from date such lien is filed.

* * *

4. Section 14.2.1 of Article 14, entitled "General Provisions", is amended as follows:

Section 14.2 General Restrictions on Amendments.

Section 14.2.1 This Declaration may be amended at any time by an instrument signed by the Declarant until Turnover, without the approval of any other party, and after Turnover, by an instrument signed by the President or Vice President and the Secretary or Assistant Secretary of the Association, certifying that such amendment has been adopted in accordance with this Declaration, the Articles of Incorporation and/or the By-Laws. The amendment shall become effective upon its filing in the public records of Palm Beach County, Florida, however, that:

* * *

(d) After the Turnover Date, but subject to the general restrictions and amendments set forth above, the Declaration may be amended with the approval of ~~Sixty-Six and 2/3 (66-2/3%)~~ percent a majority of the Board and Members.

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CFN 20060302385
OR BK 20369 PG 0260
RECORDED 05/22/2006 13:08:26
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0260 - 386; (127pgs)

PREPARED BY & RETURN TO:

Richard A. Murdoch, Esq.
Adorno & Yoss LLP
700 South Federal Highway
Suite 200
Boca Raton, Florida 33432

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

VILLAGIO DEL MAR

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VILLAGIO DEL MAR, is made on this 15 day of MAY, 2006, by BEACH CLUB PARTNERS LLC, a Florida limited liability company, hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property in Palm Beach County, Florida, described in Exhibit "A" attached hereto and incorporated herein by reference, herein referred to as the "**Property**"; and

WHEREAS, Declarant desires to create an exclusive planned residential community known as Villagio Del Mar on the land described in Exhibit "A" and such other land as may be added thereto pursuant to the terms and provisions of this Declaration, and Declarant desires to provide for the preservation and enhancement of the value, desirability and attractiveness of the Property by imposing mutually beneficial covenants, conditions, restrictions and easements on the Property; and to provide for a reasonable and flexible procedure for the overall development of the Property and to establish a method of administration, maintenance, preservation, use and enjoyment of the Property; and

WHEREAS, Declarant intends to develop the Property, or portions thereof, by the construction of roads, utilities and drainage facilities for the construction and occupancy of single family townhome dwellings, and other land uses as may be permitted by applicable zoning ordinances; and

WHEREAS, Declarant desires to establish a community association which will maintain the property owned by or dedicated to such association or any governmental entity lying within the rights-of-way or easements owned by or dedicated to such Association or governmental entity and serving the residents of the Property and not being maintained by the governmental entity, and perform such services and maintenance on behalf of the Members as hereinafter described;

WHEREAS, the Declarant has formed a not-for-profit corporation known as **Villagio Del Mar Homeowners' Association, Inc.**, to own, operate and maintain the Common Property herein described for the benefit of the owners of Lots within the Property, and for the other purposes herein set forth;

NOW, THEREFORE, the Declarant declares that the real property described in the attached Exhibit "A" shall be held, sold and conveyed subject to the restrictions, covenants and conditions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a planned community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

STATEMENT OF DECLARATION

Declarant, declares that the Property and any additional property hereinafter subjected to this Declaration by Supplemental Declaration (as defined in Article 1 below) shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens, liens and all other provisions of this Declaration as hereinafter set forth, which shall run with the title to the Property, and be binding on everyone having any right, title, or interest in the Property or any portion thereof, their heirs, successors, successors-in-title, licensees, invitees, and assigns.

By acceptance of a deed or other instrument evidencing an ownership interest, each Owner and Declarant accepts membership in the Villagio Del Mar Homeowners' Association, Inc., acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles of Incorporation and the By-Laws of the Association.

GENERAL PLAN OF DEVELOPMENT

VILLAGIO DEL MAR COMMUNITY

The Villagio Del Mar Community plan for development contemplates the construction of a residential townhome community and the establishment of Common Areas intended to be available for the benefit of the residential townhome community planned for development thereon all in the manner as, and subject to the reservations of rights, set forth in this Declaration. Among other things, the Declaration (a) requires the Association to maintain and care for the Common Areas; (b) compels membership in the Association by the Owners; (c) provides for the promulgation of assessments and enforcement by lien of collection of payment therefor; (d) affords Owners of Lots non-exclusive rights to the use and enjoyment of the Common Property; (e) provides for various use restrictions.

Declarant's general plan of development for Villagio Del Mar as more particularly described in the Final Development Order issued by the Town of Hypoluxo, Florida, as it may be amended from time to time, currently permits the construction of thirty-eight (38) townhome residential dwelling units, Common Areas, and landscape and buffer areas.

The Association, and each Owner by acceptance of a deed or other instrument evidencing an ownership interest in a Lot in Villagio Del Mar agrees to abide by and be bound by the provisions and covenants stated herein.

The Declarant intends to develop the Property in accordance with the approved Plat and the Final Development Order issued by the Town of Hypoluxo, but hereby reserves the right to modify the Plat and the Final Development Order in such manner as it, in its sole discretion, chooses but always in accordance with applicable regulatory requirements. Nothing contained herein shall be construed as obligating Declarant to develop or construct any future development tracts, or to develop the Property according to the present plan of development.

ARTICLE 1

DEFINITIONS

Definitions: The following words and terms when used in this Declaration or any Supplemental Declaration hereto (unless the context shall clearly indicate otherwise) shall have the following meanings:

Section 1.1. **"Architectural Review Committee" or "ARC"** shall mean and refer to the committee established by the Board of Directors of the Association, and further described in Article 7 of this Declaration.

Section 1.2. **"Area(s) of Common Responsibility"** shall mean and refer to the Common Areas together with any other area, for which the Association has or assumes maintenance or other responsibilities pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, permits or agreements.

Section 1.3. **“Articles of Incorporation” or “Articles”** shall mean and refer to the Articles of Incorporation for Villagio Del Mar Homeowners’ Association, Inc., a Florida not-for-profit corporation. A copy of the Articles filed with the State of Florida is attached hereto as Exhibit “B”.

Section 1.4. **“Assessment” or “Assessments”** shall mean and refer to any and all assessments and charges rendered by the Association in accordance with this Declaration and as further described in Article 6 hereof.

Section 1.5. **“Association” or “Community Association”** shall mean and refer to the Villagio Del Mar Homeowners’ Association, Inc., a Florida not-for-profit corporation established for the purposes set forth herein.

Section 1.6. **“Board of Directors” or “Board”** shall mean and refer to the Board of Directors of the Association, appointed or elected in accordance with the Bylaws of the Association.

Section 1.7. **“By-Laws”** shall mean and refer to the By-Laws of the Villagio Del Mar Homeowners’ Association, Inc. A copy of the Bylaws is attached hereto as Exhibit “C”.

Section 1.8. **“Common Areas” or “Common Property”** shall mean and refer to those tracts and parcels of land, together with any improvements thereon, which are actually and specifically dedicated by plat, deeded or leased to the Association for the use and enjoyment of all Owners of Lots, as herein defined, and designated in said plat dedication, deed or lease as “Common Property” or “Common Areas”. The term “Common Property” shall also include any personal property acquired by the Association for the use and benefit of the Members. The Common Areas may include, without limitation, Surface Water and Storm Water Management System, and improvements thereon, if any, internal buffers, community entrance features, perimeter buffers, improvements, easement areas owned by others, additions, lakes, fountains, irrigation pumps, irrigation lines, parks, sidewalks, streets, street lights, service roads, walls, commonly used utility facilities, project signage, parking areas, other lighting, entranceways, features, and entrance gates. The initial Common Property to be owned, operated and maintained by the Association pursuant to this Declaration for the use and benefit of the Owners includes without limitation, all those parcels, Tracts and land described in **“Exhibit A”** attached hereto and incorporated herein by reference, together with the Surface Water and Storm Water Management System retention ponds, as shown on the recorded Plat. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF “COMMON AREAS” AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND OR OBLIGATE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION, THE CONSTRUCTION OR SUPPLYING OF ANY SUCH ITEM BEING IN DECLARANT’S SOLE DISCRETION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED, LEASED BY OR DEDICATED TO ASSOCIATION, EXCEPT AFTER CONSTRUCTION AND DEDICATION OR CONVEYANCE OF ANY SUCH ITEM.

Section 1.9. **“Common Expenses”** shall mean and refer to the actual and estimated expenses incurred, or anticipated to be incurred, by the Association, for administering, operating, maintaining, financing, repairing, replacing or improving the Common Areas, or any portion thereof and improvements thereon, all expenses and costs relating to the obligations of the Association and Lot Owners set forth in Article 16 of this Declaration, and other services required or authorized to be performed by the Association which is attributable to the Areas of Common Responsibility, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-laws, and the Articles of Incorporation.

Section 1.10. **“Common Maintenance Areas”** shall mean and refer to the Common Areas, if any, and drainage facilities and detention ponds and any areas within public rights-of-way or easements that the Board of Directors of the Association deems it necessary or appropriate to maintain for the common benefit of the Members.

Section 1.11. **“Community” or “Villagio Del Mar” or “Villagio Del Mar Community”** shall mean and refer to the name given to the planned residential community development on the Property inclusive of the real property described in Exhibit “A” together with such additional property as is subjected to this Declaration in accordance with Article 2.

Section 1.12. **“Community Completion Date”** shall mean and refer to the date upon which all Units in Villagio Del Mar, as ultimately planned and as fully developed, have been conveyed by Declarant to Owners.

Section 1.13. **“Community-Wide-Standard”** shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standards may be more specifically determined by the Board of Directors and by the Declarant so long as the Declarant owns one or more Lots within the Villagio Del Mar Community.

Section 1.14. **“Declarant”** shall mean Beach Club Partners LLC, a Florida limited liability company, and its successors and assigns who take title to any portion of the Property for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 1.15. **“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Villagio Del Mar, as it may be amended or supplemented from time to time.

Section 1.16. **“Governing Documents” or “Association Documents”** shall mean and refer to the Declaration, any Supplemental Declaration, the By-Laws, and Articles of Incorporation, or any of the above, as each may be amended from time to time.

Section 1.17. **“Institutional Lender”** shall mean and refer to the owner and holder of a Mortgage encumbering a Lot, which owner and holder of said Mortgage may be a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, an agency of the United States government, private or public pension fund, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a credit union, real estate or

mortgage investment trust or a lender generally recognized in the community as an institutional lender.

Section 1.18. **“Lot”** shall mean and refer to a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as a townhome residence, and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) the attached townhomes on separately platted Lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or part of the Property. The term shall include all portions of the Lot owned including any residential dwelling or structure thereon.

Section 1.19. **“Member”** shall mean and refer to all those persons or entities who are members of the Association as provided in Article 3 hereof.

Section 1.20. **“Mortgage”** shall mean and refer to a permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.

Section 1.21. **“Mortgagees”** shall mean and refer to a beneficiary or holder of a Mortgage.

Section 1.22. **“Notice”** shall mean and refer to delivery of any document by mail with postage prepaid to the last known address according to the records of the Association of the person or entity who appears as Owner in the records of the Association. If available from the records of the Association, notices to an Owner will be sent to a tenant of Owner occupying the Lot. Notice to one of two or more co-owners shall constitute notice to all Owners.

Section 1.23. **“Owner”** shall mean and refer to the owner as shown by the records of the Association (whether it be the Declarant, one or more persons, firms or legal entities) of fee simple title to any Lot located within the Property. Owner shall not mean or refer to the holder of a Mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure nor shall the term “Owner” mean or refer to any lessee or tenant of an Owner.

Section 1.24. **“Party Roof”** shall mean any roof built as part of the construction of two or more Lots, which Lots and the townhomes thereon are connected by one or more Party Walls.

Section 1.25. **“Party Wall”** shall mean any fence or wall built as part of the original construction of two or more Lots which is placed on the dividing line or platted lot line between such Lots.

Section 1.26. **“Person(s)”** shall mean and refer to a human being, a corporation, a partnership, a trustee, or any other legal entity.

Section 1.27. **“Plat”** shall mean and refer to the plat of Villagio Del Mar recorded in Plat Book 99 at Pages 185 through 186, inclusive, of the Public Records of Palm Beach County, Florida, as the same may be amended from time to time.

Section 1.28. "Private Street" shall mean and refer to portions of the Property identified on the Plat as Tract "B", being the street providing nonexclusive vehicular and pedestrian access to the Lots and Common Areas.

Section 1.29. "Property" or "Properties" shall mean and refer to the real property described on the attached Exhibit "A", and such additions thereto as may be brought within the jurisdiction of the Association and made subject to this Declaration.

Section 1.30. "Supplemental Declaration" or "Supplement" shall mean and refer to any supplement, amendment or modification of this Declaration.

Section 1.31. "Surface Water and Storm Water Management System" shall mean and refer to a drainage system consisting of swales, inlets, culverts, retention ponds, detention ponds, lakes, outfalls, storm drains and the like, and all connecting pipes and easements, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect a quantity and quality of discharges from the system, as permitted pursuant to Chapter 40E, Florida Administrative Code. The Surface Water and Storm Water Management System facilities include, but are not limited to: all inlets, ditches, swales, culverts, water control structures, retention and detention ponds, lakes, flood plain compensation areas, wetlands and any associated buffer areas and wetland mitigation areas, to the extent that any such facilities, areas or conditions apply to Villagio Del Mar.

Section 1.32. "Turnover" or "Turnover Date" shall mean and refer to the date upon which the Declarant's control of the Board of Directors of the Association terminates and control of the Board is turned over to a Board of Directors elected by the Members.

ARTICLE 2

PROPERTY SUBJECT TO DECLARATION

Section 2.1. Property Subject to this Declaration. From and after the time that this Declaration is recorded in the Public Records of Palm Beach County, Florida, the Property shall be subject to the terms and conditions of this Declaration. The Property (including each Lot) shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions contained in this Declaration, which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors or assigns and shall inure to the benefit of each owner thereof.

Section 2.2. Conveyance of Common Property to the Association. In accordance with Article 11 of this Declaration, Declarant shall convey fee simple title to all Common Property to the Association upon completion of any improvements to be constructed or installed thereon.

ARTICLE 3

CREATION OF ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Creation of Association. In order to provide for the administration of the Villagio Del Mar Community and this Declaration, the Association has been organized under the laws of the State of Florida by recording the Articles of Incorporation thereof with the State of Florida.

Section 3.2. Membership. Every Owner of a Lot, by virtue of the ownership of such Lot, the Declarant and its successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner and Declarant accept membership in the Association, acknowledge the authority of the Association as herein stated, and agree to abide by and be bound by the provisions of this Declaration, the Articles of Incorporation, the Bylaws and other rules and regulations of the Association. The term "**Member**" shall include each person or entity owning any right, title or interest in any Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities also have the right of possession. Tenants or others occupying any Lot who do not have an ownership interest therein shall not be Members for the purposes of this Declaration. Membership in the Association is appurtenant to, and may not be severed from, the Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot. Members shall be responsible for compliance with the terms and conditions of this Declaration, the Articles of Incorporation and Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Lot, Common Areas, or other portion of the Property.

Section 3.3. Voting Rights of Members of the Association. Members of the Association shall be allocated votes as follows:

Class A. Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to one vote for each Lot owned.

Class B. The Class B Member shall be the Declarant, or its specifically designated (in writing) successor. The Class B Member shall be allocated three (3) votes for each Lot owned by it within the Property; provided, that the Class B membership shall cease and become converted to Class A membership as set forth in Section 3.6 of this Article 3. Upon conversion to Class A membership, the Declarant shall have one vote for each Lot owned by it within the Property so long as said Lot is subject to assessment by this Association.

Section 3.4. Common Ownership. When any Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Association, such Owner shall select one official representative to qualify

for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Lot (including Lots owned by the Declarant) may not be divided or cast in any fraction and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot. If the Owners fail to designate their official representative, then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

Section 3.5. Change of Membership.

3.5.1. Change of membership in the Association shall be established by recording in the Public Records of Palm Beach County, Florida, a deed or other instrument conveying record fee title to any Lot, and by the delivery to the Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Association, said Owner shall become a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot acquired.

3.5.2. The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

Section 3.6. Class B Membership Status.

3.6.1. The Declarant's Class B membership Status shall continue, and shall be in effect, during the period from the inception of the Declaration until either (i) seven (7) years from the date the Declaration is recorded; or (ii) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into the Association, whichever event, (i) or (ii) occurs later; or (iii) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (iv) in any event, three (3) months after the conveyance of ninety percent (90%) of the Lots in the Property that will ultimately be operated by the Association have been converted to Class A status, whichever event, (i), (ii), (iii) or (iv), occurs first ("Turnover"); provided however, that if Class B status is converted to Class A pursuant to clause (iv) and, subsequent to such event, the Declarant annexes additional Lots to the Property which annexation causes the number of Lots owned by the Declarant in the Property to exceed ten percent (10%) of the total number of Lots within the Property. Declarant's Class B status shall be restored as to all Lots within the Property then owned by Declarant, and shall continue until the next occurrence of an event of Turnover described above.

3.6.2. The Declarant shall have the right to partially assign its status as Declarant and Class B Member, by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant, to any person or entity acquiring any portion of the Property, or the land eligible for annexation into the Property, for the purpose of development of a residential subdivision consistent with the Plat, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots owned by such original Declarant. If any action of the Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarant's shall be required to satisfy the requirement of consent by the Declarant.

ARTICLE 4

FUNCTIONS OF ASSOCIATION AND RELATED MATTERS

Section 4.1. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant.

Section 4.2. Services. The Association shall have the following powers:

4.2.1. Maintenance of Common Areas, Surface Water and Storm Water Management Systems, Private Streets, landscaping, irrigation systems, lands covered by the Plat and all city, county, district or municipal properties and rights-of-way (to the extent permitted by any governmental authority) which are located within or in a reasonable proximity to the Property where deterioration of any of the described items would adversely affect the appearance of the Property or the operation of systems appurtenant thereto.

4.2.2. Maintenance of any real property located within the Property upon which the Association has accepted an easement for said maintenance.

4.2.3. Maintenance of any bulkheads owned by or dedicated for the use of the Association within the Property, as well as maintenance of water bodies if and to the extent permitted or required by any contract or by governmental authority having jurisdiction thereof.

4.2.4. Insect, pest and aquatic control where necessary or desirable in the judgement of the Board to supplement the service provided by the state and local governments. The provisions of this paragraph shall not be construed as an obligation on the part of the Association to provide such services.

4.2.5. Taking any and all actions necessary to enforce all covenants, conditions and

restrictions affecting the Property and to perform 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.

4.2.6. Conducting business of the Association, including but not limited to administrative services such as legal, accounting and financial, and communication services informing Members of activities, Notice of Meetings, and other important events. The Association shall have the right to enter into management agreements, including without limitation, agreements with companies affiliated with the Declarant in order to provide its services, and perform its functions.

4.2.7. Establishing and operating the Architectural Review Committee pursuant to Article 8 hereof.

4.2.8. Adopting, publishing and enforcing such Rules and Regulations as the Board deems necessary.

4.2.9. Lighting of roads, sidewalks, walking and bike paths throughout the Property as deemed necessary by the Board. The provisions of this paragraph shall not be construed as an obligation on the part of the Association to provide such services.

4.2.10. At the sole option and discretion of the Board, conducting recreation, sport, craft, and cultural programs of interest to Members, their families, tenants and guests and charging admission fees for the operation thereof.

4.2.11. Constructing improvements on the Common Property, and easements as may be required to provide the services as authorized in this Article.

4.2.12. Employment of guards, maintenance of control centers for the protection of persons and property within the Property, installation, operation and maintenance of communication systems, if any, by the Association or a contractual designee of the Association, and assistance in the apprehension and prosecution of persons who violate the local, state or federal laws within the Property. However, neither the Association, nor the Declarant shall be obligated to provide any security measures to the Property nor shall they 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 the Declarant, are not insurers 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 acknowledge that Declarant has made no representations or warranties, nor has any Owner, tenant, guest, or invitee 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.

4.2.13. The Association may also provide exterior maintenance upon any Lot or upon any structure thereon which, in the reasonable opinion of the Board of Directors of the Association, requires such maintenance because said Lot or structure is being maintained in a manner inconsistent with the overall appearance and standards prevailing within the Association. The Association shall

notify the Owner of said Lot or structure in writing, specifying the nature of the condition to be corrected, and if the Owner has not corrected the condition within thirty (30) days after date of said notice, the Association (after approval of a majority of the Board) may correct such condition. Said maintenance shall include but not be limited to painting, repairs, replacement and maintenance of roofs, gutters, down spouts, driveways, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot, or exterior of any structure thereon or other structures or improvements located in Villagio Del Mar at reasonable hours on any day, except Saturday and Sunday; provided, however, the Association shall have the right of entry without notice if necessary to correct an emergency situation. The cost of such maintenance shall be assessed against the Lot upon which such maintenance is performed as a Special Assessment as provided in Section 6.7.

4.2.14. Establish use fees and promulgate rules and regulations respecting the use of Common Property and Association facilities by Members and persons other than Members.

4.2.15. Engage in any activities reasonably necessary and legally required to remove from the Common Areas, Surface Water and Storm Water Management Systems, Conservation Areas, and Private Streets any pollutants, hazardous waste or toxic materials, and by Special Assessment, recover costs incurred from the Owner(s) causing or upon whose property such materials were located or generated.

4.2.16. Accept conveyance of Common Areas from the Declarant, including all improvements, structures, equipment, apparatus or personal property thereon, and cooperate with and assist Declarant, its agents, employees and contractors in periodic inspection and maintenance thereof, and accept assignment or transfer of all necessary permits or other forms of governmental authorization concerning the Common Areas pursuant to Article 11.

Section 4.3. Mortgage and Pledge. The Board shall have the power and authority (subject to the provisions of Section 5.10.1 hereof) to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its functions.

Section 4.4. Conveyance to Association. The Association shall be obligated to accept any and all conveyances to it by Declarant of fee simple title, easements or leases to Surface Water and Storm Water Management Systems, Common Areas, subject to any and all obligations and restrictions imposed on such lands, or incumbent on the owner of such lands for the continued maintenance and operation of such lands, including, but not limited to, all environmental and drainage permits issued by any governmental authority.

Section 4.5. Conveyance by Association. The Association may convey or dedicate lands or easements to Palm Beach County, Florida and/or the Town of Hypoluxo, Florida. The Association may also convey lands or easements, owned by the Association, to the Declarant in connection with any replatting of any portion of the Property.

Section 4.6. Contracts with Other Associations. The Association is authorized to enter into any contracts or easement arrangements with any other association, provided that such contracts or easements are necessary or beneficial for the operation of the Association or the maintenance of the Property; provided that the costs or expenses of operating, performing, or maintaining such contracts or easements shall be allocated between this Association and such other association in accordance with the cost incurred or benefit received by each association. Any such contracts or easements shall be approved by the vote or written consent of a majority of the Board of the Association.

Section 4.7. Access Systems. An electronic access system has been or will be provided at the entrance onto the Property from U.S. Highway One. This Access System erected by the Declarant shall be dedicated to the Association, and shall be accepted by the Association pursuant to Article 11 and maintained, repaired and replaced by the Association as part of the Common Areas. Neither Declarant nor the Association make any representations whatsoever as to the security of the premises or the effectiveness of the Access System. Neither Association nor Declarant shall have any liability for any injury, damage, or loss, of any kind or nature whatsoever, to person or to property by reason of failure to provide adequate access control or ineffectiveness of access control measures undertaken, or due to the failure of any electrical, electronic, or mechanical access control or monitoring system to prevent or detect a theft, burglary or any other crime, or unauthorized entry onto the Property. The Association Board of Directors shall establish all rules and regulations concerning operation and access, provided that the Association shall not restrict access to the Properties by Declarant, its agents, employees, contractors, customers or invitees at all reasonable hours. ASSOCIATION AND DECLARANT SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE ACCESS CONTROL OR INEFFECTIVENESS OF ACCESS CONTROL MEASURES UNDERTAKEN.

Section 4.8. Cable Television System. The Association shall have the right, but not the obligation, to enter into an agreement with a cable television company to provide cable television services to all of the Lots. Any and all costs and expenses incurred by the Association under or pursuant to any agreement(s) ("**Cable Agreement**") entered into by the Association pursuant to which cable television service ("**Cable Service**") will be provided to all of the Lots on the Property shall be apportioned equally among all Lots with respect to which the Association is being charged under or pursuant to the Cable Agreement except to the extent, if any, that any Owner elects to receive an "**Optional Service**" (being a service not automatically received by all Owners entitled to receive Cable Service pursuant to the Cable Agreement). Each Owner who receives an Optional Service, if any, shall be responsible for paying the costs thereof. The foregoing shall in no way obligate Declarant or the Association to enter into a Cable Agreement. Declarant shall not be charged for Cable Television Service or required to make any payment for such Cable Television Service until such service is activated for such Lot by Declarant. Neither Association nor Declarant shall be responsible for failure or interruption of cable television transmissions and or service to any Lot and/or for any maintenance or repairs that may be required from time to time of electronic or optic or any other component of the cable television service and infrastructure.

ARTICLE 5

EASEMENTS

Section 5.1. Owners' Easements of Access and Enjoyment. Subject to the provisions below, every Owner shall have a right to use, and an easement of enjoyment in and to the Common Areas, together with an easement of access to and from the Common Areas, which shall be appurtenant to and shall pass with the title to the Lot owned by such Owner, subject to the following:

5.1.1. The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

5.1.2. All provisions of the Declaration and the Articles and Bylaws of the Association and rules and regulations adopted by the Association.

5.1.3. Rules and regulations governing the use and enjoyment of the Common Areas adopted by the Association; provided, however, that the Association may not restrict the persons described in Section 5.4 of this Article from the reasonable use of the Common Areas in connection with the construction and sale of Lots and other improvements upon the Property.

5.1.4. Restrictions contained on any and all plats of all or any part of the Common Areas or filed separately with respect to all or any part or parts of the Common Areas.

5.1.5. The additional restrictions set forth in this Article 5.

Section 5.2. Delegation of Use. Any Owner may delegate, in accordance with the appropriate Bylaws, his right of ingress and egress over and across the Common Areas and right of use and enjoyment at the Common Areas to his guests, invitees and family members, and to tenants and contract purchasers of his Lot, and their respective guests, invitees and family members. Every Owner shall be deemed to have delegated its right of enjoyment to the Common Areas to occupants or lessees of that Owner's Lot subject to the provisions of this Declaration and the Rules and Regulations, as may be promulgated, from time to time. Any such delegation or lease shall not relieve any Owner from its responsibilities and obligations provided herein.

Section 5.3. Utility Easements. The Declarant reserves to itself (and its successors or assigns) for so long as Declarant owns any of the Property, and the Association thereafter, the right to grant easements to any private company, public or private utility or governmental authority providing utility and other services within the Property and the Common Property upon, over, under and across the Property. Said easements shall only be given for the purpose of maintaining, installing, repairing, altering and operating sewer lines, irrigation lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal lines and systems, pipes, wires, fiber optics lines, power lines, telephone service, gas lines, syphons, valves, gates, pipelines, cable television service, alarm systems and all machinery and apparatus appurtenant thereto to all of the foregoing as may be necessary or desirable for the installation and maintenance of utilities and providing services to Owners, the Property, and the Common Property. All such easements to be of a size, width and location as

Declarant, or the Association, in its discretion, deems best but selected in a location so as to not unreasonably interfere with the use of any improvements which are now, or will be, located upon the Property.

Section 5.4. Declarant Easements. Declarant hereby reserves to itself, its successors and assigns, the following rights, privileges and easements, for the use and benefit of Declarant and such persons, entities and/or property as Declarant shall determine in its sole and exclusive judgment, which rights, privileges and easements may be transferred or assigned, in whole or in part, for the exclusive or nonexclusive use and benefit of the assignee provided that such transfer or assignment shall be in writing and recorded in the Public Records of Palm Beach County, Florida.

5.4.1. There is hereby reserved unto Declarant, its successors and assigns, a perpetual easement, privilege and right in and to, over, under, on and across the Common Property for ingress and egress as required by Declarant, its officers, directors, employees, agents, independent contractors, invitees and designees; provided, however, that such access and use does not unnecessarily interfere with the reasonable use and enjoyment of the Common Property by the Owners. Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on any of the Property owned by Declarant. The easements herein, reserved by Declarant shall not structurally weaken any improvements or unreasonably interfere with enjoyment of the Property.

5.4.2. There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right to install erect, operate, maintain, repair and replace utility lines, facilities, apparatus and equipment, including, but not limited to, water, sewer, electricity, natural gas, telephone, television, electronic communication, fiber optic and other service lines, facilities, apparatus and equipment, together with the right of ingress and egress, in, on, over, under and upon all easements, rights-of-way, Common Areas depicted on the Plat, save and except any portion of the said areas upon which the Declarant has erected any portion of the Lot or other improvements, in which event that portion of the easement area underlying the improvements shall be deemed abandoned.

5.4.3. There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right to connect the drainage facilities serving adjacent Lands not encumbered by this Declaration with and to the Surface Water and Storm Water Management System to receive and/or discharge surface water runoff in accordance with the approved drainage plans and permits applicable to the Property and such adjacent lands.

5.4.4. There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right of access, ingress and egress for vehicles, equipment and pedestrians over, on and upon all streets, roads, alleys, Private Street, Conservation Areas, and other Common Areas and parking facilities located within the Property for access to the Property and to adjacent lands not encumbered by this Declaration.

5.4.5. There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right for the placement and location of an electronic monitoring system, if any, installed within the Property, together with a perpetual easement for the

placement and location thereof, including without limitation, conduits, wires, amplifiers, towers, antennae and related apparatus and equipment; and easement for ingress and egress to service, maintain, install, repair and replace the aforesaid apparatus and equipment.

5.4.6. There is hereby reserved unto Declarant, its successors and assigns, the right to use all portions of the Common Areas in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect models erected on the Lots, installing signs and displays, holding promotional parties and picnics, and using the Common Areas for every other type of promotional or sales activity that, may be employed in the marketing of new and used residential Lots. The easements created by this Section, and the rights reserved herein in favor of Declarant, shall be construed as broadly as possible and supplement the rights of Declarant set forth herein. At no time shall Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

Section 5.5. Support Easement and Maintenance Easement. An easement is hereby created for the existence and maintenance of supporting structures (and the replacement thereof) in favor of the entity required to maintain the same. An easement is hereby created for maintenance purposes (including access to perform such maintenance) over and across Villagio Del Mar (including Lots and structures thereon) for the reasonable and necessary maintenance of Common Areas, utilities, cables, wires and other similar facilities.

Section 5.6. Easement to Public Rights-of-Way. Notwithstanding anything to the contrary set forth in this Declaration, to the extent necessary, each Owner shall have a nonexclusive easement for vehicular and pedestrian access to and from his Lot over the Private Street to a public right-of-way. The easement herein granted shall be subject to the reasonable regulation of traffic by the Association, including but not limited to: speed limits; one-way streets; stop signs; yield signs; and other common traffic control signs and devices. The Association shall not have the right to restrict access to the Private Street to Owners, resident members of the Owner's household, invited guests, commercial delivery services, government officials, including but not limited to, postal, police, fire and safety officials, vendors, contractors and tradesmen engaged by an Owner, or the Declarant. The Association shall have the right, but not the obligation, to require nonresidents requesting entry to the Private Street to stop at the entry gate and provide evidence of authorization from an Owner. The right of the Owner to use the Private Street for access to the Owner's Lot may not be suspended or withheld for any reason, including nonpayment of assessments or failure to obey traffic regulations, however, the Association shall have the right to exercise all other remedies available at law or in equity to recover from any such Owner all unpaid assessments, and to enforce all traffic regulations, and, in the event the Association incurs any expense in so doing, in addition to any other relief obtained by the Association, either voluntarily, by agreement, through arbitration or court action, the Owner shall reimburse the Association for all its costs and expenses, including, but not limited to, all reasonable attorney's fees, expert witness fees, investigation costs and other expenses incurred by the Association at the pre-trial, trial or appellate levels. Notwithstanding anything herein to the contrary, no portion of the Private Street may be altered without the prior written authorization of the Town of Hypoluxo, or their authorized designee. No amendment to this Declaration that materially affects the Private Street or the use of the Private Street shall be made without the prior written approval of the Town of Hypoluxo, or their authorized designee.

Section 5.7. Service Easements. Declarant hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities which have been granted rights to service the Lots within the Property, and to such other persons as Declarant from time to time may designate, the nonexclusive, perpetual right of ingress and egress over and across the Private Street, Common Property, for the purposes of performing their services and investigations.

Section 5.8. Drainage System and Easements. The flow of drainage in the drainage system shall not be obstructed or diverted. The Association shall maintain the drainage system as permitted by the South Florida Water Management District, expressly in accordance with the conditions of the applicable drainage permits. Without limitation, the drainage system established by the Declarant will be based on the necessary permits or approvals from the governmental authorities, within Property, including on any Lot shall not be altered, diverted or otherwise modified or interrupted. Declarant hereby reserves for the benefit of Declarant a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage for any Lot. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage improvements within the Property.

Section 5.9. Right of Entry. The Association shall have the right, but not the obligation, to enter any Lot for emergency, security, and safety, which right may be exercised by the Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right, but not the obligation, of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board. In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association shall have the right, but not the obligation, to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

Section 5.10. Extent of Easements. The rights and easements of enjoyment created in this Article 5 shall be subject to the following:

5.10.1. The right of Declarant or the Association, in accordance with its Bylaws, to borrow money from any lender for the purpose of improving and/or maintaining the Common Areas, Surface Water and Storm Water Management Systems, Conservation Areas, Private Street, landscaping, and irrigation systems and providing services authorized herein and, in and thereof, to mortgage said Common Areas.

5.10.2. The right of the Association to suspend the rights and easements of enjoyment of any Member or any tenant of any Member for any period during which any assessment remains

unpaid, and for any period, not to exceed sixty (60) days, for any infraction of its published rules and regulation, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment. Notwithstanding the foregoing, no such suspension shall be imposed in violation of applicable laws.

5.10.3. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility that may be situated on or in the Common Property.

5.10.4. The right and authority of the Board to place (and remove) after notice any reasonable restrictions upon any roadways owned by the Association including, but not limited to, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of such roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Common Property shall not make such restrictions unreasonable.

5.10.5. The right of the Association to give, dedicate, mortgage or sell all or any part of the Common Property (including leasehold interests therein) to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be determined by the Association; provided that no such gift or sale or determination of such purposes or conditions shall be effective unless the same shall be authorized pursuant this Declaration. The Association shall deliver written notice of the meeting and of the proposed agreement and action thereunder to each Member thereof prior to such meeting as set forth in this Declaration. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association, and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the Members.

Section 5.11. Access Easements. There is hereby reserved for the benefit of all Owners, Declarant, the Association, South Florida Water Management District, Lake Worth Drainage District, Palm Beach County, the Town of Hypoluxo, and all other governmental authorities an easement (herein referenced as the "**Access Easements**") over, upon and across those areas as depicted on the Plat for access to the drainage system, storm water management and drainage facilities located within the associated water management tracts for purposes of performing any and all maintenance activities pursuant to the maintenance obligation of the Association.

Neither the Association, the Declarant, nor any Owner shall obstruct access to the Access Easement, and no fence, hedge, landscaping or other improvement that would impair or restrict access to the Access Easements shall be installed or permitted to remain within said Access Easements. Neither the Association, the Declarant, nor any Owner shall install any bulkhead, pier or other structure within any Access Easements, and all Owners whose Lots abut the Access Easements shall be responsible for maintaining their Lots, including the repair or prevention of erosion, within the Access Easements, subject to the obligations of the Association to perform landscape maintenance set forth elsewhere in this Declaration. The beneficiaries of the Access

Easement, including, but not limited to all Owners, shall have the right to enter the Access Easement at all reasonable times for the purposes of maintenance of the Access Easement.

Section 5.12. Wall; Fence ;Signage; and Landscape Buffer Easement. There is hereby reserved for the benefit of the Declarant and the Association, an easement over, upon and across parcels of land of Villagio Del Mar as landscape buffers (herein referred to as the “**Landscape Buffer**”), for the erection, maintenance, repair and replacement of a wall or fence, and as may be determined in the Association’s discretion for the erection, maintenance and replacement of signs, and the installation, maintenance, repair and replacement of landscaping, including, without limitation, berms, swales, planters, hedges, trees, shrubs, ground cover, flowers, and other plants and accessories, and landscape lighting and irrigation lines, equipment and facilities. No Owner shall install or remove any plant or other improvement or installation placed in the Landscape Buffer Easement.

Section 5.13. Sign Easement. There is hereby reserved for the benefit of the Declarant and the Association, an easement (herein referred to as the “**Sign Easement**”) in, over, under, upon and across all Common Areas as depicted on the Plat of Villagio Del Mar, for construction, erection, installation, operation, maintenance, repair and replacement of signs and monuments, together with landscaping, lighting and irrigation facilities. No Owner shall obstruct access to the Sign Easement, or install or remove any plant or other improvement or installation placed in the Sign Easement by the beneficiaries thereof or obstruct the view of the Sign Easement from the adjacent Private Street. All signs, monuments, landscaping, lighting, irrigation and other permanent improvements installed in the Sign Easement by the Declarant shall become the Common Property of the Association upon conveyance thereof from the Declarant, and the Association shall maintain the Sign Easement and the improvements therein as part of the Common Property. In addition, the Declarant shall have the right, without the prior approval of the Association or any Owner, to erect marketing signs within the Sign Easement, and to change, move, remove, repaint, maintain and otherwise exercise complete and unfettered control over such marketing signs at all times prior to the sale of the last Lot constructed by Declarant in Villagio Del Mar, and all such marketing signs shall be and remain the exclusive property of the Declarant and shall not be deemed part of the Common Property owned by the Association.

Section 5.14. Easement for Encroachment. The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Areas caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching Property to the extent of such encroachment. An easement is hereby granted for encroachment in favor of an Owner in the event any portion of his or her dwelling unit or appurtenant improvements such as a driveway encroaches upon any of the Lots as a result of inaccuracies in survey, initial construction by Declarant, or due to settlement or movement or caused by changes in the building design or site plan, provided such changes have been approved by appropriate governmental authorities. Such encroaching improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching improvements in favor of the Owner thereof.

Section 5.15. Temporary Completion Easement. All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon adjacent Lots, provided that such easement shall terminate 24 months after the date such adjacent Lot is conveyed to the Owner by the Declarant,

Section 5.16. Sale and Development Easement. For as long as Declarant owns any Lot, there is hereby reserved for the benefit of Declarant and its designees an easement over, upon, across and under the Property as may be reasonably required by Declarant in connection with the development, construction, sale and promotion, or leasing of any Lot within the Property, including but not limited to the free right to access and use the recreational building/facility located or to be located on the Property, the street in front of any model areas designated by Declarant for parking by visitors and staff, to maintain and show model homes, to construct residential dwellings and related improvements, to have employees in the office, and the free right to use the Common Properties, in connection with the development, construction, sale, promotion, marketing, or leasing, of any Lot within the Property. In addition, the Declarant shall have the right, without the prior approval of the Association or any Owner, to erect marketing signs within and on Declarant owned Units, and within all Tracts, and to change, move, remove, repaint, maintain and otherwise exercise complete and unfettered control over such marketing signs at all times prior to the sale of the last Lot constructed by Declarant in Villagio Del Mar, and all such marketing signs shall be and remain the exclusive property of the Declarant and shall not be deemed part of the Common Property owned by the Association.

Section 5.17. Access to Recreation Area. There is hereby reserved for the benefit of the Declarant, the Association and all Owners an easement between Lots 19 and 20 for ingress and egress to the Recreation Area Easement. This easement is six (6) feet wide and runs easterly between said Lots. The Owners of Lots 19 and 20 shall not in any way obstruct the easement or otherwise interfere with ingress and egress over this easement and the utilization of this easement for its intended purposes.

Section 5.18. Recreation Area Easement. There is hereby reserved for the benefit of the Declarant, the Association and all Owners an easement to permit the doing of every act necessary and proper to the use of the Recreation Area, identified as Tract "C" on the Plat. These acts shall include, but not be limited to, ingress and egress over and across the Recreation Area, the use of the facilities located in the Recreation Area, the usual and common noise level generally associated with the types of activities conducted in and about similar recreation areas.

Section 5.19. Open Space, Drainage, Conservation, Recreation and Water Areas. There is hereby reserved for the benefit of the Declarant, the Association and all Owners an easement to permit the doing of every act necessary and proper to the use of the Open Space, Drainage, Conservation, Recreation and Water Areas, identified as Tracts "D" and "E" on the Plat. These acts shall include, but not be limited to, ingress and egress over and across these areas, the use of the facilities, if any, located in these areas, the usual and common noise level generally associated with the types of activities conducted in and about similar areas, and subject to the rules and regulations of all governmental and quasi-governmental authorities having jurisdiction over these areas.

Section 5.20. Party Wall Easement. When any Lot (“**Servient Lot**”) abuts another Lot (“**Dominant Lot**”) on which the exterior wall of a townhome has been or can be constructed against or immediately contiguous to the interior property (perimeter) line shared by the Dominant Lot and the Servient Lot, then the Owner of the Dominant Lot shall have an easement over the Servient Lot, which easement shall be four (4') feet in width contiguous to the interior property line running from the front of the rear property line of the Servient Lot for the following purposes:

5.20.1. For installation, maintenance, repair, replacement and the provision of utility services, equipment and fixtures to serve the Dominant Lot, including but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, television antenna and cable television facilities, and electronic security.

5.20.2. Of support in and to all structural members, footings and foundations, of the Lot or other improvements which are necessary for support of the improvements on the Lot or other improvements on the Dominant Lot. Nothing in this Declaration shall be construed to require the Owner of the Servient Lot to erect, or permit the erection of, additional columns, bearing walls or other structures on its Lot for the support of the Dominant Lot.

5.20.3. For entry upon, and for ingress and egress through the Servient Lot, with persons, materials and equipment, to the extent reasonably necessary in the performance of the maintenance, repair, replacement any improvements on the Dominant Lot.

5.20.4. For roof encroachments, overhanging troughs or gutters, down-spouts and the discharge therefrom of rainwater and the subsequent flow thereof over the easement area and the Common Areas.

An Owner of a Servient Lot shall do nothing on his Lot which interferes with or impairs the use of this easement.

ARTICLE 6

ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Operations of Assessments. Declarant covenants, and each Owner of any Lot shall by acceptance of a deed therefor, regardless of whether it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay the Association: (1) Annual Assessments, (2) initial Capital Assessments, and (3) Special Assessments, all fixed, established and collected from time to time as hereinafter provided. The Annual Assessments, Initial Capital Assessment, and Special Assessments together with such interest thereon and costs of collection provided herein shall be a charge and continuing lien as provided herein on the real property and improvements of the Owner against whom each such assessment is made. Each such assessment, together with such interest thereon and cost of collection, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the

entire amount of the assessment.

The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Property or by the abandonment of the property against which the assessment was made. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 6.2. Purpose of Annual Assessments. The Annual Assessments levied by the Association, may be used for the improvement, maintenance, enhancement and operation of the Surface Water and Storm Water Management Systems and Common Property located in, at or about the Property, and further to provide services which the Association is authorized or required to provide by contract or otherwise, including, but not limited to, the payment of taxes and insurance thereon, construction, repair or replacement of improvements, payment of the costs to acquire labor, equipment, materials, management and supervision necessary to carry out its authorized functions, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized or required functions.

Section 6.3. Duty of the Board. It shall be the duty of the Board, at least thirty (30) days in advance of each fiscal year of the Association, to establish the annual budget and to fix the amount of the Annual Assessment against each Lot for the coming fiscal year, and to prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owner. Failure to fix the amount of the Annual Assessment within the time period set forth above will not preclude the Board from fixing the Annual Assessment at a later date. In the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year, and the Annual Assessment for the immediately preceding year shall continue for the current year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereto.

Section 6.4. Rate of Assessment. Annual Assessments shall be established by dividing the total Common Expenses of the Association by the total number of Lots to derive a uniform base assessment amount applicable to all Lots. Special Assessments for capital improvements or expenses applicable to all Lots within the Property shall be established in the same manner; however, Special Assessments applicable to a particular Lot for expenses attributable exclusively to such Lot, or the Owner thereof, shall be determined by dividing the applicable expense by the number of Lots to which it applies. After such amounts have been determined, the amounts due from the Class "B" Members shall be adjusted according to the following provisions. Declarant will have the following option for each assessment year.

6.4.1. During the period in which Declarant has the status of the Class B Member,

all Lots owned by Declarant, unless otherwise elected in writing by Declarant owning the Lot or Unit, shall be assessed at twenty-five percent (25%) of the rate of assessment applicable to Lots owned by Class A Members, provided however, that in the event that the actual operating expenses of the Association during the year for which the Declarant's assessment is 25% of the Class A Membership assessment exceed the actual income of the Association derived from all assessments imposed on all Members and Declarant electing to pay assessments at 25% of the Class "A" assessment rate Declarant shall reimburse the Association the difference between its actual operating expenses and its actual assessment income for such year, save and except any portion of such deficit attributable to delinquent assessments owed by Class A Members. The amount to be paid by Declarant shall be prorated on the basis of the number of Lots owned by Declarant divided by the total number a Lots owned by all Owners. Payment of such reimbursement shall be made by Declarant within 30 days after receipt of the Association's annual statement of accounts. Notwithstanding the foregoing, the Declarant shall have the right, but not the obligation, to reimburse the Association for deficits attributable to delinquent assessments owed by Class A Members, and, in that event, the Association shall promptly institute collection proceedings, including legal action if necessary, to recover such unpaid amount(s) from such Owner(s), and, upon receipt of such recovery, the Association shall reimburse Declarant the amount(s) so recovered up to the amount of any operating deficit funded by Declarant which arose from such nonpayment.

6.4.2. In the alternative, Declarant may elect, by written notice to the Board, to pay the full Class A rate of assessment for each Lot owned by the Declarant within the Association and subject to assessment without thereby waiving its Class B status, and, in such event, shall not be liable for the operating deficit of the Association as provided in Subsection 6.4.1.

6.4.3. At such time as Class B status shall cease, all Lots owned by Declarant shall be assessed at the full Class A rate and Declarant shall have no obligation to fund any operating deficit of the Association thereafter. Notwithstanding anything contained herein to the contrary, in the event the Association incurs any Common Expense, which by its nature is applicable only to a Lot with a completed structure thereon, such expense shall only be assessed to and payable by the Owners of completed Lots, and shall not be included within any Assessments payable by Declarant. Such expenses include, for example, expenses for bulk cable television service, which may be incurred pursuant to this Declaration.

Section 6.5. Special Assessments. In addition to the Annual Assessments authorized herein, the Association may levy in any fiscal year a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto; provided, such assessment shall have the affirmative vote or written consent, or combination thereof of at least a simple majority of the votes of each class of Members as evidenced by the result of a vote taken by the Association. The obligation to pay Special Assessments shall be computed on the same basis as for Annual Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The Association (by simple majority vote of the Board) may also levy a Special Assessment

against any Member to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

Section 6.6. Notice and Quorum Requirements. Written notice of any proposed action to be taken pursuant to Section 6.5 shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a written description of the proposed assessment. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. The quorum for any such meeting shall be no less than 20% of the total number of votes. The foregoing requirement is a minimum requirement, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

Section 6.7. Date of Commencement of Annual Assessments - Due Dates. The Annual Assessments provided for herein shall commence as to each Lot on the day on which the Lot is subjected to the terms and conditions of this Declaration by recordation of this Declaration or any Supplemental Declaration annexing Lots into the Association, or on the date the Association Articles of Incorporation are filed with the Secretary of State of Florida, whichever occurs later. The dates when such Annual Assessments shall become due shall be established by duly adopted resolution of the Board. The Annual Assessments shall be adjusted (pro-rated) according to the number of days remaining in the fiscal year at the time assessments commence on the Lot. The Association may delegate to a mortgage company, financial institution or management company responsibility for collection of assessments. The Annual Assessments shall be payable in advance in monthly installments, or in annual, semiannual or quarter-annual installments if so determined by the Board of Directors of the Association (absent which determination they shall be payable monthly).

Section 6.8. Records of Payment. The Board shall prepare a roster of Owners and Annual Assessments and Special Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner at reasonable times with reasonable notice. Any Owner shall have the right to request the Association to issue a written statement signed by an officer of the Association, setting forth whether all Annual Assessments and/or Special Assessments owed by such Owner have been paid. The Association shall have the right to impose a fee for the issuance of such statements not to exceed \$50.00 per statement. Requests for such statements shall be in writing addressed to the address to which Annual Assessment payments are made. Each request shall contain the street address and legal description (by platted lot and block) of the property and the full name of the Owner. The Association shall issue the requested statement within 30 days after receipt of the written request, subject to the payment of any fee for such service imposed by the Association. Such written statement issued by the Association shall be prima facie evidence of payment of any assessment therein stated to have been paid.

Section 6.9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of the Association.

6.9.1. If any assessment (e.g. any Annual Assessment, or Special Assessment) is not paid on the date due, then such assessment shall become delinquent and the entire assessment shall, together with interest thereon and cost of collection thereof as hereinafter provided, become due and payable and be a continuing lien on the property which shall bind such property in the hands of the then Owner, the Owner's heirs, devisees, personal representatives, successors and assigns. The obligation of the Owner to pay such assessment is a personal obligation and any assessments that are due but remain unpaid at the time the Owner disposes of his or her ownership interest shall be enforceable by the Association against such person or against such person's successor in interest to the property subject to the assessment unless such successor in interest acquires title to the property by foreclosure of a lien securing a purchase money mortgage or home equity mortgage, or by deed or conveyance in lieu of foreclosure of such lien.

6.9.2. The Association may record a notice of lien for delinquent assessments in the public records and foreclose the lien in the same manner as a mortgage. The lien shall not be valid against subsequent bona fide purchasers or mortgagees for value unless so recorded. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments thereafter until satisfied of record, together with interest thereof, as provided herein, and the reasonable cost of (a) notices of delinquency, (b) demands for payment, (c) notices of liens, (d) assignment of liens, (e) releases of liens, (f) recording costs, (g) attorney's fees, and (h) management company fees.

6.9.3. If the assessment is not paid within thirty (30) days after the due date it shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, or the highest rate permitted by law at the time such amount is applied, whichever is less, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys fee to be fixed by the court together with the costs of the action.

6.9.4. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure.

6.9.5. Suit to recover a money judgment for delinquent amounts owed to the Association and reasonable attorney's fees and costs shall be maintainable without foreclosing or waiving the lien securing the same.

Section 6.10. Subordination of the Lien to the Mortgages; Mortgagees' Rights. The lien of the assessments provided for herein is subordinate to the lien of any purchase money or home equity Mortgage given to an Institutional Lender now or hereafter placed upon a Lot recorded prior to the recording of a notice of lien pursuant to Section 6.9 of this Article 6; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

An Institutional Lender, upon request, shall be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. The Association may provide such notice without receiving a request from the Institutional Lender. An Institutional Lender may pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Property and Institutional Lenders making such payments shall be owed immediate reimbursement therefor from the Association.

Section 6.11. Damage to Common Property by Owners. Any maintenance, repairs or replacements within the Common Property arising out of or caused by the willful or negligent act of the Owner, Owner's family, guests or invitees shall be performed at said Owner's expense or a Special Assessment therefore shall be made against Owner's Lot.

Section 6.12. Exempt Property. The following property subject to this Declaration shall be exempted from all assessments, charges and liens created herein: (a) all easements, rights-of-way or other interest dedicated and accepted by the local public authority and devoted to public use; and (b) all Common Property. All Lots, Property or additional property annexed pursuant hereto and owned by Declarant shall be exempt from payment of Assessments for so long as Declarant funds any deficit in the annual budget. Declarant shall fund such expenses only as they are actually incurred by the Association during the period that Declarant is funding the deficit. Declarant's obligation to funding deficits shall terminate at such time as Declarant, in its sole discretion, elects to pay the Assessment for each Lot owned by it, or after the Turnover Date, whichever shall first occur. Declarant may, but is not obligated to, assign this exemption right to any entity it may determine. Any such assignment of Declarant's exemption shall have no effect on Declarant's exemption hereunder.

Section 6.13. Initial Capital Assessment. In addition to all other assessments described herein, each Lot shall be subject to an Initial Capital Assessment equal to three (3) months of the then prevailing Annual Assessment, which shall be paid to the Association upon conveyance of the Lot from Declarant to a Class A Member. The obligation to pay the Initial Capital Assessment shall be borne by the purchaser of the Lot, and the Initial Capital Assessment shall be collected and paid to the Association at the closing at which title to the Lot is conveyed to the purchaser, however failure of the title company or settlement agent to collect such Initial Capital Assessment on behalf of the Association shall not relieve the purchaser of the obligation to pay such amount, nor shall any such title company, settlement agent or Declarant be responsible for such payment.

Section 6.14. Rights to Pay Assessments and Receive Reimbursement. Association, Developer and any Lender of a Lot shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Lot. If so paid, the party paying the same shall be subrogated to the enforcement rights of Association with regard to the amounts due.

ARTICLE 7

ARCHITECTURAL CONTROL

Section 7.1. Enforcement of 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 committees established in Section 7.2 and 7.3 of this Article 7.

No construction, which term shall include within its definition, staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article until the requirements of the ARC have been fully met, and until the approval of the appropriate entities has been obtained, including, but not limited to, the Town of Hypoluxo.

Section 7.2. Architectural Review Committee. The Board may establish an Architectural Review Committee ("ARC") which shall have jurisdiction over all construction on any portion of the Property except Units or improvements constructed or installed by the Declarant and whose duties, powers and responsibilities shall be as follows:

7.2.1. The ARC shall consist of three (3) or more persons designated by the Board.

7.2.2. The ARC shall have the right of approval of all architecture and landscaping of any Lots. All construction and development within the Property is subject to local governmental control; however, the ARC may, in its sole discretion, impose standards of architectural and landscaping design, which standards are greater or more stringent than standards prescribed in applicable building, zoning, planning or other local governmental codes. Notwithstanding the foregoing, all Lots and improvements constructed or installed by the Declarant shall be deemed approved by the ARC and shall not be subject to review or approval by the ARC.

7.2.3. No building, sign, outside lighting, fence, hedge, wall, walk, dock or other improvement, structure or planting shall be constructed, erected, installed, or planted until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and the location, as applicable, of same shall have been submitted to and approved in writing by the ARC.

7.2.4. Prior to the initiation of construction or installation upon any Lot, the Owner thereof shall first submit to the ARC a complete set of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, as applicable, and

any other information, deemed necessary by the ARC for the performance of its function. In addition, the Owner shall submit the identity of the individual or company intended to perform the work and a projected commencement and completion date.

7.2.5. All plans for the construction or installation of any improvements within the Property impacting drainage of any Lot shall contain a drainage plan which shall be consistent with the master drainage plan, provided, however, any improvements that would impact or otherwise alter the master drainage plan are prohibited.

7.2.6. Upon receipt by the ARC of all of the information required by this Article 7, it shall have 30 days in which to review said plans. The proposed improvements will be approved if, in the sole, absolute and unfettered opinion of the ARC, (1) the improvements will be of an architectural style and of materials that are compatible with the other structures in the Property; (2) the improvements will not violate any restrictive covenant or encroach upon any easement or platted building set back lines; (3) the improvements will not result in the reduction in property value or adversely effect the use of adjacent property; (4) the individual or company intended to perform the work is acceptable to the ARC; and (5) the improvements will be substantially completed, including all cleanup, within six (6) months of the date of commencement (twelve (12) months for the construction of a complete house), in the event that the ARC fails to issue its written approval or disapproval at the proposed construction within 30 days of its receipt of the last of the materials or documents required to complete the Owner's submission, the ARC's approval shall be deemed to have been denied without further action.

7.2.7. In the exercise of its sole, absolute, and unfettered discretion, the ARC may require the Owner to provide assurances that the improvements will be completed in accordance with the approved plans. Such assurances may include the posting of a performance bond and/or a completion bond in favor of the Association, independent professional inspection reports or sworn progress reports.

7.2.8. If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article 7 to the same extent as if erected without prior approval of the ARC. The ARC or the Association or any Owner may maintain any action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

7.2.9. There is specifically reserved unto the ARC, the right of entry and inspection upon any Lot, including the interior of any improvements on a Lot with respect to the support of improvements on adjoining Lots, for the purpose of determination by ARC whether there exists any construction of any improvement which violates the terms of any approval by the ARC or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The ARC is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees at all levels in connection therewith. The Association

shall indemnify and hold harmless the members of the ARC from all costs, expenses and liabilities including reasonable attorneys fees incurred by virtue of any member of the ARC's service as a member of the ARC.

7.2.10. A majority of the ARC may take any action of the committee and may designate a representative to act for it in the event of death, disability or resignation of any member of the ARC, the Board shall designate a successor. If a request for approval is pending before the ARC that must be approved or rejected before the Board has appointed a successor to the ARC member who has resigned or died or become disabled, the surviving member(s) of the ARC shall be deemed to have been named as the agent or representative of the ARC and shall have the authority to act on behalf of the ARC with respect to any such pending applications.

7.2.11. The ARC may impose reasonable fees and charges upon Owners to enable it to carry out its functions.

7.2.12. In each instance where a structure has been erected, or the construction thereof is substantially advanced, in such manner that the same violates the restriction contained in this Declaration or any other covenants which the ARC has the power to enforce, or in such manner that the same encroaches on any easement area or setback line, the Board of the Association shall have the authority to release the property from the restriction which it violated and to grant an exception to permit the encroachment by the structure over the setback line or on the easement area, so long as the ARC, in the exercise of its sole, absolute, and unfettered discretion, determines that the release or exception will not materially and adversely affect the health, safety and appearance of the Property.

7.2.13. The Board of Directors of the Association has the right, but not the obligation, to grant waivers for minor deviations and infractions of this Declaration upon its own action or at the request of the ARC. The granting of any waiver for any portion of the Property may be given or withheld in the Board's sole discretion and a prior grant of a similar waiver shall not impose upon the Board the duty to grant new or additional requests for such waivers.

7.2.14. The Association, Declarant and ARC, and any officer, employee, director or member thereof, shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant or ARC, or any officer, employee, director or member thereof, to recover any such damages.

Section 7.3. Declarant Exemption; and Approval of Fences. This Article shall not apply to the original structures erected on any Lot built by or on behalf of, and/or sold by Declarant, its successors and assigns. Notwithstanding any other provision to the contrary, as long as the Declarant continues to own any Lot in the Property, no fence, dock, or pier shall be constructed on any Lot or Common Areas, nor any hedges or other landscaping installed on any Lot, unless approved by Declarant, which may be withheld, conditioned or delayed in the sole and absolute discretion of the Declarant. The authority reserved to the Declarant to approve, disapprove or condition any request

for construction of a fence or installation of hedges or landscaping shall supersede the authority of the ARC, and the ARC shall not accept any application or request for approval of a hedge, landscaping, fence, dock, or pier unless such application or request is accompanied by the written consent of the Declarant.

Section 7.4. Modifications. The ARC shall also have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots. The ARC may promulgate detailed standards and procedures governing modifications to Lots and structures thereon. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the ARC for 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. Due to the nature and configuration of the improvements on the Lots, permission or approval shall be required to paint or repaint, even in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications, by the Declarant or the ARC, as the case may be. Except with respect to the support and shared walls with improvements on adjacent Lots, nothing contained herein shall be construed to limit the right of any Owner to remodel the interior of a Lot or to paint the interior of his Lot any color desired. All improvements to the interior of any improvements on the Lot shall be performed by licensed contractors, who shall provide a certificate of insurance to the Association, as may be reasonably required by the Association, and shall obtain all permits and licenses to perform the contemplated improvements from all governmental authorities having jurisdiction over Villagio Del Mar. Each and every Owner performing, or causing to be performed such alterations, improvements and/or additions in, on, or about his Lot and the improvements thereon, agrees to indemnify and save harmless the Association, the Declarant and its general contractor from all expenses, liens, claims or damages to either persons or property, including, without limitation, to adjacent Lots and the improvements thereon, arising out of or resulting from the undertaking or making of said alterations, additions and improvements, including all attorneys fees and costs incurred by the Association, Declarant or its general contractor with respect thereto. Each acknowledges and agrees that making such alterations, improvements and/or additions, can void any and all warranties of the Declarant or its general contractor. In the event that the ARC fails to approve or to disapprove such plans or to request additional information reasonably required within thirty (30) days after submission, the Owner shall provide the Board with a notice of such failure, and if the Board fails to respond within five (5) business days after receipt of such notice, the plans shall be deemed approved.

Section 7.5. Review and Appeal of ARC Decisions. The Board of Directors shall have the right to review and overturn the decisions of the ARC. Any Owner whose request for approval from the ARC has been denied, shall have the right to submit a written request to the Board for a review of the decision of the ARC. Such request must be accompanied by a complete copy of each and every plan, drawing and document submitted to the ARC, as well as copies of any correspondence or written communication between the Owner, or applicant, and the ARC, and shall state the arguments the Owner, or applicant, desires the Board to consider, and the exact form of relief requested. All such appeals shall be deemed de novo applications which shall be reviewed by the Board rather than the ARC, but which shall otherwise be governed by the requirements and procedures described in Section 7.2 of this Article 7. The Board shall not review decisions by the ARC granting its approval of applications presented in compliance with Section 7.2.

Section 7.6. Address for Notice. Requests for ARC approval or correspondence with the ARC shall be addressed to the Architectural Review Committee - Villagio Del Mar Homeowners Association, Inc. and mailed or delivered to the principal office of Declarant in Palm Beach County, Florida area, or such other address as may be designated from time to time by the ARC. No correspondence or request for approval shall be deemed to have been received until actually received by the ARC in form satisfactory to the ARC.

ARTICLE 8

USE AND OCCUPANCY; LEASES

Section 8.1. Single Family Residential Use Only. All Lots and dwellings shall be used and occupied for single family residence purposes only, except for normal construction activity, sale, and re-sale of improvements of the Lot, sale or re-sale of other property owned by Declarant, and administrative offices of Declarant. No Lot or dwelling may be used for commercial, institutional or other nonresidential purpose if such use involves the attendance or entry of nonresidents upon the Lot or otherwise diminishes the residential character of the Lot or neighborhood. This prohibition shall not apply to the use of any Lot by Declarant as a model home or sales office, or the use of any Lot as a site for a construction office trailer or sales office trailer by Declarant. No Owner may actively engage in any solicitations for commercial purposes within Villagio Del Mar.

Section 8.2. Rental of Units; Leases; Time Share. No Lot may be used as a rooming house, hostel or hotel. No "Time-Sharing Plan" (as defined in Section 721.05 of the Florida Statutes) or any similar plan shall be permitted for any Unit. Rentals of less than 365 days duration or operation of a rooming house, hostel or hotel shall be deemed to be commercial uses for the purposes of enforcement of this Declaration, and are prohibited. No Lot may be subdivided or leased by the room, and all leases shall comply with this Declaration.

8.2.1. **Instrument in Writing.** All leases shall be in writing, and complete copies of all leases shall be delivered to the Board of Directors of the Association on or before the date of occupancy of any Tenant (herein so called) under any such lease. Each lease shall set forth the name, address and telephone number of the Owner of the Unit; the name, address and telephone number of the Tenant; the date of occupancy; the date of termination; the names of all persons who will occupy the Lot and their relationships to the Tenant; and, a description of each motor vehicle owned or operated by the Tenant or members of the Tenant's household.

8.2.2. **Minimum Lease Term.** All leases shall be for a term of 12 months or longer. No Owner may rent any portion or all of a Lot for a period of less than 12 months. No Owner may rent all or any portion of a Lot more than once in any 12-month period. If a Tenant, who has signed a lease of 12 months or longer, defaults on the lease or abandons the Lot before the expiration of the lease term, the Owner shall have the right to find a replacement Tenant provided that the term of the lease for the replacement Tenant shall be at least 12 months, and provided further that if the replacement Tenant defaults or abandons the Lot, or if the term of the replacement lease expires before the expiration of 12 months after the date of the original lease, the Owner may not replace the replacement Tenant until the 12-month period has expired.

8.2.3. **Subleases.** There shall be no subleases of Lots in Villagio Del Mar.

8.2.4. **Roommates and Paying Guests.** Any person unrelated to the Owner of a Lot by parentage or marriage who pays rent or other financial consideration or otherwise contributes financially for the upkeep of the Lot or income of the Owner as a condition of cohabitation with the Owner or other occupancy of the Lot shall be considered a Tenant and shall be subject to this Declaration. Such roommate/guest/tenant arrangements shall be in writing and shall comply with the conditions of Sections 8.2.1, 8.2.2 and 8.2.3 above.

8.2.5. **Compliance with Amended Declaration.** All Owners and Tenants shall certify in writing to the Association, at the time copies of the leases are delivered to the Board of Directors pursuant to Section 8.2.1 above, that the Owner has delivered to the Tenant a complete copy of the Declaration, and that the Tenant acknowledges the obligation of the Tenant and all members of the Tenant's household to comply with the covenants, conditions and restrictions contained in this Declaration. No Owner may assign or otherwise transfer the Owner's rights and obligations under this Declaration to any Tenant, and the Association shall have the right to enforce the covenants, conditions and restrictions set forth in this Declaration against the Owner, Tenant or any member of the Tenant's household, individually or collectively. The Association shall not be bound by any provision in the lease or other agreement between the Owner and Tenant requiring prior notice or imposing other conditions on the rights of the Association. The Association shall have the right to collect all annual and special assessments imposed on the Lot from the Owner thereof, and shall not be obligated to collect any such amounts from a Tenant.

8.2.6. **Association as Third Party Beneficiary.** The Association shall be deemed a third party beneficiary of all leases of Lots, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the Tenant or the Owner. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement prior to commencement of the lease term shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or Tenant contained in the lease or otherwise.

8.2.7. **Vicarious Liability of Owner for Acts of Tenant.** Notwithstanding any condition of any lease to the contrary, Owner, by acceptance of the deed to the Lot, hereby covenants and agrees with the Association and all other Owners of Lots in Villagio Del Mar Community, including but not limited to Declarant, that Owner shall be responsible for the acts or omissions of any Tenant or member of the Tenant's household to the same extent that Owner would be liable for such acts or omissions if committed by Owner or a member of Owner's household. Owner's obligations hereunder shall be deemed a guaranty of performance by Tenant, and the Association shall have the right to take any action or seek any remedy for Tenant's failure or refusal to comply with the covenants, conditions and restrictions of this Declaration directly from or against the Owner without first taking such action or obtaining such remedy from or against the Tenant.

Section 8.3. Construction of Common Areas Facilities. Declarant as "Developer" has constructed or will construct, at its sole cost and expense, to the extent permitted by law, certain facilities and improvements as part of the Common Areas, together with equipment and personalty

contained therein, and such other improvements and personalty as Developer determines in its sole discretion. Developer shall be the sole judge of the composition of such facilities and improvements. Prior to the Community Completion Date, Developer reserves the absolute right to construct additional Common Areas facilities and improvements within Villagio Del Mar, from time to time, in its sole discretion, and to remove, add to modify and change the boundaries, facilities and improvements now or then part of the Common Areas. Developer is not obligated to, nor has it represented that it will, modify or add to the facilities, improvements, Common Areas as they are contemplated as of the date hereof. Developer is the sole judge of the foregoing, including the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, improvements, appurtenances, personalty (e.g., furniture), color, textures, finishes, or Common Areas, or changes or modifications to any of them.

8.3.1. **Use of Common Areas by Developer.** Until the Community Completion Date, Developer shall have the right to use any portion of the Common Areas, without charge, for any purpose deemed appropriate by Developer.

8.3.2. **Conveyance.** Within sixty (60) days after the Community Completion Date, or earlier as determined by Developer in its sole discretion, all or portions of the Common Areas may be dedicated by Plats, created in the form of easements, or conveyed by written instrument recorded in the Public Records, or by Quitclaim Deed from Developer to Association. The dedication, creation by easement, or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership operation, maintenance, and administration of the conveyed portions of Common Areas and other obligations relating to the Common Areas imposed herein, Association shall, and does hereby, indemnify and hold Developer harmless on account thereof. Association, by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Common Areas, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS BEING CONVEYED.

8.3.3. **Operation After Conveyance.** After the conveyance or dedication of any portion of the Common Areas to Association, the portion of the Common Areas so dedicated shall be owned, operated and administered by Association for the use and benefit of the owners of all property interests in Villagio Del Mar including, but not limited to, Association, Developer, Owners and any Lenders. Subject to Association's right to grant easements, and other interests as provided herein, Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without (i) if prior to the Community Completion Date, the approval of (a) a majority of the Board; and (b) the consent of Developer; or (ii) from and after the Community Completion Date, approval of (a) sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the Board; and (b) seventy-five percent (75%) of all of the votes in Association.

Section 8.4. Common Maintenance. The Property has been established as a community in which the Association provides certain exterior maintenance services for the residents as part of its normal function in order to create a life-style for the Owners providing freedom from the burden of such maintenance responsibilities. It shall be in the sole and absolute determination of the Board when these maintenance services occur. The expense of such maintenance services is included in the Annual Assessments of the Association. The responsibility for maintenance of the Lots is described as follows:

8.4.1. **Owners' Obligations.** Each Owner, at its own cost, shall be exclusively responsible for performance of all maintenance obligations for their Lot that is not specifically assumed by the Association pursuant to this Declaration, including, without limitation, repair and replacement of all exterior elements of the improvements to a Lot, including but not limited to the paint, garage doors, entry or exit doors, window screens, all glass surfaces and windows, all shutters, all awnings, all pavers, all planters and landscaping incorporated into decks or enclosures, or affixed to the Lot or any patio, walkways, and driveways, or other improvements that are not specifically described in this Section 8.4.1. Further, each Owner of a Lot shall maintain at his expense all structural, electrical, mechanical, and plumbing elements thereof. Owners are strictly prohibited from performing any maintenance duties of the Association, without the prior written consent from the Association. All such repairs and replacements shall be performed to the same quality and standard as such items were originally installed by the Declarant, except as otherwise authorized, in writing, by the Association.

8.4.1.1. **Alterations.** Owners shall not make any alterations or additions to any Lot or Common Areas including without limitation, any changes or alterations of landscaping, ground cover or grass, without first obtaining the written consent of the ARC pursuant to Article 7. Alterations or additions to Lots that would affect the expense of the maintenance obligation of the Association may be rejected for that reason alone, without consideration of the aesthetics or benefits of the proposed alteration or addition.

8.4.1.2. **Duty to Report.** Owners shall promptly report to the Association, any condition of the landscaping or irrigation of any Lot in need of maintenance or repair.

8.4.1.3. **Vicarious Liability of Owner for Acts of Tenant.** Notwithstanding any condition of any lease to the contrary, Owner, by acceptance of the deed to the Lot, hereby covenants and agrees with the Association and all other Owners of Lots in Villaggio Del Mar Community, including but not limited to Declarant, that Owner shall be responsible for the acts or omissions of any Tenant or member of the Tenant's household to the same extent that Owner would be liable for such acts or omissions if committed by Owner or a member of Owner's household. Owner's obligations hereunder shall be deemed a guaranty of performance by Tenant, and the Association shall have the right to take any action or seek any remedy for Tenant's failure or refusal to comply with the covenants, conditions and restrictions of this Declaration directly from or against the Owner without first taking such action or obtaining such remedy from or against the Tenant. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

8.4.2. **Responsibilities of the Association.** The Association shall be responsible for the performance of the certain services for the maintenance and landscaping of the Lots as part of its Common Areas. The Board of Directors shall notify the Members in writing setting forth the exact services to be performed, the total estimated cost of such services. The services to be performed shall be determined from time to time by the Board of Directors, and may include the following, without limitations:

8.4.2.1. **Lawn Care.** Mowing, trimming, edging of lawns, including application of fertilizers, herbicides, fungicides and other agents within areas accessible to lawn care crews, and excluding planters, flower pots, rock gardens, or other landscaping or plantings or integrated into the Lot or any patio, or any other landscaping not installed by the Declarant or the Association.

8.4.2.2. **Landscape Maintenance.** Pruning, trimming, and weeding, of trees, shrubs and flower beds installed by the Association or the Declarant on the Lot in accordance with landscape plans and specifications approved by the ARC, including the application of pesticides, herbicides, fungicides and other agents.

8.4.2.3. **Lot Maintenance.** The Association shall be responsible for, on an "as needed" basis, painting of the exteriors and pressure cleaning of the exteriors of the improvements on the Lots. All exterior painting and pressure cleaning shall be performed when deemed appropriate by the Board in the Board's sole and absolute discretion, but at least every four (4) years, at a minimum.

8.4.2.4. **Amenity Maintenance.** The Association shall be responsible for the maintenance, repairs and up-keep of the amenities of Villagio Del Mar and Common Areas.

8.4.2.5. **Irrigation System.** Operation, maintenance and replacement of all irrigation system lines, pumps, meters, timers, sprinkler heads or other apparatus, equipment or machinery. Due to water quality, irrigation systems may cause staining on improvements on the Lot, other structures or paved areas. It is each owner's responsibility to treat and remove any such staining, Association may require from time to time, that Owners adopt systems to prevent stains (e.g., automatic deionization systems). Developer and Association shall have the right to use one or more pumps to remove water from lakes and water bodies for irrigation purposes at all times, subject to applicable permitting. Developer may utilize an automated loop system to irrigate the Common Areas and/or Lots. Any automated loop irrigation system that is not specifically the maintenance obligation of Owners, shall be the maintenance obligation of Association and shall be deemed part of the Common Areas.

8.4.2.6. **Littoral Areas.** The maintenance and monitoring of the littoral areas shall be the sole and perpetual responsibility of the Association in accordance with the guidelines of the South Florida Water Management District ("SFWMD") Permit Number 50-06160-P, as part of the Surface Water and Storm Water Management Systems.

Section 8.5. Scheduling and Control. The Association shall have the exclusive right to

control the timing of the performance of the services described in the notice sent to Members by the Board of Directors, including the hours of the day and days of the week or, which such services will be performed, as well as the schedule of irrigation and application of fertilizers, pesticides, herbicides, fungicides and other agents. No Owner shall interfere with the performance of the services by the Association or its contractors, agents or employees, or alter the schedule of irrigation established by the Association.

Section 8.6. Indemnification. The Association covenants and agrees that it will indemnify and save and hold harmless Declarant from and against: (i) any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about any Lot within the Property or elsewhere within the Property; (ii) any and all costs, reasonable legal fees, expenses and liabilities incurred in connection therewith; (iii) the investigation thereof or the defense of any action or proceeding brought thereon; and (iv) any and all orders, judgments and/or decrees in connection with, relating to, arising from the performance by or failure to perform by the Association of its obligations under this Declaration. Included in the foregoing provisions of indemnification are any expenses that Declarant may incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions, and covenants contained in this Declaration to be kept and performed by the Association.

Section 8.7. Exculpation of Association and Declarant. The Declarant shall have no obligation whatsoever for the performance of any service described in this Declaration, or for the failure or refusal of the Association to perform such services.

Section 8.8. Events of Force Majeure. Notwithstanding anything herein to the contrary, neither the Association, nor its officers or directors, nor Declarant shall be liable for any damages suffered by any Owner resulting from acts of God, natural disaster, bad weather or other events or conditions beyond the control of the Association, including but not limited to, damage or destruction of landscaping (including trees, shrubs and other plants), or damage caused by wind blown debris. In the event of loss or damage to landscaping on any Lot, the Owner of said Lot shall be exclusively responsible for payment of all costs of restoration or replacement, and shall cause such damage to be completely repaired within six (6) months after the event. If any Owner shall fail to repair such damage within such time period, the Association shall have the right, but not the obligation, to perform such restoration, repair or replacement, and the cost thereof shall be assessed against the Lot as a Special Assessment. By acceptance of the deed to the Lot, each Owner, for and on behalf of himself/herself and any insurer, hereby waives all rights of subrogation against the Association, its officers and directors, and Declarant for recovery of costs expended by any such insurer for the restoration, repair or replacement of damage to, or caused by, any landscaping (including trees, shrubs and other plants) or wind blown debris.

ARTICLE 9

USE RESTRICTIONS

Section 9.1. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 9.2. Development Activity. Notwithstanding any other provision herein, Declarant and its successors and assigns, shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of dwellings on the Property.

Section 9.3. Temporary Structures. No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant to use trailers or outbuildings as sales offices, construction offices or material storage facilities.

Section 9.4. Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Lot, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in Villagio Del Mar or by any other means displayed within Villagio Del Mar without the prior written approval of the Board of Directors, which approval may be arbitrarily withheld, even for aesthetic reasons. Provided, however, nothing contained herein shall prohibit signs or billboards erected and maintained by Declarant.

Section 9.5. Campers, Boats and Recreational Vehicles. No campers, pick-up trucks, boats, boat trailers, recreational vehicles, vans, buses, motorcycles, mobile homes or similar types of non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within the garage located on such Lot, and said vehicles and accessories are in an operable condition. The ARC as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by the ARC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph. No maintenance, dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. No commercial vehicle bearing commercial insignia or names shall be parked on any Lot except within an approved enclosed structure which prevents such view thereof from adjacent lots and streets, unless such vehicle is temporarily parked for the purpose of serving such Lot.

Section 9.6. Animals, Pets, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that cats, dogs or other generally recognized domestic household pets may be kept in a Unit, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, that no more than one (1) adult animal weighing not more than twenty-five (25) pounds, may be kept on a single Lot. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. Under no circumstances shall any pit bulls, or other dogs deemed potentially dangerous, as determined by the Association, in its sole and absolute discretion, be permitted in Villagio Del Mar, including as a pet of a Lot Owner. It is each Lot Owner's responsibility to immediately clean up all pet waste from the Property.

Section 9.7. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but shall be removed from view before the following day.

Section 9.8. Parking. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas not intended for vehicular access or on any easement unless in use for maintaining such Common Areas. No vehicles, trailers, or other apparatus may be parked overnight, other than in a garage on a Lot, within Villagio Del Mar. No on-street parking or parking on lawns shall be permitted.

Section 9.9. Business, Commercial or Institutional Use. No trade, business, profession, or commercial activity, or any other non-residential use, shall be conducted by a Lot Owner or resident of a Lot, if in connection therewith customers, patients, deliveries, or the like come to the Lot or if such nonresidential use is otherwise apparent from the exterior of the Lot. The foregoing shall not apply to construction offices, model homes and sales offices of Declarant as set forth in this Declaration, and shall not preclude Declarant's activities associated with the construction, development and sale of Lots within Villagio Del Mar.

Section 9.10. Detached Building. No detached accessory buildings, including, but not limited to, detached garages, storage buildings, greenhouse or children's playhouse shall be erected, placed or constructed upon any Lot without the prior consent of the ARC.

Section 9.11. Fences, Walls, and Hedges. No fence, walls, or hedge shall be erected or maintained on any Lot except for (1) fences, walls, and hedges erected in conjunction with Declarant's model homes or sales offices, (2) Common Areas walls, fences, hedges, or buffering or screening structures, landscaping or improvements erected by the Declarant or the Association, (3) fences, walls, and hedges erected by the Declarant as part of the original architecture of the improvements to a Lot and in compliance with the plans and specifications therefor approved by the Declarant or the ARC.

Section 9.12. Solar Energy Devices. No Owner may erect or maintain solar collector panels or other solar energy devices or equipment upon any Lot unless the Lot Owner has obtained all permits necessary for the installation and maintenance of such device and such apparatus is erected and maintained in such a way that it is screened from public view at a point in the center of the public street right-of-way directly in front of the house erected on such Lot; and no such apparatus shall be erected without the prior written consent of the ARC.

Section 9.13. Clotheslines and Outside Clothes Drying. No clotheslines or clothesline poles shall be erected, and no outside clothes-drying is permitted, except where such activity is mandated by governmental authorities for energy conservation purposes, in which event the ARC shall have the right to approve the portions of any Lot used for outdoor clothes-drying purposes and

the types of devices to be employed in this regard, which approval must be in writing. In such event such outdoor clothes drying will only be permitted behind a Lot, in an area which is screened from view from adjoining Lots. Only portable outdoor clothes-drying facilities approved by the ARC will be permitted, and same shall be removed when not in use.

Section 9.14. Window Treatment. All window or door coverings within a Lot which are visible from the exterior of the improvements, the Common Areas or any other portion of Villagio Del Mar shall be white two inch (2") blinds which shall conform to the standards provided by the Declarant, unless otherwise approved in writing by the Association. No sheets, paper, aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

Section 9.15. Lighting. No exterior lighting shall be permitted except as originally installed by the Declarant or otherwise approved by ARC.

Section 9.16. Bicycles and Personal Property. All bicycles and personal property shall be kept, stored and placed in an area not visible from outside the dwelling.

Section 9.17. Garages and Garage Doors. No garage shall be permanently enclosed or converted to use other than the purpose intended. All garage doors shall be kept closed at all times except when opened to permit vehicles to enter and exit the garage.

Section 9.18. Awnings. No awnings, canopies or shutters, including hurricane or storm shutters, shall be attached to or affixed to the exterior of any building unless such awnings, canopies or shutters have been approved by the ARC.

Section 9.19. Artificial Vegetation. No artificial grass, plants or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ARC.

Section 9.20. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

Section 9.21. Mail Boxes. Mail boxes shall be erected and maintained upon areas determined by the U.S. Postal Service in accordance with the current postal authority standards and the approval of the ARC. If the Postal Service requires the use of cluster type mailboxes, such mailboxes shall be erected and maintained by the Association within the right-of-way of the Private Street or on other Common Property at locations required or approved by the Postal Service.

Section 9.22. Sports Equipment, Athletic and Recreational Facilities. Outdoor athletic and recreational facilities such as basketball goals, swing sets and sport courts of either a permanent or temporary nature shall not be placed on any Lot in Villagio Del Mar, unless approved in writing by ARC. No permanently installed basketball poles and backboards are permitted. No portable

basketball backboards may be kept outside of a Lot overnight or when not in use.

Section 9.23. Water and Sewage Systems. No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks.

Section 9.24. Exterior Holiday Decorations. Lights or decorations may be erected on the exterior of Lots in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations that are not permanent fixtures of the Lot which are part of the original construction or have been properly approved as permanent improvements by the ARC shall be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 15th of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday. The Association shall have the right, upon thirty (30) days prior written notice to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion or damages of any kind except intentional misdeeds and gross negligence.

Section 9.25. Television and Radio Receiving Devices. Subject to the approval of the Declarant and ARC, no exterior radio or television antenna, satellite dish, microwave antenna or other antenna or device for sending or receiving television or radio signals may be erected or maintained on the exterior of any Lot in the Property in such a manner as to be visible to an observer from the street in front of the Lot. Television and/or radio receiving devices may be erected on the exterior of a Lot in a location that does not allow them to be visible to an observer from the street in front of the Lot if such devices are approved for installation by the ARC, provided however, that satellite receiving dishes in excess of 12 inches in diameter shall be prohibited on all Lots. Notwithstanding the foregoing, the Board of Directors of the Association shall have the authority to establish size limitations for television and radio receiving devices that do not have a material effect upon the appearance of the Lot which devices may be approved for use in areas that are visible to an observer from the street if advances in technology create devices that are unobtrusive and do not materially affect the appearance of the Lot. By acceptance of a deed to a Lot within the Property, each Owner agrees that this restrictive covenant is a reasonable limitation on the Owners' ability to receive television and/or radio transmissions, and (1) does not unreasonably delay or prevent installation, maintenance or use of television or radio receiving devices, (2) does not unreasonably increase the cost of installation, maintenance or use of television or radio receiving devices, (3) does not preclude reception of an acceptable quality television or radio signal, and (4) does not impose an unnecessary burden, expense or delay on any Owner. Each Owner covenants with Declarant and every other Owner that the rights of the Association and all other Owners of Lots in the Property in the protection of property values and the architectural character and aesthetics of the Property supersedes and takes precedence over the interests of each individual Owner in the placement of television and radio receiving devices, and that the limitations established in this Declaration provide each Owner reasonable alternatives for receiving quality television and radio signals without the necessity of erecting receiving devices in locations that are visible to observers from the street in front of the Lot or otherwise materially affect the appearance of the Lot. Therefore, each Owner

agrees to be bound by this limitation and waives the benefits of any contrary rule or regulation promulgated by the Federal Communications Commission or other governmental body or agency.

Section 9.26. Maintenance of Premises and Landscaping. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Lot. All lawns, landscaping and irrigation systems, and any property, structure, improvement and appurtenance shall be kept in good, safe, clean, neat and attractive condition. All areas not covered by structures, walkway or paved parking facilities shall be maintained as lawn or landscape areas, with underground irrigation systems, to the pavement edge of any abutting streets and to the water line of any abutting lakes, canals or water bodies. No stone, gravel, or paving of any type shall be used as a lawn unless approved as part of the final landscape plan.

Section 9.27. Discharge into Water Bodies. Nothing other than storm water or irrigation waters may be discharged into any lake, canal, or other body of water located within or adjacent to the Property. The construction and/or installation of any device through which water is drawn shall be subject to the prior written approval of the ARC as set forth in Article 7 of the Declaration. Irrigation water may not be withdrawn from any body of water within the Property or the ground without the consent of the Declarant, its successors and assigns, which consent may be withheld in the sole discretion of such Board.

Section 9.28. Party Walls. Some, or all, of the improvements on the Lots may be constructed as attached dwellings, and will share common walls which shall be referred to herein as "Party Walls". The Owners of the Lots sharing Party Walls shall be jointly responsible for all maintenance, repairs and replacement of the Party Walls, and the Association shall not have any responsibility or authority whatsoever for the maintenance, repair or replacement of any Party Wall. No Owner shall make any hole or penetration of any Party Wall without the prior written consent of the other Owner(s) of the Party Wall. Any Owner who causes damage to any Party Wall through their acts or omissions, or through the acts or omissions of the Owner's tenants, guests, invitees or members of the Owner's household or family, shall be liable to the other Owner(s) of the Party Wall for the cost of repairing such damage and restoring the Lot and property of the other Owner(s) to the condition they were in immediately prior to such damage. The Board of Directors of the Association may, in its sole and absolute discretion acting on the mutual written request of the Owners of the Party Wall, elect to assist the Owners of Party Walls in the peaceful resolution of any disputes concerning the Party Walls through voluntary non-binding mediation. If the Board elects to assist by providing voluntary nonbinding mediation for the Owners of the Party Wall, the Board shall have no liability whatsoever for the outcome of the mediation, or the failure of any Owner to respect the agreement, if any, reached through mediation. No Association funds shall be expended to provide voluntary non-binding mediation services to the Owners of Party Walls, and such Owners shall agree to pay any expenses of such mediation, in advance, as part of their mutual request for mediation. The Board may elect to terminate any such voluntary mediation at any time and without any prior notice or cause by delivering written notice of such termination to the Owners of the Party Wall. Each Owner sharing a Party Wall shall have all easement rights reasonably necessary to perform the obligations contained herein over the Units sharing a Party Wall.

Section 9.29. Party Roofs.

9.29.1. **General Rules of Law to Apply.** To the extent not inconsistent with the provisions of this Section, the general rule of law regarding party roofs and liability for personal damage due to negligence of willful acts or omissions shall apply to all Party Roofs within Villagio Del Mar which are built by Declarant as part of the original construction of the Units and any replacement thereof. In the event any portion of any structure or facility, as originally constructed by Declarant, including, without limitation, any Party Roof, shall protrude over an adjoining Lot, it shall be deemed that such Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection or Party Roof. The foregoing shall also apply to any replacements of any Party Roofs. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of this Declaration.

9.29.2. **Sharing of Repair, Replacement and Maintenance for Party Roofs.**

(a) **General.** The cost of reasonable repair and maintenance of Party Roofs shall be shared on a pro rata basis based on the air conditioned space sharing such Party Roof without prejudice, however, to the right of any Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(b) **Failure to Contribute.** In the event that an Owner shall fail or refuse to pay his pro rata share of costs of repair, maintenance, or replacement of a Party Roof (whether or not through his own fault or the failure of his insurance company to pay any claim), then and in that event, the Owner advancing monies therefor shall have a right to file a claim of lien for such monies advanced in the Public Records and shall have the right to foreclose said lien in accordance with the same procedural requirements as now provided for in Florida Statutes for foreclosure of a construction lien; provided, however, such claim of lien shall be filed within ninety (90) days from date repairs or replacements are made to the Party Roof and suit thereon shall be commenced one (1) year from date such lien is filed.

(c) **Alterations.** Subject to applicable building codes, the Owner of a Lot sharing a Party Roof with an adjoining Lot shall not make any alterations, additions or structural changes in the Party Roof without the joint agreement of all of the Owners sharing the Party Roof and the ARC.

(d) **Easements.** Each Owner sharing a Party Roof shall have all easement rights reasonably necessary to perform the obligations contained herein over the Lots sharing the Party Roof.

Section 9.30. Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall, or portable air-conditioning units are permitted, without the prior written consent of Declarant or the ARC.

Section 9.31. Garage Sales. No garage sales or similar sales are permitted except as permitted by the Association. Prior to the Turnover Date, the Association shall not permit any

garage sales without the prior written consent of Declarant.

Section 9.32. No Interference With Completion. Neither the ARC nor any Owner shall interfere with Declarant's completion and sale of the Units.

Section 9.33. Business Use. Except for normal construction activity, sale, and re-sale of a Lot, sale or re-sale of other property owned by Declarant, administrative offices of Declarant or its designees, or Association, no trade, business, profession, or commercial activity, or any other non-residential use, shall be conducted upon any portion of the Property nor within any Lot.

Section 9.34. Assumption of Risk. Without limiting any other provision herein, each person within any portion of the Common Areas accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of such Common Areas, including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers, (c) view restrictions caused by maturation of trees and shrubbery, (d) reduction in privacy caused by the removal or pruning of shrubbery or trees within Villagio Del Mar, and (e) design of any portion of Villagio Del Mar. Each such person also expressly indemnifies and agrees to hold harmless Declarant, Association, and all employees, directors, representatives, officers, and agents of the foregoing, from any and all damages, whether direct or consequential, arising from or related to the person's use of the Common Areas, including without limitation, for reasonable attorneys' fees, paraprofessional fees and costs at trial and upon appeal. Without limiting the foregoing, all persons using the Common Areas, including without limitation, all water bodies, the Intracoastal Waterway, lakes, pools or areas adjacent to a lake, do so at their own risk. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS ALLIGATORS, SNAKES, RACCOONS, DEER, SWINE, TURKEYS, AND FOXES. DECLARANT AND ASSOCIATION, SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

ARTICLE 10

PICKETING AND DEMONSTRATIONS

By acceptance of the deed to any Lot covered by this Declaration, the Owner covenants and agrees with the Owners of all other Lots within the subdivision, that no Owner or resident of any Lot shall engage in picketing, protest marches, sit-in demonstrations, protest speeches or other forms of public protest, including without limitation, displaying signs or placards within public view, upon any Lot or within any Common Areas, easement or street adjacent to any Lot, or affixed to any vehicle or apparatus upon or adjacent to any Lot. This prohibition shall not affect the right of any person to participate in any other form of public protest conducted outside the area depicted on the recorded Plat of Villagio Del Mar. No Owner or resident of any Lot shall engage in conduct that tends to vilify, ridicule, denigrate, or impugn the character of any other Owner or resident if such conduct occurs on any Lot, Common Areas, easement or street depicted on any Plat of Villagio Del Mar. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on his or her constitutional right of free speech and

to recognize and agree that all Owners have the right to the peaceful enjoyment of their property; the right of privacy; the right to practice their own religion; the freedom of association; the right to engage in a profession, business or lifestyle of their own choosing provided that the conduct of such profession, business or lifestyle is not illegal and does not otherwise violate any provision of this Declaration.

ARTICLE 11

ACCEPTANCE AND MAINTENANCE OF COMMON PROPERTY; MAINTENANCE OF AREAS OF COMMON RESPONSIBILITY

Section 11.1. Construction and Ownership of Common Property Improvements. It is anticipated that Declarant will designate certain portions of the Property to be Common Property. Declarant may elect to construct or install certain improvements or facilities upon portions of the Common Property, but is not obligated to do so. Declarant shall have the absolute right and power to determine what improvements or facilities, if any, it will install or construct on the Common Property at all times prior to conveying such Common Property to the Association, and within two (2) years thereafter. All lands designated by the Declarant as Common Property shall be conveyed to, and title shall be held by, the Association, together with all improvements or facilities constructed or installed thereon, and subject to the terms, conditions and obligations of any drainage permits, environmental permits or other applicable governmental approvals or permits.

Section 11.2. Acceptance of Common Property. If requested by Declarant, within thirty (30) days after receipt of written notice from the Declarant informing the Association that Declarant has completed construction or installation of improvements upon any portion of the Common Property, the President of the Association, or in the absence of the President, any Vice President of the Association, together with a duly authorized representative of the Declarant, shall conduct a thorough inspection of the improvements or facilities, and shall report in writing any incomplete or defective conditions. In such event, the Association shall have the right to engage the service of a professional engineer, or other qualified inspector, to assist with the inspection and preparation of the written report. Declarant shall convey by Quitclaim Deed all of its right, title and interest in and to the Common Property, including the improvements or facilities, to the Association, and the Association shall accept and acknowledge the deed of conveyance, and/or the certificate of completion, and shall thereafter own all right, title and interest in the Common Property and improvements or facilities subject to any applicable easements or other matters of record and any permits or approvals applicable to the Common Property. The Common Areas, personal property, and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is", "where is" condition without any representation or warranty, expressed or implied, in fact or by law, as to the condition, fitness or merchantability of the Common Areas being conveyed.

Section 11.3. Maintenance of the Common Property. The Association shall own, operate and maintain all Common Property, including but not limited to the Private Streets, and the improvements or facilities constructed or installed thereon in first class condition, subject to normal wear and tear, depreciation, and the elements. Maintenance of the Common Property shall include periodic inspection and preventive maintenance for the improvements and facilities owned by the

Association; provided however, notwithstanding anything to the contrary contained in this Section 11.3.

Section 11.4. Inspections of the Common Property by Declarant. Declarant hereby reserves the right, at all times after conveyance of the Common Property to the Association, to enter the Common Property, without prior notice, and to inspect the condition of the improvements and facilities owned by the Association. If Declarant determines, in its sole judgement, that the improvements or facilities are in need of repair or maintenance, it shall so notify the Association in writing, and it shall be the Association's sole obligation to promptly complete such repairs or maintenance. Failure of the Association to properly maintain and repair the Common Property shall relieve the Declarant of any liability to the Association or to any Member for any condition of the Common Property. Declarant shall have the right to make a record of its inspections, including, without limitation, by photographing and/or videotaping the Common Property, and shall have the right to perform tests or examinations to determine the condition of the Common Property, provided that Declarant shall indemnify the Association from any claims for personal injury, death, property damage or nonpayment asserted by persons claiming by, through or under the Declarant for injury, death or damage occurring as a result of such examinations or tests. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the Common Property owned by the Association. The deeds conveying the Common Property to the Association may contain a recitation of this reservation, however failure to recite such reservation in such deeds shall not affect the rights of Declarant herein reserved.

Section 11.5. Maintenance and Repair Records. The Association shall keep records of maintenance and repairs performed on the Common Property, and such records shall be made available to the Declarant and to any Member upon written request. Failure of the Association to maintain appropriate records of maintenance and repairs shall be conclusive evidence that such maintenance and repairs were not performed.

Section 11.6. Operation, Maintenance and Monitoring of Drainage Facilities/Surface Water and Storm Water Management System. The Declarant has caused or will cause to be constructed within the geographic area shown by the Plat drainage canals, lakes, drainage retention/detention ponds, swales and outfalls. These drainage structures, elements and facilities are part of the overall drainage plan for the Property. The Association shall have unobstructed ingress to and egress from all drainage facilities, structures, swales, retention/detention ponds and lakes within the Property at all reasonable times to maintain said drainage system and facilities in a manner consistent with its responsibilities. No Owner shall cause or permit any interference with such access and maintenance. Should the Association fail to sufficiently maintain any portion of the Surface Water and Storm Water Management System within its boundaries (or any portion of a surface water management system which connects with the Surface Water and Storm Water Management System), the Town of Hypoluxo, in addition to the SFWMD (hereinafter defined) shall have the authority to maintain such portion and the cost of such maintenance shall be assessed against and allowed as part of the Annual Assessment, or against an individual Owner as a Special Assessment, as appropriate, and shall become immediately due and payable as provided for other assessments of the Association. Consequently, no Owner shall utilize, in any way, any of the drainage facilities or incorporate such facilities in the Owner's development plans, without the express prior written consent of the Declarant and the Association. Further, where an Owner of a

Lot is contiguous to any of the drainage facilities, the Owner shall prepare its site plan so that the utilization of its property will not adversely affect the drainage facilities and structures and so as to be aesthetically compatible with such drainage facilities and structures.

Section 11.7. Environmental and Drainage Permits. The Association shall maintain, as part of the common elements, the Surface Water and Storm Water Management System drainage structures for the Property, and comply with condition of the permits from the South Florida Water Management District ("SFWMD") Permit No. 50-06160-P, the Lake Worth Water Management District, Palm Beach County, the Town of Hypoluxo, the State of Florida, the United States government and their agencies, bureaus and instrumentalities for the drainage system, including, without limitation, perpetual maintenance of all signage and notices required by such permits (herein referred to as the "Environmental and Drainage Permits"). The Association, shall, when requested by Declarant, apply for the issuance of, or accept assignment of all SFWMD, Town of Hypoluxo, and/or Palm Beach County permits for Villagio Del Mar property (as such property may be expanded by annexation of additional phases as herein contemplated) and shall be designated as the "permittee" thereof accepting transfer of the Environmental and Drainage Permits applicable to the Property. The conditions of the Environmental and Drainage Permits include monitoring and record keeping schedules, and maintenance. The drainage facilities and improvements, including, without limitation, the retention/detention ponds, underground pipes, inlets and outfall structures, if any, shall be collectively referred to herein as the "Surface Water and Storm Water Management System". The following additional conditions shall apply:

(a) The Association shall hold and save the SFWMD, the Town of Hypoluxo, and/or Palm Beach County harmless from any and all damages, claims, or liabilities which may arise by reason of the operation, maintenance or use of any improvement or facility authorized by the permits.

(b) The Association shall at all times properly operate and maintain the systems treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the permits, as required by the SFWMD, the Town of Hypoluxo, and/or Palm Beach County. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permits and when required by SFWMD and/or Palm Beach County rules.

Section 11.8. Monitoring. Water quality data for the water discharged from the permittee's property (i.e., from the Lots and/or Common Property) or into the surface waters of the state shall be submitted by the Association to the SFWMD as required. Parameters to be monitored may include those listed in Chapter 17-3 of the Florida Administrative Code. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Waste Water by American Public Health Association of Methods for Chemical Analyses of Water and Wastes by the U. S. Environmental Protection Agency. If water quality data are required, the permittee (i.e., the Association as assignee of the Environmental and Drainage Permits) shall provide data as required on volume of water discharged, including total volume discharged during the days of sampling and total monthly discharge from the Property or into surface waters of the state.

Section 11.9. Control. The Association agrees to operate and maintain the surface Water and Storm Water Management System, and has sufficient ownership so that it has control over all water management facilities authorized.

Section 11.10. Access and Inspection. The Association specifically agrees to allow authorized SFWMD personnel, upon presentation of credentials or other documents as may be required by law, access to the Property, at reasonable times, where the permitted activity is located or conducted, for the purposes of inspection and testing to determine compliance with the Environmental and Drainage Permit and SFWMD regulations, such as:

- (a) Having access to and copying any records that must be kept under the conditions of the Environmental and Drainage Permits; and
- (b) inspecting the facility, equipment, practices, or operations regulated or required under the Environmental and Drainage Permits; and
- (c) Sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the Environmental and Drainage Permits or SFWMD rules; and
- (d) Gathering of data and information.

Reasonable time may depend on the nature of the concern being investigated.

Section 11.11. Hold Harmless. The Association shall hold and save the SFWMD and the Declarant harmless from any and all damages, claims, costs, expenses, and/or liabilities which may arise by reason of the operation, maintenance (or failure to properly operate or maintain) or use of any facility authorized by the Environmental or Drainage Permits.

Section 11.12. Operation. The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the Environmental and Drainage Permits, as required by the SFWMD or by any other governmental authority issuing an Environmental and Drainage Permits. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the Environmental and Drainage Permits and when required by SFWMD rules.

Section 11.13. Littoral Areas. Establishment and survival of littoral areas, if required by SFWMD, provided for storm water quality treatment in wet detention systems shall be assured by proper and continuing maintenance procedures designed to promote viable wetlands plant growth of natural diversity and character. Following as-built approval, perpetual maintenance shall be provided for the permitted system.

Section 11.14. Reports. The Association shall submit inspection reports in the form required by SFWMD if such reports are required, in accordance with the following schedule unless specified otherwise here or in the permit application:

11.14.1. For systems utilizing effluent filtration or exfiltration, the inspection shall be performed eighteen (18) months after operation is authorized and every eighteen (18) months thereafter.

11.14.2. For systems utilizing retention and wet detention, the inspections shall be performed two (2) years after operation is authorized and every two (2) years thereafter.

Section 11.15. Surface Water Management Plan. It shall be the responsibility of each Lot Owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40E-4, F.A.C., approved and on file with the SFWMD.

Section 11.16. Notice to Owners; Non-Disturbance; and Maintenance. Owners are hereby notified that certain Lots may include, or be adjacent to wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements, including, but not limited to, Tract "D" as shown on the Plat. It is the Lot Owners responsibility not to remove native vegetation that becomes established within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements abutting their property. Removal includes dredging, the application of herbicide, and cutting. Lot Owners should address any question regarding authorized activities within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements to SFWMD, Surface Water Permitting Department. The SFWMD may authorize removal of certain exotic or nuisance vegetation upon application by Lot Owners or the Association. Each Lot Owner, by acceptance of the deed conveying title to the Owner, is deemed thereby to have accepted the partial assignment of the responsibilities under Environmental or Drainage Permit(s) and/or SFWMD rules affecting the Lot and to have agreed to abide by all conditions of the permit(s) including, but not limited to, agreement of the Lot Owner not to violate the conditions of the permit(s) regarding dumping of household trash, fill or landscape trimmings or planting or removal of plant life. Lot Owners are hereby notified that activities such as planting grass, sodding, planting any shrub, tree or flower, trimming or removing dead or damaged vegetation, filling low areas, distributing dirt more evenly, digging drainage ways, erecting fences, paving, constructing playhouses or treehouses, or in any other way disturbing the natural environment is subject to strict regulation, and no such activities should occur unless a valid permit has been first obtained.

Section 11.17. Prior Approval. No Owner of a Lot within the subdivision may construct or maintain any building, residence, landscaping, trees, or structure, or undertake or perform any activity in the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements described in the approved permit and recorded Plats of the subdivision, unless prior approval is received from the Town of Hypoluxo and SFWMD pursuant to Chapter 40E-4, F.A.C.

11.17.1. Neither the Association nor any Owner shall engage in any construction related activities within any part, of the Surface Water and Storm Water Management System unless such activities have been approved in writing by the SFWMD and Palm Beach County, or are specifically authorized by the conditions of the applicable permits. Without

limitation, the following activities are deemed construction related and are prohibited unless authorized in accordance with this Subsection: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Surface Water and Storm Water Management System facilities.

11.17.2. The Association, through its Board of Directors, shall be responsible for enforcing the provisions of this Declaration, however, in addition to enforcement by the Association, Declarant hereby reserves unto itself, and grants to Palm Beach County and SFWMD, the non-exclusive right, but not the obligation, to enforce the permits, all applicable federal, state and local laws, ordinances and regulations, and all applicable rules and regulations of the Association against any person or entity in violation including the Owners, the Association, and the Declarant, by the exercise of any remedies available at law or in equity, or otherwise provided in this Declaration for the protection and benefit of the Association, the Members and the Property governed by this Declaration. Notwithstanding anything in this Declaration to the contrary, in the event that Palm Beach County or SFWMD elects to take enforcement action against any Owner, the Declarant, the Association or any other person for violation of the terms of any permit, law, ordinance, rule or regulation, such enforcement shall not be subject to the mandatory arbitration provisions of Article 15.2 of this Declaration.

11.17.3. Notwithstanding any other provision of this Declaration to the contrary, no portion of the Surface Water and Storm Water Management System shall be altered without the prior written authorization of the Town of Hypoluxo and/or Palm Beach County, or its authorized designee. No amendment to this Declaration that materially affects the Surface Water and Storm Water Management System shall be made without the prior written authorization of the Town of Hypoluxo and/or Palm Beach County, or his authorized designee.

Section 11.18. Effect of Dissolution. In the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System must be transferred to and accepted by an entity which would comply with Section 40E, Florida Administrative Code, and be approved by SFWMD prior to such termination, dissolution or liquidation. In the event that no other entity exists to receive such transfer, the obligations of the Association shall be deemed assumed by the Owners, and all such Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water and Storm Water Management System in accordance with the requirements of the permits.

Section 11.19. Special Amendments Relating to Surface Water and Storm Water Management System. Any amendment to this Declaration which alters the Surface Water and Storm Water Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have the prior written approval of the South Florida Water Management District. This section may not be amended without the consent of such District.

Section 11.20. Shared Facilities. It is expected that certain portions of the Surface Water and Storm Water Management System will serve the drainage needs of adjacent lands not owned by Declarant and not within the Property subject to this Declaration. Declarant reserves the right to grant such drainage and/or use easements and rights as Declarant may deem necessary or appropriate

for accomplishing the drainage needs of the Property and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the system by the Owners or unreasonably increase the cost of maintenance of the system by the Association.

Section 11.21. Water Levels in Retention Ponds; Flooding, Wildlife. The Surface Water and Storm Water Management System is designed to provide drainage for the Properties. NEITHER THE ASSOCIATION, THE DECLARANT, PALM BEACH COUNTY NOR THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT SHALL HAVE ANY LIABILITY WHATSOEVER TO ANY OWNER FOR CLAIMS OR DAMAGES ALLEGED BY AN OWNER DUE TO WATER LEVELS IN THE LAKES AND/OR RETENTION PONDS, IF ANY, BEING BELOW NORMAL OR OTHERWISE UNACCEPTABLE TO THE OWNER. Recreational use and aesthetic appearance of the retention ponds is secondary to their intended drainage function, and during periods of prolonged drought or other unusual weather events water levels in the retention ponds may recede, and neither the Association, the Declarant, Palm Beach County nor SFWMD shall have any liability for such conditions. Provided that the Surface Water and Storm Water Management System is constructed in substantial compliance with the plans and specifications therefor approved by the appropriate governmental authorities, neither the Declarant, nor the Association nor any governmental authority shall be liable to the Association or any Owner for damage caused by flooding, and each Owner acknowledges and agrees that as long as the Declarant and the Association have acted in good faith in reliance on reasonable engineering criteria approved by the governmental authorities in the design and construction of the Surface Water and Storm Water Management System, they shall not be liable for damages sustained by any Owner caused by weather events not taken into consideration in the design or construction of such system and facilities. All Persons are hereby notified that from time to time alligators and other wildlife may habitate or enter into water bodies within or nearby the Property and may pose a threat to Persons, pets and property, but that the Association and Declarant are under no duty to protect against, or to monitor, or to notify Owners or other persons of the presence of such wildlife, and do not in any manner warrant or insure against any death, injury, damage or loss caused by such wildlife to Persons, pets or property.

Section 11.22. Bulkhead Maintenance and Replacement. All bulkheads or retaining walls installed in or around the Intracoastal Waterway by the Declarant or the Association shall be part of the Common Areas, and shall be maintained, repaired and replaced by the Association as an Association expense, provided however, that if such maintenance, repair or replacement is caused by the failure of the Lot Owner whose Lot abuts the bulkhead or retaining wall to use reasonable diligence and care in the maintenance of the Lot, the Association shall have the right to impose a special assessment against the Owner of such Lot for the reasonable and necessary expense incurred by the Association in so doing. Nothing herein shall limit the right of the Association to enter into agreements with the Association or other governmental or quasi-governmental authority for the maintenance, repair or replacement of such bulkheads and retaining walls.

ARTICLE 12

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 12.1. Rights of Eligible Holders. An institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Association (such request to state (1) the name and address of such holder, insurer, or guarantor; (2) the name of the Owner; (3) the address of the Unit; and (4) the Lot and Block numbers and identification of the Lot, thereby becoming an "Eligible Holder"), will be entitled to:

12.1.1. the right to inspect Association documents and records on the same terms as Members;

12.1.2. copies of all written notices to the Lot Owner of material amendments to the Declaration, Articles of Incorporation or Bylaws of the Association when such notices are required to be given to Owners pursuant to such documents;

12.1.3. copies of written notices to the Lot Owner of extraordinary actions to be taken by the Association when such notices are required to be given to Owners pursuant to this Declaration or the Bylaws;

12.1.4. copies of written notices to the Lot Owner of (1) any property loss, condemnation or eminent domain proceeding affecting the Common Property resulting in losses greater than ten percent (10%) of the current annual budget, or (2) any Lot insured by the Association in which the Eligible Holder has an interest;

12.1.5. copies of written notices to the Lot Owner of any termination, lapse or material modification of an insurance policy held by the Association;

12.1.6. written notice of any default by an Owner of a Lot subject to a mortgage held by the Eligible holder in paying assessments or charges to the Association which remains uncured for sixty (60) consecutive days;

12.1.7. written notice of any proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before such action is taken;

12.1.8. the right of a majority of Eligible Holders (determined on the basis of one vote for each Lot standing as security for a mortgage held by the Eligible Holder) to demand that the Association retain a professional management company; and

12.1.9. the right of a majority of Eligible Holders (determined on the basis of one vote for each Lot standing as security for a mortgage held by the Eligible Holder) to demand an audit of

the Association's financial records.

Section 12.2. Voting Rights of Eligible Holders. For purposes of this Section, an Eligible Holder of a Mortgage shall be entitled to one (1) vote for each first Mortgage owned.

12.2.1. Unless at least two-thirds (2/3) of the Eligible Holders consent, the Association shall not:

(a) by act or omission abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Property which the Association owns, directly or indirectly (The granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property, or conveyance of a portion of the Common Property to Declarant in accordance with Section 2.3, shall not be deemed a transfer within the meaning of this subsection.);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded or any portion of the Property shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any material aspect of the scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

12.2.2. Any election to terminate the legal status of the Association shall require:

(a) the approval of at least fifty-one percent (51%) of the Eligible Holders if the election to terminate the legal status is the result of substantial destruction or a substantial taking in condemnation of the Common Property; or

(b) the approval of at least sixty-seven percent (67%) of the Eligible Holders if the termination is sought for any other reason.

12.2.3. In the event a portion of the Common Property is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the project unless fifty-one (51%) of the Eligible Holders approve the taking of other action by the Association.

12.2.4. The affirmative vote fifty-one percent (51%) of the Eligible Holders shall be sufficient to require the Association to engage a professional management company.

12.2.5. The affirmative vote fifty-one percent (51%) of the Eligible Holders shall be sufficient to require the Association to conduct an audit of its financial records.

Section 12.3. Voluntary Payments by Eligible Holders. Eligible Holders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and Eligible Holders making such payments shall be entitled to immediate reimbursement from the Association.

Section 12.4. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the Eligible Holder of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 12.5. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the Eligible Molder of any Mortgage encumbering such Owner's Lot.

Section 12.6. Applicability of this Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, the Bylaws, or Florida corporate law for any of the acts set out in this Article.

Section 12.7. Failure of Eligible Holder to Respond. Any Eligible Holder who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Eligible Holder within thirty (30) days of the date of the Associations request.

ARTICLE 13

INSURANCE AND CASUALTY LOSSES

Section 13.1. Common Areas and Improvements to Lots. The Association shall keep all buildings, structures, improvements, facilities and fixtures located within the Common Areas, as well as the building structures only as provided below, located on the Lots, insured against loss or damage by fire or other casualty for the full insurable 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 normal exclusions for land, foundations, excavation costs and similar matters) and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The insurance on the building structures located on the Lots shall cover the structures only, including party walls and roofs, and shall not cover the interior of the buildings insured, including, but not limited to, interior partition walls, interior doors, interior stairways, kitchen cabinets and fixtures, appliances whether built-in or not, electrical

fixtures, bathroom cabinets and fixtures, and any floor, wall or ceiling coverings. If desired by the Owners or their mortgagees, it shall be the Owners' responsibility to obtain any insurance for the excluded items in the preceding sentence. 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 Members. The insurance coverage with respect to the Common Areas shall be written in the name of, and the proceeds thereof shall be payable to, the Association, and the insurance coverage with respect to the building structures located on the Lots shall be blanket policies written in the name of the Association, individually and as agent for the Owners covered by the policies, without naming them and as for their mortgagees without naming them, 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. Insurance proceeds for building structures located on the Lots must be used by the Association for the repair or replacement of the damaged or destroyed structure(s). Premiums for all insurance carried by the Association are common expenses included in the assessments made by the Association.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association shall contain provisions, or be accompanied by endorsements, for: agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction.

All insurance policies shall contain standard mortgagee clauses, if applicable.

Section 13.2. Flood Insurance. The Association shall also maintain, to the extent any insurable improvements to Common Areas are within an "A" flood zone, flood insurance in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Common Areas or the maximum amount of coverage available under the National Flood Insurance program. The Association shall also maintain, to the extent any insurable improvements to the Lots are within an "A" flood zone, flood insurance in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Lots or the maximum amount of coverage available under the National Flood Insurance program.

Section 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 Members, 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.

Section 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, with coverage of at least \$2,000,000.00 (if available at reasonable rates and upon reasonable term) for any single occurrence, 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 Member against

liability to each other Member 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 Member and the Association and its Board of Directors and officers, from liability in connection with the Common Areas, the premiums for which shall be Common Expenses and included in the assessments made against the Members. The Association may also obtain such other insurance as the Board deems appropriate. 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 or any management company engaged by the Association 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. At a minimum, however, there shall be blanket fidelity bonding of anyone (compensated or not) who handles or is responsible for funds held or administered by the Association, with the Association to be an obligee thereunder. Such bonding shall cover the maximum funds to be in the hands of the Association or management company during the time the bond is in force. In addition, the fidelity bond coverage must at least equal the sum of three (3) months of regular assessments, plus all reserve funds.

Section 13.5. Damage and Destruction.

13.5.1. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

Immediately after damage or destruction by fire or other casualty to building structures located on Lots, if insurance proceeds are sufficient to effect total restoration, then the Association shall cause such building structures located on the Lots to be repaired and reconstructed substantially as they previously existed. Such restoration shall be limited to the building structures only, including party walls and roofs, and shall not cover the interiors of the buildings insured, including, but not limited to, interior partition walls, interior doors, interior stairways, kitchen cabinets and fixtures, appliances, whether built in or not, electrical fixtures, bathroom cabinets and fixtures, and any floor, wall or ceiling coverings. Without limiting the foregoing, in the event of damage to or destruction of a portion of a building structure located on and affecting only one Lot, if such damage or destruction was caused by the negligence or willful misconduct of the Owner of such Lot, including such Owner's family, tenants, guests and invitees, both minor and adult, then the Association may, in its sole discretion, require said Owner to cause such damaged or destroyed portion of the building structure on said Owner's Lot to be repaired and reconstructed substantially as it previously existed, notwithstanding whether there are sufficient insurance proceeds, or any insurance proceeds whatsoever to effect same. In the event such Owner fails to timely and properly complete such repair and reconstruction within the time prescribed by the Association, then the

Association may effect may same at such Owner's expense and an individual assessment therefore shall be made against such Owner's Lot in accordance with the provisions of Section 6.5 hereof, and may be collected as provided herein for the collection of Assessments. In the case of co-owners of a Lot, the liability of such Owners shall be joint and several.

13.5.2. In the event of damage or casualty loss to the improvements, if any, erected on the Common Property, which in the opinion of the Board of Directors, should not be repaired or reconstructed, the Board shall deliver written notice thereof to each Member stating (1) the amount of the insurance proceeds to be paid to the Association by the insurer as a result of the loss; (2) the estimated cost of repair or reconstruction; and (3) a request that each Member deliver a written response voting for or against repair or reconstruction within 30 days after receiving the Board's notice. Such notice shall be sent to each Member within 60 days after the Board has received the settlement offer of the insurer and the estimated cost of repair or reconstruction from a qualified contractor. The Association shall make the repairs or reconstruct the improvements unless at least 75% of the Members of each class of membership vote not to do so. No Eligible Holder shall have the right to participate in the determination of whether the damage or destruction to the Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction Mortgages, if any, providing construction financing for such damaged Common Property.

13.5.3. In the event that it should be determined in the manner described above that the damage or destruction to the Common Property shall not be repaired or reconstructed and no alternative improvements are authorized by the Members, then and in that event the affected portion of the Common Property shall be restored to its natural state and maintained by the Association in a neat and attractive condition.

Section 13.6. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Property shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Eligible Holders as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Eligible Holder of a Lot and may be enforced by such Mortgagee.

Section 13.7. Repair and Reconstruction. If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for Annual Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Section 13.8. Lot Owner's Personal Coverage. To the extent permitted by law, the insurance purchased by the Association shall not cover claims against an Owner due to accidents

occurring within his Lot, nor does it cover casualty or theft loss to the contents of an Owner's Lot or for flood damage to contents. It shall be the obligation of the individual Lot Owner to purchase and pay for insurance as to all such risks. Further, each Lot Owner shall be responsible for obtaining and maintaining, at their sole expense, all insurance coverages and policies required by such Lot Owner's Mortgagee. Every insurance policy issued to an individual Lot Owner should provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property, without rights of subrogation against the Association.

ARTICLE 14

GENERAL PROVISIONS

Section 14.1. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, Members representing three-fourths (3/4) of the votes of the Association vote in favor of terminating this Declaration at the end of its then current term. Termination of this Declaration is deemed to be an "Extraordinary Action" subject to the provisions of Section 14.3.2. Notwithstanding anything contained herein to the contrary, this Declaration may not be terminated without the prior written consent of the Town of Hypoluxo, or the Final Development Order is revoked.

Written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least sixty (60) days in advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution.

Said certificate shall be recorded in the Public Records of Palm Beach County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. Termination of the Association shall not have the effect of terminating easements herein provided or granted prior to such termination, or terminating contractual rights created prior to termination which from the context of the contract were meant to survive termination.

Section 14.2. General Restrictions on Amendments. Notwithstanding any other provision herein to the contrary, no amendment to this Declaration shall affect the rights of Developer unless such amendment receives the prior written consent of Developer, which may be withheld for any reason whatsoever. No amendment shall alter the provisions of this Declaration benefitting Lenders without the prior approval of the Lender(s) enjoying the benefit of such provisions. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. All amendments must comply with Article 11 as it benefits the SFWMD. No amendment shall be effective until it is recorded in the Public Records.

14.2.1. This Declaration may be amended at any time by an instrument signed by the Declarant until Turnover, without the approval of any other party, and after Turnover, by an instrument signed by the President or Vice President and the Secretary or Assistant Secretary of the Association, certifying that such amendment has been adopted in accordance with this Declaration, the Articles of Incorporation and/or the By-Laws. The amendment shall become effective upon its filing in the public records of Palm Beach County, Florida, Provided, however, that:

(a) As long as Declarant is an Owner of any Lot or Unit, no amendment shall become effective without the written consent of Declarant.

(b) Declarant specifically reserves the absolute and unconditional right so long as it owns any of the Property, to amend this Declaration without the consent or joinder of any party: (i) to conform to the requirements of any holder of a Mortgage; (ii) to conform to the requirements of title insurance companies; (iii) to conform to the requirements of any governmental entity having control or jurisdiction over the Property; (iv) to clarify the provisions of this Declaration; or (v) in such other manner as Declarant may deem necessary or convenient.

(d) After the Turnover Date, but subject to the general restrictions and amendments set forth above, this Declaration may be amended with the approval of sixty-six and 2/3 (66 2/3 %) percent of the Board and Members.

Amendments to the Articles and By-Laws shall be made in accordance with the requirements of the Articles and By-Laws and need not be recorded in the Public Records of Palm Beach County, Florida.

Section 14.3. Assignment of Rights and Duties. Any and all of the rights, powers and reservations of the Association and Declarant may be assigned to any person, corporation or association which will assume the duties of the Association or Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assume such duties, he or it shall to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Association or Declarant. Further, the Association or Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

Section 14.4. Enforcement. Enforcement of these covenants, conditions and restrictions

shall be by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Association or any Owner or Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. Further, the Association shall have the right of self help to cure any violations that remain uncured after any required notice is given.

Section 14.5. Notice Under Florida Statutes Chapter 558. Chapter 558, Florida Statutes (2003), requires that the following notice be given to any person entering into a contract for the sale, design, construction, or remodeling of a dwelling:

FLORIDA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THE CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NO OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER FLORIDA LAW WHICH MUST BE MUST AND FOLLOWED TO PROTECT YOUR INTERESTS.

In the event of any claim by any Lot Owner relating, directly or indirectly, to construction defects, Declarant and its contractor(s) shall have notice and opportunity to inspect the Lot and townhome, and the Common Areas, and to make the repairs or replacements necessary to remedy the alleged defect. Declarant and its contractor(s) shall have all rights, notice, access and opportunity to cure any alleged construction defect as provided in Florida Statutes Chapter 558 (2003) which shall be deemed incorporated by reference herein.

Section 14.6. Severability. Should any covenant, condition or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 14.7. Interpretation. The Board shall have the right except as limited by any other provisions of this Declaration or the Bylaws to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the maintenance of Common Areas and the facilities located thereon.

Section 14.8. Disposition of Common Property on Termination of Declaration. Should the Members of the Association vote not to renew and extend this Declaration as provided for herein, all Common Property owned by the Association at such time shall be transferred to another association or appropriate public agency having similar purposes. If no other association or agency will accept such property then it will be conveyed to a Trustee appointed by the Circuit Court of Palm Beach County, Florida, which Trustee shall sell the Common Property free and clear of the limitations imposed hereby upon terms established by the Circuit Court of Palm Beach County, Florida. That portion of the Common Property consisting of the Surface Water and Storm Water Management System cannot be altered, changed or sold separate from the lands it serves except that Declarant shall be obligated to and shall convey that portion of the Common Areas consisting of the Surface Water and Storm Water Management System to the Association upon completion and approval of such system by all applicable governmental authorities. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Property, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of the Common Property. The excess of proceeds, if any, from Common Property shall be distributed among Owners in a proportion which is equal to the proportionate share of such Owners in Common Expenses.

Section 14.9. Execution of Documents. The Plat may require from time to time the execution of certain documents required by governmental authorities. To the extent that said documents require the joinder of Owners, Declarant by its duly authorized officers may, as the agent or the attorney-in-fact for the Owners, execute, acknowledge and deliver such documents and the Owners, by virtue of their acceptance of deeds, irrevocably nominate constitute and appoint Declarant, through its duly authorized officers, as their proper and legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section shall recite that it is made pursuant to this Section.

Section 14.10. Indemnification. The Association shall indemnify, defend, and hold harmless every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and, committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify, defend, and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of, but shall be in addition to, any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 14.11. Prohibited Actions. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

Section 14.12. Singular Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

Section 14.13. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Property.

Section 14.14. Conflicts. In the event of conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

Section 14.15. Partial Invalidity. The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 14.16. Certain Rights of Declarant. Declarant reserves, and the Declarant and its nominees shall have the right to enter into and transact on the Property any business necessary to consummate the construction and sale of Units including but not limited to, the right to maintain models and a sales office, place signs, employ sales personnel, use the Common Property and show Units. Any such models, sales office, signs and any other items pertaining to such efforts shall not be considered a part of the Association Property and shall remain the property of Declarant. The rights and privileges of Declarant herein described in this Section t 14.17 shall terminate upon Declarant no longer owning any portion of the Property.

Section 14.17. Conflicts. In the event of any conflict among this Declaration, the Articles, the By-Laws or any of the other Association Documents, this Declaration shall control.

Section 14.18. Temporary Committees. The Declarant, prior to the Turnover of the Association, at its sole discretion, may create temporary committees for the purposes of aiding in the transition of the Association from Declarant control to the control of the Members.

Section 14.19. LIABILITY. NEITHER DECLARANT NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY WHATSOEVER TO OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE WATER BODIES, INTRACOASTAL WATERWAY, AND DRAINAGE EASEMENTS OR ANY PART OF THE SURFACE WATER MANAGEMENT SYSTEMS. EACH OWNER FOR ITSELF AND ITS GUESTS, TENANTS, OR INVITEES RELEASES DECLARANT AND THE ASSOCIATION FROM ANY LIABILITY IN CONNECTION THEREWITH. NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, AND DIRECTORS, SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY LEVEL IN ANY WATER BODY WITHIN OR ADJACENT TO THE PROPERTY.

ARTICLE 15

ENFORCEMENT

Section 15.1. Enforcement. Enforcement of these covenants, conditions and restrictions shall be in accordance with this Article 15 by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and to enforce any obligation and/or lien created by these covenants; and failure by the Association or any Owner or Declarant, or their successors or assigns, to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter. Further, the Association shall have the right of self help to cure, but no obligation to cure any violations that remain uncured after any required notice is given. If the Association elects to commence enforcement proceedings after delivery of notice thereof to any Owner in violation hereof, and incurs any expenses in the commencement of such proceedings, the Association shall prosecute such enforcement proceedings to conclusion notwithstanding subsequent voluntary compliance by the Owner until the Association shall have recovered its expenses from such Owner. The Town of Hypoluxo shall have the right, but not the obligation, to enforce any covenant, condition or restriction contained in this Declaration which inures to the Town of Hypoluxo.

Section 15.2. Mediation and Arbitration of Disputes. Before commencing any other form of legal action to enforce the provisions of this Declaration (other than an action for specific performance or an injunction by Declaration or the Association) party desiring enforcement shall first demand mediation by an independent third party professional mediator. If a settlement of the dispute is reached through voluntary mediation, a notice thereof shall be executed by the parties, and, if appropriate, shall be recorded in the real property records to place all successors and assigns of the Owner on notice of such settlement. If no settlement is achieved through voluntary mediation, either party shall have the right to initiate mandatory binding arbitration according to the rules of the American Arbitration Association. All persons owning any portion of any Lot, their family members and tenants, shall be deemed to have consented to mandatory binding arbitration of all disputes arising under this Declaration, and shall cooperate and participate in such arbitration proceedings. The award of the arbitrator may be entered as an agreed judgment in any litigation or legal proceeding concerning the subject matter of the arbitration, and shall be enforceable in accordance with its terms. In any such arbitration proceedings, the arbitrator shall award recovery of the arbitration fees, reasonable attorneys' fees, expert witness fees, and other costs and expenses of such proceeding to the prevailing party. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Association or any Owner or Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. Further, the Association shall have the right of self help to cure any violations that remain uncured after any required notice is given.

ARTICLE 16

REQUIREMENTS OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Section 16.1. Notice is hereby given to all Lot Owners that Lots within Villagio Del Mar may contain or be adjacent to wetland preservation or mitigation areas and upland buffers which are protected under conservation easements. The wetlands and upland buffers may not be altered from their natural and permitted condition with the exception of: exotic or nuisance vegetation removal, or restoration in accordance with the restoration plan included in the conservation easement. Exotic vegetation may include, but is not limited to, malaleuca, Brazilian pepper, Australian pine and Japanese climbing fern or any other species currently listed by the Florida Exotic Pest Plant Council. Nuisance vegetation may include cattails, primrose willow, grape vine and torpedo grass.

Section 16.2. The Association has accepted the responsibility for perpetual maintenance of the conservation easements set forth with site plan, including, but not limited to, the wetlands areas and the upland buffers, and agrees to take action against Lot Owners as necessary to enforce the terms and conditions of the conservation easements and the SFWMD Permit for Villagio Del Mar. The Association is responsible for all costs of mitigation and monitoring of these areas, and shall use assessments of Lot Owners to meet its financial obligations hereunder as more particularly defined in Article 6 hereof.

Section 16.3. The Association is also responsible for the perpetual maintenance of any signage required by the SFWMD Permit.

Section 16.4. The maintenance and monitoring plan for the conservation areas, which areas are to be monitored and maintained by the Association in accordance with the SFWMD Permit shall be maintained in the office of the Association subsequent to Turnover.

Section 16.5. THE CONSERVATION AREAS ARE HEREBY DEDICATED AS COMMON AREAS, THEY SHALL BE THE PERPETUAL RESPONSIBILITY OF THE ASSOCIATION AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL OR PERMITTED STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS, OR OTHER VEGETATION - WITH THE EXCEPTION OF EXOTIC/NUISANCE VEGETATION REMOVAL; EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL; DIKING OR FENCING; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE; FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

Section 16.6. The Association hereby accepts responsibility for the operation and maintenance of the surface water management system described in the SFWMD application. The surface water management system is owned by the Association. The Association is responsible for assessing and collecting fees for the operation, maintenance, and, if necessary, replacement of the

surface water management system. Fees shall be collected by the Association as assessments as provided in Article 6 of this Declaration.

Section 16.7. Any amendment to this Declaration, or the Articles of Incorporation or Bylaws of the Association, or any exhibit hereto, which would affect the surface water management system, conservation areas, or water management portions of the common areas shall be submitted to SFWMD for review prior to finalization of the amendment. SFWMD shall determine if the proposed amendment will require a modification of the environmental resource or surface water management permit. If a permit modification is necessary, the modification must be approved by SFWMD prior to the amendment of this Declaration.

Section 16.8. Notwithstanding anything contained herein to the contrary, the provisions of this Article 16 shall remain in full force and effect for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period.

Section 16.9. The monitoring and maintenance of the mitigation area described in the SFWMD Permit Number 50-06160-P shall be the responsibility of the Association. The Association must successfully complete the mitigation and satisfy the Permit conditions. The success criteria are described in the Permit, a copy of which is attached hereto as **Exhibit "D."**

Section 16.10. The Environmental Resource or Surface Water Management Permit is made a part of this Declaration and attached hereto as Exhibit "D." Copies of the Permit and any future permit actions of the SFWMD shall be maintained by the Registered Agent of the Association for the benefit of the Association.

Section 16.11. SFWMD has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel the Association to correct any outstanding problems with the surface water management system facilities or in the mitigation or conservation areas under the responsibility and control of the Association.

Section 16.12. The following activities are prohibited in or on the Conservation Areas described on the Plat of Villagio Del Mar: (a) construction or placing of buildings, road, signs, billboards or other advertising, utilities, or other structures on or above the ground in the Conservation Areas; (b) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials; (c) removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic vegetation in accordance with a SFWMD approved maintenance plan; (d) excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface; (e) surface use except for purposes that permit the land or water to remain in its natural condition; (f) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing; (g) acts or uses detrimental to such aforementioned retention of land or water areas; and (h) acts or uses within

SFWMD's regulatory jurisdiction which are detrimental to the preservation of any features or aspects of the Property having historical or archaeological significance.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

WITNESSES:

BEACH CLUB PARTNERS LLC, a Florida limited liability company

By: GENESIS BEACH CLUB LLC, a Florida limited liability company, its Manager

[Signature]
Name: E. FARNER

By: Edward Masi
Edward Masi, its sole Manager

Judy A. Bailes
Name: Judy A. Bailes

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of MAY, 2006, by EDWARD MASI, sole manager of GENESIS BEACH CLUB LLC, a Florida limited liability company, the Manager of BEACH CLUB PARTNERS LLC, a Florida limited liability company, on behalf of the company, who is personally known to me.

Maria Castillo
Print Name: Maria Castillo
Notary Public, State of Florida
Commission No.: DD411220
My Commission Expires: Mar 24, 2009

NOTARY PUBLIC-STATE OF FLORIDA
 Maria Castillo
(Notary) Commission # DD411220
Expires: MAR. 24, 2009
Bonded Thru Atlantic Bonding Co., Inc.

JOINDER

VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC. does hereby join in the document to which this Joinder is attached, and the terms thereof are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, the undersigned has executed this Joinder on this 15 day of MAY, 2006.

WITNESSES:

[Signature]
Name: C. FABIEN

[Signature]
Name: Judy A. Boiles

VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation

By: [Signature]
Matthew O'Connor, President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 15 day of MAY, 2006, by Matthew O'Connor, President of VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation, who is personally known to me or who has produced his/her Florida State drivers license as identification, on behalf of the corporation.

[Signature]
Notary Public State of Florida
Print Name: Maria Castillo
My Commission Expires: MAR. 24, 2009

(Notary Seal)

NOTARY PUBLIC-STATE OF FLORIDA
Maria Castillo
Commission # DD411220
Expires: MAR. 24, 2009
Bonded Thru Atlantic Bonding Co., Inc.

LEGAL DESCRIPTION:

EXHIBIT "A"

Parcel 1:

Lots 5, Less the West 38.52 feet, SOLYMAR, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court, in and for Palm Beach County, Florida, as recorded in Plat Book 4, Page 25.

Parcel 2:

Lots 6 of SOLYMAR, being a subdivision of a portion of Government Lot 3 in the South Half of the Southwest Quarter of Section 10, Township 45 South, Range 43 East, LESS the West 38.52 feet, as measured along the South side of said Lot 6 of SOLYMAR, according to the Plat thereof as recorded in Plat Book 4, Page 25, Public Records of Palm Beach County, Florida; also described as all that part of said Lot 6, which lies within 44 feet Easterly of the base line of survey, according to the Right-of-Way map section 93010-2501 State Road 5, as filed in the Office of the Clerk of the Circuit Court of Palm Beach County, Florida.

Parcel 3:

A parcel of land in Government Lot 3, Section 10, Township 45 South, Range 43 East, Palm Beach County, Florida, more particularly described as follows:

BEGINNING at the Southwest corner of said Section 10, run easterly along the South line of said Section 10, a distance of 1291.04 feet to a point in the easterly right of way line of the Old Dixie Highway; thence northerly along said easterly right of way line, and making an angle with said Section line, measured from West to North of $87^{\circ} 13' 40''$, a distance of 203.94 feet; thence Easterly along a line parallel to the South line of said Section 10, a distance of 182 feet to the Southeast corner of Lot 6, SOLYMAR subdivision, as recorded in Plat Book 4, page 25, Palm Beach County Public Records, being the POINT OF BEGINNING and the Southwesterly corner of the parcel of land herein described; thence continue Easterly along the same course, a distance of 757 feet, more or less, to the waters of Lake Worth; thence northerly along the waters of Lake Worth, a distance of 207 feet, more or less, to a point in a line parallel to, and 205.6 feet Northerly from, measured along a line parallel to said easterly right of way line of Old Dixie Highway, the South line of the parcel of land herein described; thence Westerly along said parallel line, a distance of 700 feet, more or less, to a point in a line running Northerly from the Point of Beginning, parallel to the easterly right of way line of said Old Dixie Highway; thence Southerly along said line parallel to the Easterly Right-of-way line of said Old Dixie Highway, a distance of 205.6 feet to the POINT OF BEGINNING, being the same land described in the aforesaid Plat of SOLYMAR as Lots 1 to 4, inclusive, and Lots 7 to 10, inclusive and the portion of CALLE SOLYMAR comprehended within the same.

Parcel 4:

A parcel of submerged land in Lake Worth in Section 10, Township 45 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

From the point of intersection of the Westerly extension of the Southerly line of Lot 6, of the Plat of SOLYMAR, recorded in Plat Book 4, Page 25, Public Records of Palm Beach County, Florida, with the center line of the Florida East Coast Railway Right-of-Way, run South $89^{\circ} 03' 0''$ East, along said westerly extension and along the southerly line of said Lot 6 and its easterly extension, a distance of 997.56 feet to a point in the Mean High Water Line along the westerly shore of Lake Worth and the Point of Beginning of the parcel of land hereinafter described; thence North $4^{\circ} 18' 0''$ West along the High Water Line, a distance of 125 feet; thence continue along said Mean High Water Line North $9^{\circ} 59' 40''$ East, a distance of 80.49 feet to a point in the Easterly extension of the Northerly line of Lot 5 of said plat of SOLYMAR; thence South $89^{\circ} 03' 0''$ East, along the Easterly extension of the Northerly line of said Lot 5, a distance of 400 feet to a point in the Bulkhead line along the Westerly shore of Lake Worth, as established by the Town of Hypoluxo, Florida, by Ordinance No. 7, said Bulkhead Line being shown on plat recorded in Plat Book 26, Page 89; thence South $0^{\circ} 16' 02''$ West along said Bulkhead Line, a distance 101.32 feet to the beginning of a curve concave to the West and having a radius of 1442.38 feet; thence Southerly along the arc of said curve and through an angle of $4^{\circ} 04' 48''$, a distance of 102.71 feet to a point in the Easterly extension of the southerly line of said Lot 6, thence North $89^{\circ} 03' 0''$ West, along said extension, a distance of 400 feet to the Point of Beginning.

Also described as follows:

All of the plat of "VILLAGIO DEL MAR", according to the Plat thereof, as recorded in Plat Book 99, Pages 185 and 186, of the Public Records of Palm Beach County, Florida.

EXHIBIT "B"

**ARTICLES OF INCORPORATION
OF
VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC.
a Florida corporation, Not-for-Profit**



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC., a Florida corporation, filed on May 17, 2006, as shown by the records of this office.

The document number of this corporation is N06000005397.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Eighteenth day of May, 2006



CR2EO22 (01-06)

Sue M. Cobb
Sue M. Cobb
Secretary of State

ARTICLES OF INCORPORATION

OF

VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC., a Florida corporation, Not-for-Profit

In compliance with the requirements of Chapter 617 Florida Statutes, the undersigned persons do hereby make, subscribe and acknowledge that they have voluntarily associated themselves together for the purpose of forming a corporation not-for-profit, the articles of incorporation of which read as follows. All capitalized words or phrases used herein shall have the meanings herein ascribed, and if not defined in this instrument, such capitalized words or phrases shall have the meanings given in the Declaration of Covenants, Conditions and Restrictions for Villagio Del Mar, hereinafter identified.

ARTICLE I

NAME

The name of the corporation is **Villagio Del Mar Homeowners' Association, Inc.**, hereinafter referred to as the "**Association**" or the **Homeowners' Association**".

ARTICLE II

PRINCIPAL OFFICE

The principal office of the Homeowners' Association is initially located at 565 East Hillsboro Boulevard, Deerfield Beach, Florida 33441.

ARTICLE III

REGISTERED OFFICE AND REGISTERED AGENT

The initial registered office of the Homeowners' Association shall be at c/o Beach Club Partners LLC, 565 E. Hillsboro Boulevard, Deerfield Beach, FL 33441 with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Crockett Farnell.

FILED
2008 MAY 17 P 3:22
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Homeowners' Association does not contemplate pecuniary gain or profit to the members thereof, will make no distribution of income to its members, directors or officers and the specific purposes for which it is formed are to provide for the ownership, operation, maintenance and preservation of the Common Area, and for the maintenance and improvement of any easements granted to the Homeowners' Association within the lands identified as Villagio Del Mar (the "**Association Property**") pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Villagio Del Mar, recorded in the Public Records of Palm Beach County, Florida (hereinafter called the "**Declaration**"), and such additional properties as may be added thereto from time to time by annexation or otherwise as provided in the Declaration and in these Articles. The Association is formed to promote the health, safety and welfare of its members and the residents within the Association Property and any additions thereto as may hereafter be brought within the jurisdiction of this Association, and to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration which is hereby incorporated into this instrument as is fully reproduced herein;

(b) Fix, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) Borrow money, and with the assent of two-thirds ($\frac{2}{3}$) of the votes of each class of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the Common Area to any Public Agency or authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Such dedication or transfer shall not be effective without the assent of two-thirds ($\frac{2}{3}$) of the votes of each class of Members, agreeing to such dedication sale or transfer;

(f) Participate in mergers and consolidations with other not-for-profit corporations organized for the same purposes or annex additional residential property and Common Area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds ($\frac{2}{3}$) of the votes of each class of Members; and

(g) Purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of interests in real or personal property, except to the extent restricted hereby; to contract for the management and maintenance of the Common Area and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and Homeowners, repair and replacement of the Common Area with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, including but not limited to the making of assessments, promulgation of rules and execution of contracts on behalf of the Association;

(h) to operate and maintain the common property, including the surface water management system permitted in the South Florida Water Management District Permit, a copy of which is on file in the offices of the Association.

(i) Have and to exercise any and all powers, rights and privileges which a corporation organized under the corporation not for profit law of the State of Florida, by law may now or hereafter have to exercise.

ARTICLE V

MEMBERSHIP

Section 5.1 Every Owner of a Lot within the lands subjected to the Declaration (as defined in the Declaration) including Declarant, shall be a Member of the Association. Memberships in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 5.2 There shall be two (2) classes of Members as follows:

(a) Class A Members. Class A Members shall be all Homeowners with the exception of Declarant.

(b) Class B Members. The Class B Member shall be Declarant or its specifically designated (in writing) successor who shall remain a member so long as it owns a Lot subject to the Declaration; provided that the Class B membership shall cease and be converted to Class A membership as set forth in Section 6.3 hereof.

ARTICLE VI

VOTING RIGHTS

Section 6.1 Members of the Association shall be allocated votes as follows:

Class A. Each Class A Member shall be entitled to one vote for each

Lot owned. For the purposes of determining voting rights, each Lot owned by a Class A Member shall be deemed entitled to one (1) vote regardless of the number of persons sharing common ownership interests.

Class B. The Class B Member shall be allocated three (3) votes for each Lot owned by it within the Association Property provided, that at such time as the Class B membership shall cease and become converted to Class A membership as set forth in Section 6.3, the Declarant shall have one vote for each Lot owned by it within the Association Property.

Section 6.2 When any Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it, or a copy thereof, is filed with the secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Lot (including Lots owned by the Declarant) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Homeowners of that Lot. If the Homeowners fail to designate their official representative, then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

Section 6.3 The Declarant's Class B membership status shall continue, and shall be in effect, during the period from the inception of the Declaration until either (i) seven (7) years from the date the Declaration is recorded; or (ii) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into the Homeowners Association, whichever event, (i) or (ii) occurs later; or (iii) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (iv) in any event, three (3) months after the conveyance of ninety (90%) percent of the Lots in the Association Property that will ultimately be operated by the Association have been converted to Class A status, whichever event, (i), (ii), (iii) or (iv), occurs first ("**Turnover**"); provided however, that if Class B status is converted to Class A pursuant to clause (iv) and, subsequent to such event, the Declarant annexes additional Lots to the Association Property which annexation causes the number of Lots owned by the Declarant in the Property to exceed ten percent (10%) of the total number of Lots within the Association Property, Declarant's Class B status shall be restored as to all Lots within the Association Property then owned by Declarant, and shall continue until the next occurrence of an event of conversion described above.

Section 6.4 The Declarant shall have the right to partially assign its status as Declarant and Class B Member by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant to any person or entity acquiring any portion of the Property, or adjacent lands eligible for annexation into the Property, for the purpose of development of a residential subdivision consistent with the plan of Villagio Del Mar, and any such assignee shall

thereafter be deemed to be the Declarant as to the Lots owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots owned by such original Declarant. If any action of the Association, requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

ARTICLE VII

BOARD OF DIRECTORS

Section 7.1 The names and addresses of the members of the first Board of Directors who shall hold office until the annual meeting of the members and until their successors are elected or appointed and have qualified, are as follows:

NAME	ADDRESS
Edward Masi	565 East Hillsboro Boulevard Deerfield Beach, Florida 33441
Matthew O'Connor	549 Golfview Drive Gulfstream, Florida 33488
Crockett Farnell	565 East Hillsboro Boulevard Deerfield Beach, Florida 33441

Section 7.2 The affairs of the Association shall be managed by a Board of Directors as provided in and subject to the requirements of Article IV the Bylaws. Such Board of Directors shall consist of an odd number of directors with a minimum of at least three (3) directors and a maximum of no more than seven (7) directors. Directors need not be Members of the Association and need not be residents of the Association Property. Each Director shall serve for a term from the date of the meeting at which he is elected until the next annual meeting subject to the provisions governing resignation, death, disability, removal and replacement set forth in the Declaration, Bylaws and this instrument.

ARTICLE VIII

AMENDMENTS

Section 8.1 **Proposal.** An amendment or amendments to these Articles of Incorporation may be proposed by the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by a majority of the Members of the Association, whether meeting as Members or by instrument in writing signed by them. Upon any amendment or amendments to these Articles of

Incorporation being proposed by the Board of Directors or Members, such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in his absence, and a Meeting of the Members of the Association shall be called not later than sixty (60) days from the receipt by him of the proposed amendment or amendments.

Section 8.2 Notice. It shall be the duty of the Secretary to give each Member written notice of such meeting, stating the proposed amendment or amendments in reasonably detailed form, which notice shall be prepared by and at the expense of the Homeowners' Association and mailed by the Homeowners Association or presented personally to each Member not less than thirty (30) days nor more than sixty (60) days before the date set for the meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association, with postage thereupon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the records of the Homeowners' Association, whether before, during or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The notice shall also contain a copy of a proxy that can cast in lieu of attendance at the meeting. The quorum for any such meeting shall be no less than 20% of the total number of votes. The foregoing requirement is a minimum requirement, however, more a stringent requirement imposed elsewhere in these Articles of Incorporation or in the Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

Section 8.3 Resolution. At the meeting at which the amendment is to be proposed and considered, a resolution for the adoption of the proposed amendment may be made by any member of the Board of Directors of the Association, or by any Member of the Association, present in person or by proxy. The approval of a resolution for the adoption of a proposed amendment to these Articles of Incorporation shall require the affirmative vote of a majority of the members of the Board of Directors of the Association.

Section 8.4 Approval. Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 67% of the Class A Members (i.e. all Members except the Declarant who retains Class B status) who are present, in person or by proxy, and voting at a meeting called as described in the notice and conducted by the Homeowners' Association at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting.

Notwithstanding the foregoing, during the period in which the Declarant retains the status of the Class "B" Member, the Declarant shall have the right to amend these Articles of Incorporation, without the necessity of joinder by the Members or any other persons or entities, to make non-substantial changes that do not materially or adversely affect the interests of other Members or other affected parties, and to clarify any ambiguities or conflicts, or correct any scriveners' errors in these Articles of incorporation.

Section 8.5 Limitation. No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members, nor any changes in the provisions of Article IV hereof, without approval of sixty-seven percent (67%) of the votes of each case of Members. No amendment shall be made that is in conflict with the Declaration, nor shall any amendment make any changes which would in any way affect any of its rights, privileges, powers or options herein provided in favor of or reserved to the Declarant, or the designated successor of the Declarant, unless the Declarant or such successor shall join in the execution of the amendment.

Section 8.6 Recording. Any amendment or amendments of these Articles of Incorporation shall be transcribed and certified in such form as may be necessary to file the same in the office of the Secretary of State of the State of Florida. A certified copy of each amendment of these Articles of Incorporation shall be recorded in the Public Records of Palm Beach County, Florida.

ARTICLE IX

OFFICERS

The affairs of the Association will be administered by the officers designated in the Bylaws of the Association. Said officers will be elected by the Board of Directors at its first meeting following the annual meeting of Members of the Association and will serve at the pleasure of the Board of Directors. The names and addresses of the Officers who are to manage the affairs of the Association until the annual meeting of the Board of Directors and until their successors are duly elected and qualified are:

PRESIDENT -	Matthew O'Connor
VICE PRESIDENT -	Crockett Farnell
SECRETARY/TREASURER -	Crockett Farnell

ARTICLE X

INDEMNIFICATION

Section 10.1 Indemnity. The Association shall indemnify, defend, and hold harmless any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a Director, employee, officer or agent of the Association, against expenses (including attorneys fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceedings, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceedings, has no reasonable cause to believe his or her conduct was unlawful, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or misfeasance or malfeasance in

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the performance of his duty to the Association, unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court shall deem proper, the termination of any action, suit or 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 and in a manner which he or she 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 reasonable cause to believe that his or her conduct was unlawful.

Section 10.2 Expenses. 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 action, suit or proceeding referred to in Section 10.1 above, or in defense of any action, suit or proceeding referred to in Section 10.1 above, he shall be indemnified against expenses (including reasonable attorneys fees and reasonable appellate attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 10.3 Approval. Any indemnification under Section 10.1 above (unless ordered by a Court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the directors, officers, employees or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 10.1 above. 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 action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or by a majority of the Members.

Section 10.4 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in any specific case upon receipt of an undertaking by or on behalf of the affected Director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article X.

Section 10.5 Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of (but shall be in addition to) any other rights to which those seeking indemnification, may be entitled under any By-Law, agreement, vote of Members or otherwise, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

Section 10.6 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Association against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

ARTICLE XI

BYLAWS

The first Bylaws of the Association will be adopted by the Directors named herein, and may be altered, amended, or rescinded in the manner provided by said Bylaws. Any Bylaws adopted by the Board of Directors shall be consistent with these Articles.

ARTICLE XII

TRANSACTIONS IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED

Section 12.1 No contract or transaction between the Association and one or more of its directors or officers, or between the Association and any other corporation, partnership, or Association, or other organization in which one or more of its directors or officers are directors or officers have a financial interest, shall be invalid, void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof which authorized the contract or transaction, or solely because his or their votes are counted for such purpose. No director or officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction.

Section 12.2 Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a Committee which authorized the contract or transaction.

ARTICLE XIII

SUBSCRIBER

The name and address of the subscriber to these Articles of Incorporation is

Crockett Farnell
565 East Hillsboro Boulevard
Deerfield Beach, Florida 33441

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TALLAHASSEE, FLORIDA

ARTICLE XIV

DISSOLUTION

The Association may be dissolved with the assent given by not less than two-thirds (2/3) of the votes of each Class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be disposed of or transferred to another association or appropriate public agency having similar purposes.

IN WITNESS WHEREOF, the undersigned subscriber has executed these Articles of Incorporation this 15 day of MAY, 2006.

Judy A. Bailes
Print Name: Judy A. Bailes


By: Crockett Farnell
Crockett Farnell

Nancy Hopkins
Print Name: Nancy Hopkins

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this ____ day of MAY, 2006, by Crockett Farnell. Said person did not take an oath and is personally known to me.

NOTARY PUBLIC-STATE OF FLORIDA
 Maria Castillo
Commission # DD411220
Expires: MAR. 24, 2009
Bonded Thru Atlantic Bonding Co., Inc.

(NOTARY SEAL)

Maria Castillo
Notary Public, State of Florida

Commission No.: DD411220

My Commission Expires: Mar. 24, 2009

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TALLAHASSEE, FLORIDA

**CERTIFICATE DESIGNATING PLACE OF BUSINESS
FOR SERVICE OF PROCESS WITHIN THIS STATE,
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED**

Pursuant to Chapter 48.091, Florida Statutes, the following is submitted in compliance with said Act:

That, **Villagio Del Mar Homeowners' Association, Inc.**, desiring to organize under the laws of the State of Florida, with its principal offices at 565 East Hillsboro Boulevard, Deerfield Beach, Florida 33441 has named Crockett Farnell, whose office is located at 565 East Hillsboro Boulevard, Deerfield Beach, Florida 33441 as its agent to accept service of process within the State.

ACKNOWLEDGMENT

Having been named to accept service of process for the above stated corporation, at the place designated in this Certificate, Crockett Farnell hereby accepts to act in this capacity, and agrees to comply with the provisions of said Act relative to keeping open said office.

By: 
Crockett Farnell

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TALLAHASSEE, FLORIDA

EXHIBIT "C"

**BYLAWS OF
VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC.,
a Florida corporation, Not-for-Profit**

BYLAWS OF
VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC.,
a Florida corporation, Not-for-Profit

1. GENERAL PLAN OF OWNERSHIP

- a. **Name.** The name of the corporation is VILLAGIO DEL MAR HOMEOWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation, and is hereafter referred to as the "Association" or "Homeowners Association." The principal office of the corporation shall be located in the State of Florida.
- b. **Bylaws Applicability.** The provisions of these Bylaws are applicable to the Association created pursuant to the Declaration of Covenants, Conditions and Restrictions for Villagio Del Mar recorded in the Public Records of Palm Beach County, Florida (herein referred to as the "Declaration"). All capitalized words or phrases used herein shall have the meanings herein ascribed, and if not defined in this instrument, such capitalized words or phrases shall have the meanings given in the Declaration or Articles of Incorporation of the Association.
- c. **Personal Application.** All present and future Owners of Lots within the Association Property (as defined in the Articles of Incorporation and Declaration of the Association) and their tenants, guests and invitees are subject to the regulations set forth in these Bylaws.

The recording of a declaration authorizing the creation of a homeowners association and the mere acquisition of a Lot or acquisition or rental of any Lot or the mere act of occupancy of any Lot signify that these Bylaws are accepted, ratified, and will be complied with.

2. MEMBERSHIP, VOTING RIGHTS, MAJORITY OF QUORUM, QUORUM, PROXIES

- a. **Membership.** Every Owner of a Lot, by virtue of the ownership of such Lot, and the Declarant and its successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner and Declarant accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of the Declaration, the Articles of incorporation, these Bylaws and other rules and regulations of the Association. The term "Member" shall include each person or entity owning any right, title or interest in any Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or

entities also have the right of possession. Tenants or others occupying any Lot who do not have an ownership interest therein shall not be Members for the purposes of these Bylaws. Membership in the Association is appurtenant to, and may not be severed from, the Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in the Declaration, the Articles of Incorporation or these Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot. Members shall be responsible for compliance with the terms and conditions of the Declaration, the Articles of Incorporation and these Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Lot, Common Area or other portion of the Property.

- b. Voting Rights. Members of the Association shall be allocated votes as follows:

Class "A". Class A Members shall be all Owners with the exception of the Declarant. Each Class "A" Member shall be entitled to one vote for each Lot owned.

Class "B". The Class B Member shall be the Declarant, or its specifically designated (in writing) successor. The Class B Member shall be allocated three (3) votes for each Lot owned by it within the Property which is subject to assessment by this Association; provided, that the Class B membership shall cease and become converted to Class A membership as set forth in Section 4. Upon conversion to Class A membership, the Declarant shall have one vote for each Lot owned by it within the Property so long as said Lot is subject to assessment by the Association.

When any Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Homeowners Association, such Owner shall select one official representative to qualify for voting in the Homeowners Association and shall notify in writing the Secretary of the Homeowners Association of the name of such individual. The vote allocated to any Lot (including Lots owned by the Declarant) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot. If the Owners fail to designate their official representative, then the Homeowners Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

- c. Change of Membership.

- (1) Change of membership in the Association shall be established by recording in the Public Records of Palm Beach County, Florida, a

deed or other instrument conveying record fee title to any Lot, and by the delivery to the Homeowners Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Homeowners Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Homeowners Association, said Owner shall become a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Homeowners Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessment attributable to the Lot acquired.

- (2) The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner, of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

d. **Class B Membership Status.**

- (1) The Declarant's Class B membership status shall continue, and shall be in effect, during the period from the inception of the Declaration until either (i) seven (7) years from the date the Declaration is recorded: or (ii) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into the Homeowners Association, whichever event, (i) or (ii) occurs later; or (iii) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (iv) in any event, within ninety (90) days after the conveyance of ninety percent (90%) of the Lots in the Property that will ultimately be operated by the Association have been converted to Class A status, whichever event, (i), (ii), (iii) or (iv), occurs first: provided however, that if Class B status is converted to Class A pursuant to clause (4) and, subsequent to such event, the Declarant annexes additional Lots to the Property which annexation causes the number of Lots owned by the Declarant

in the Property to exceed ten percent (10%) of the total number of Lots within the Property Declarant's Class B status shall be restored as to all Lots within the Property then owned by Declarant, and shall continue until the next occurrence of an event of conversion described above.

- (2) The Declarant shall have the right to partially assign its status as Declarant and Class B Member by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant to any person or entity acquiring any portion at the Property, or the adjacent land eligible for annexation into the Property, for the purpose of development of a residential subdivision, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots owned by such original Declarant. If any action of the Homeowners Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.
- e. **Majority of Quorum.** Unless otherwise expressly provided in these Bylaws or the Declaration any action which may be taken by the Association may be taken by a majority of a quorum of the Members of the Association.
- f. **Quorum.** Each Homeowners Association meeting required by the Association pursuant to the Declaration shall require the presence, either in person or by proxy, of a quorum of the members of the Homeowners Association. The quorum for any such meeting shall be no less than 20% of the total number of votes. The foregoing requirement is the minimum requirement, however, more stringent requirements imposed elsewhere in these Bylaws or in the Articles of Incorporation or in the Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section, and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.
- g. **Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary at least twenty-four (24) hours before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed, and upon conveyance by the Member of his Lot.

3. ADMINISTRATION

- a. **Place of Meetings of Members.** Meetings of the Members shall be held within the Association Property or such other suitable place as close thereto as practicable in Palm Beach County, convenient to the Owners as may be designated by the Board of Directors.
- b. **Annual Meetings.** The first annual meeting of the Members shall be held on the date at the place and time, as determined by the Board of Directors, provided, however, that said meeting shall be held, to the extent possible, within one (1) year from the date of incorporation of the Association. Thereafter, the annual meeting of the Association shall be held on the anniversary date of the first annual meeting; provided, however, that should the anniversary date fall on a legal holiday, then such annual meeting of the Members shall be held on the next day thereafter which is not a legal holiday. Subject to the provisions of Article IV, Section 1 herein, at each annual meeting there shall be elected by ballot of the Members a Board of Directors, in accordance with the requirements of Section 5 of Article IV of these Bylaws. At the first annual meeting, the Directors shall be elected to serve until the second annual meeting, and at the second annual meeting, Directors shall be elected for a term of one (1) year beginning with the second annual meeting. Unless a Director resigns before the expiration of his term of office, each Director shall hold his office until his successor has been elected and the first meeting involving such successor is held. The term of office of any Director elected to fill a vacancy created by the resignation of his predecessor shall be the balance of the unserved term of his predecessor. The Members may also transact such other business of the Association as may properly come before them, Each First Mortgagee of a Lot may designate a representative to attend all annual meetings of the Members.
- c. **Special Meetings of Members.** Special meetings of the Members may be called at any time by the President or by a majority of a quorum of the Board of Directors, or upon a petition signed by Class A Members holding at least ten percent (10%) of the voting power of the Class A Members having been presented to the Secretary. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

No business shall be transacted at a special meeting except as stated in the notice, unless by consent of those Members holding at least four-fifths (4/5) of the voting power of the Association, either in person or by proxy. Each First Mortgagee of a Lot may designate a representative to attend all special meetings of the Members.

- d. **Notice of Meetings of Members.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting of Members stating the purpose thereof as

well as the day, hour, and place where it is to be held, to each Member of record and to each First Mortgagee of a Lot which has filed a written request for notice with the Secretary, at least fourteen (14) but not more than sixty (60) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting. The mailing of a notice, postage prepaid, in the manner provided in this Section shall be considered notice served, after said notice has been deposited in a regular depository of the United States mail. If no address has been furnished to the Secretary, notice shall be deemed to have been given to a Member if posted in a conspicuous place on the Common Property.

- e. **Adjourned Meetings.** If any proposed meeting cannot be organized because a quorum has not been attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.
- f. **Order of Business.** The order of business at all meetings of the Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of Officers; (e) reports of committees; (f) election of inspector of election; (g) election of Directors; (h) unfinished business; and (i) new business. Meetings of Members shall be conducted by the Officers of the Association in order of their priority.
- g. **Action Without Meeting.** Any action, which under the provisions of Florida law may be taken at a meeting of the Members, may be taken without a meeting if authorized by a writing signed by the required number of Members who would be entitled to vote at a meeting for such purpose, and such writing is filed with the Secretary.
- h. **Consent of Absentees.** The transaction of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the Members not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.
- i. **Minutes; Presumption of Notice.** Minutes or similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed

truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

4. BOARD OF DIRECTORS

- a. **Number, Term and Qualifications.** The affairs of this Association shall be governed by a Board of Directors composed of no fewer than three (3) nor more than seven (7) persons as is determined from time to time by the Members. The term of each Directors service shall extend until the next annual meeting of the Members, and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section h. below.
- b. **Powers and Duties.** The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done exclusively by the Members.
- c. **Special Powers and Duties.** Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration and Articles of Incorporation, the Board of Directors is vested with, and responsible for, the following powers and duties:
 - (1) To select, appoint, and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Declaration and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board.
 - (2) To conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefor consistent with law, with the Articles of Incorporation, the Declaration, and these Bylaws, as the Board may deem necessary or advisable.
 - (3) To change the principal office for the transaction of the business of the Association from one location to another with the State of Florida as provided in Article I hereof: to designate any place within said State for the holding of any annual or special meeting or meeting of Members consistent with the provisions of Article III. Section 2 hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment may

deem best, provided that such seal shall at all times comply with the provisions of law.

- (4) To borrow money and to incur indebtedness for the purposes set forth in the Declaration, and to cause to be executed and delivered therefor, in the Associations' name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges hypothecations or other evidences of debt and securities therefor.
- (5) To fix and levy from time to time, Assessments upon the Owners, as provided in the Declaration; to determine and fix the due date for the payment of such Assessments, and the date upon which the same shall become delinquent; provided, however, that such Assessments shall be fixed and levied only to provide for the general benefit and welfare of the Association and its Members in accordance with the provisions of the Declaration. The Board of Directors is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate reserves for replacements as it shall deem to be necessary or advisable in the interest of the Association or welfare of its Members. Disbursements from such trust reserve fund shall be made only in accordance with the provisions of the Declaration. Should any Owner fail to pay such Assessments before delinquency, the Board of Directors in its discretion is authorized to enforce the payment of such delinquent assessments as provided in the Declaration.
- (6) To enforce the provisions of the Declaration covering the Common Area, and areas on which the Association has an easement or has granted an easement to a governmental or quasi-governmental agency (the "Easement Areas"), these Bylaws or other agreements of the Association.
- (7) To contract for and pay fire, casualty, errors and omissions, blanket liability, malicious mischief, vandalism, and other insurance, insuring the Members, the Owners, the Association, the Declarant, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration, covering and protecting against such damages or injuries as the Board deems advisable, which may include without limitation, medical expenses of persons injured on the Common Area and Easement Areas, and to bond the agents and employees of any management body, if deemed advisable by the Board. The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on behalf of the

Association.

- (8) To contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, public areas, and Easement Areas and to employ personnel necessary for the operation of the Common Area, public areas and Easement Areas, including legal and accounting services, and to contract for and pay for improvements to the Common Area, public areas and Easement Areas.
- (9) To delegate its powers according to law, and subject to the approval of the Members, to adopt these Bylaws.
- (10) To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Association.
- (11) To fix, determine and from time to time, name, if necessary or advisable, the public agency, fund, foundation or corporation which is then or there organized or operated for charitable purposes, to which the assets of this Association shall be distributed upon liquidation or dissolution, according to the Articles of Incorporation of the Association. The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association, and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts.
- (12) To adopt such uniform and reasonable rules and regulations as the Board may deem necessary for the management of the Common Area and Easement Areas which rules and regulations shall become effective and binding after (1) they are adopted by a majority of the Board at a meeting called for that purpose, or by the written consent of such number of Directors attached to a copy of the rules and regulations of the Association, and (2) they are posted in a conspicuous place in or near the Common Area. For so long as the Declarant enjoys Class B Membership status, such rules and regulations shall not materially adversely affect the rights, privileges or preferences of any Member or owner as established by the Association, the Articles of Incorporation of the Association and these Bylaws and such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation and these Bylaws.

d. Management Agent. The Board shall have the option to employ a managing agent

to manage the Common Area and Easement Areas and the affairs of the Association. The managing agent shall perform such duties and services as the Board shall authorize.

- e. **Election and Term of Office.** Subject to the provisions of Article 4, Section i. herein, at the first annual meeting of the Association, and thereafter at each annual meeting of the Members, Directors shall be elected by secret written ballot by a plurality of Members as provided in these Bylaws, each Member voting being entitled to cast its votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. In the event that an annual meeting is not held, or the Board is not elected thereat, the Board may be elected at a special meeting of the Members held for that purpose. Each Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence. Any person serving as a Director may be reelected, and there shall be no limitation on the number of terms during which he may serve.
- f. **Books, Records.** The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in manner consistent with generally accepted accounting principles and Florida Statutes.
- g. **Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum and such person so elected shall be a Director until a successor is elected at the next annual meeting of the Members of the Association, or a special meeting of the Members called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in case the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place.
- h. **Removal of Directors.** At any regular or special meeting of the Members, duly called, any one or more of the Directors may be removed with or without cause by a majority vote of the Members of the Association, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If any or all of the Directors are so removed, new Directors may be elected at the same meetings.
- i. **Organization Meeting.** The first regular ("Organization") meeting of a newly elected Board of Directors shall be held within ten (10) days of election of the Board, at such place as shall be fixed and announced by the Directors at the meeting at

which such Directors were elected, for the purpose of organization, election of Officers and the transaction of other business. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board shall be present.

- j. **Other Regular Meeting.** Other regular meetings of the Board of Directors may be held at such time and place in or near the Association Property as shall be determined, from time to time by a resolution adopted by a majority of a quorum of the Directors; provided, however, that such meeting shall be held no less frequently than annually. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, e-mail, telephonic facsimile, telephone or telegraph, at least seventy-two (72) hours prior to the date named for such meeting, and shall be posted at a prominent place or places within the Common Area.
- k. **Special Meeting.** Special meetings of the Board of Directors may be called by the President (or, if he is absent or refused to act, by the Vice President) or by any two (2) Directors. Except in the event of a bona fide emergency, at least seventy-two (72) hours notice shall be given to each Director personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and the purpose of the meeting, and shall be posted at a prominent place or places in or near the Association Property. If served by mail, each such notice shall be sent, postage prepaid, to the address reflected on the records of the Association, and shall be deemed given if actually received earlier, at 5:00 P.M. on the second day after it is deposited in a regular depository of the United States mail as provided herein. Whenever any Director has been absent from any special meeting of the Board, an entry, in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such Director, as required by law and as provided herein.
- l. **Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board, however, called and notice or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice. If a quorum be present, and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof, then such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.
- m. **Quorum and Adjournment.** Except as otherwise expressly provided herein, at all

meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

- n. **Action Without Meeting.** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the vote or written consent of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.
- o. **Fidelity Bonds.** The Board of Directors may require that all Officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.
- p. **Committees.** The Board of Directors by resolution may from time to time designate such committees as it shall desire, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its Members, as well as a chairman, shall state the purposes of the committee, and shall provide for reports, termination, and other administrative matters as deemed appropriate by the Board.

5. OFFICERS

- a. **Designation.** The principal Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer and an Assistant Secretary, and such other Officers as in their judgment may be necessary. The office of Secretary and Treasurer may be held by the same person, but the office of President and Secretary may not be held by the same person.
- b. **Election of Officers.** The Officers of the Association shall be elected annually by the Board of Directors at the Organization Meeting of each new Board of Directors, and each officer shall hold his office until he shall resign or be removed or otherwise disqualified to serve, or his successor shall be elected and qualified to serve.
- c. **Removal of Officers.** Upon an affirmative vote of a majority of the entire Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose. Any officer may resign at

any time by giving written notice to the Board or to the President or Secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board shall not be necessary to make it effective.

- d. **Compensation.** Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such officer, agent, or employee, provided that no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation.
- e. **President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power, subject to the provisions of Article 4, Section p. to appoint committees from among the members from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business of the Association. The President shall be ex officio a member of all standing committees, and he shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws of the Association.
- f. **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled, refuses or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or these Bylaws of the Association.
- g. **Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association at the principal Office of the Association or at such other places as the Board of Directors may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Directors may direct, and the Secretary shall, in general perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notice of meetings of the Members of the Association and of the Board of Directors required by these Bylaws or by law to be given. The Secretary shall maintain a book of record Owners, listing the names and addresses of the Owners as furnished by the Association, and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Lot

is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board of Directors.

- h. **Treasurer.** The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall co-sign all promissory notes on behalf of the Association. The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors, in accordance with the Declaration, shall render to the President and Directors, upon request, an account of all of his transactions as Treasurer and of the financial conditions of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

6. OBLIGATIONS OF OWNERS FOR ASSESSMENTS

- a. **Payment.** The Association shall obtain funds with which to operate by assessment of the Members in accordance with the provisions of the Declaration as supplemented by the provisions of the Articles of the Association relating thereto. Said assessments shall be payable monthly, in advance, without notice, and shall be due on the first day of each month. Unless otherwise required by the Board, assessments may not be made payable less frequently than monthly.
- b. **Special Assessments.** Special Assessments for charges by the Association against Members for other than Common Expenses or for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be levied in the same manner as herein provided for regular Assessments, except that notice thereof shall be given, and they shall be payable in the manner determined by the Board.
- c. **Past Due Assessments.** Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the rate set forth in the Declaration and shall result in the filing of a claim of lien as set forth in the Declaration.
- d. **Default.** As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessment, if not paid within thirty (30) days after the due date, shall bear interest from the date of

delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

7. AMENDMENTS TO BYLAWS

- a. **Proposal.** Amendments to these Bylaws may be proposed by the Board of Directors (the "Board") of the Association by resolutions adopted by a majority vote of the Directors present at any regular or special meeting of the Board at which a quorum is present or, in the alternative, by a written instrument signed by a majority of the Board, or by the vote of a majority of a quorum of Members present in person or by proxy at a special or regular meeting of the Members or by written instrument signed by them, Such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association not later than sixty (60) days from the receipt by him of the proposed amendment or amendments.
- b. **Notice.** It shall be the duty of the Secretary to give each Member written notice of such meeting, stating the proposed amendment or amendments in reasonably detailed form, which notice shall be prepared by and at the expense of the Homeowners Association and mailed by the Homeowners Association or presented personally to each Member not less than thirty (30) days nor more than sixty (60) days before the date set for the meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association, with postage thereupon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the records of the Homeowners Association, whether before, during or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting.
- c. **Resolution.** At the meeting at which the amendment is to be proposed and considered, a resolution for the adoption of the proposed amendment may be made by any member of the Board of Directors of the Association, or by any Member of the Association, present in person or by proxy. The approval of a resolution for the adoption of a proposed amendment to these Bylaws shall require the affirmative vote of a majority of the members of the Board of Directors of the Association.
- d. **Approval.** Amendments may be approved by the Members, after receipt of notice as

set forth above, either (1) by the affirmative vote of at least 67% of the Class A Members (i.e. all Members except the Declarant who retains Class B status) who are present, in person or by proxy and voting at a meeting called as described in the notice and conducted by the Homeowners Associations at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting.

Notwithstanding the foregoing, during the period in which the Declarant retains the status of the Class "B" Member, the Declarant shall have the right to amend these Bylaws, without the necessity of joinder by the Members or any other persons or entities, to make nonsubstantial changes that do not materially or adversely affect the interests of other Members or other affected parties, and to clarify any ambiguities or conflicts, or correct any scriveners' errors in these Bylaws.

- e. **Limitation.** No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members without approval of sixty-seven percent (67%) of the votes of each class of Members. No amendment shall be made that is in conflict with the Declaration, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Declarant, or the designated successor of the Declarant, unless the Declarant or such successor shall join in the execution of the amendment.
- f. **Recording.** Such amendment or amendments of these Bylaws shall be transcribed and certified in such form as may be necessary to file the same in the office of the Association and shall be recorded in the Public Records of Palm Beach County, Florida within thirty (30) days from the date on which the same is approved.

8. MORTGAGES

- a. **Notice to Association.** An Owner who mortgages his Lot shall notify the Association through the managing agent or the Secretary of the Board of Directors in the event there is no managing agent, of the name and address of his Mortgagee and the Association shall maintain such information in a book entitled "Mortgagees of Lots." Any such Owner shall likewise notify the Association as to the release or discharge of any such mortgage.
- b. **Notice of Unpaid Assessments.** The Board of Directors of the Association shall at the request of a Mortgagee of a Lot report any unpaid assessments due from the Owner of such Lot, in accordance with the provisions of the Declaration.

9. MEANING OF TERMS

All terms appearing herein initially capitalized shall have the same meanings as are applied to such terms in the Declaration, which terms include without limitation: "Owner," "Board," "Lot," "Articles," "Member," "Mortgage," "Mortgagee," and "Common Assessments."

10. CONFLICTING PROVISIONS

In case any of these Bylaws conflict with any provisions of the laws of the State of Florida, such conflicting Bylaws shall be null and void upon final Court determination to such effect, but all other Bylaws shall remain in full force and effect. In a case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of conflict between the Declaration and these Bylaws, the Declaration shall control.

11. MISCELLANEOUS

- a. **Execution of Documents.** The Board of Directors, except as in these Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent, committee member, or employee shall have any power or authority to bind the Association by any contract or engagement or to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.
- b. **Inspection of Bylaws.** The Association shall keep in its office for the transaction of business the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members and all First Mortgagees at all reasonable times during office hours.
- c. **Fiscal Year.** The fiscal year of the Association shall be determined by the Board of Directors and having been so determined is subject to change from time to time as the Board of Directors shall determine.
- d. **Membership Book.** The Association shall keep and maintain in its office for the transaction of business a book containing the name and address of each Member. Termination or transfer of ownership of any Lot by an Owner shall be recorded in the book together with the date on which such ownership was transferred, in accordance with the provisions of the Declaration.

WE HEREBY CERTIFY that the foregoing Bylaws of the Association were duly adopted by the Board of Directors of the Association in a meeting held for such purpose on the 15 day of MAY, 2006.


Crockett Farnell

EXHIBIT “D”

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT PERMIT
FOR
VILLAGIO DEL MAR**

Consists of 28 pages including this page



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE
STANDARD GENERAL PERMIT NO. 50-06160-P
DATE ISSUED: May 11, 2004**

COPY

Form #0941
08/95

PERMITTEE: BEACH CLUB PARTNERS L L C
565 EAST HILLSBORO BLVD
DEERFIELD BEACH, FL 33441

PROJECT DESCRIPTION: Relocation of the previously approved boardwalk within the wetland mitigation area and minor modification of a surface water management system serving a 5.82 acre residential development known as The Beach Club.

PROJECT LOCATION: PALM BEACH COUNTY, SEC 10 TWP 45S RGE 43E

PERMIT DURATION: See Special Condition No:1. See attached Rule 40E-4.321, Florida Administrative Code.

This is to notify you of the District's agency action concerning Notice of Intent for Permit Application No. 031210-17, dated December 10, 2003. This action is taken pursuant to Rule 40E-1.603 and Chapter 40E-40, Florida Administrative Code (F.A.C.).

Based on the information provided, District rules have been adhered to and an Environmental Resource General Permit is in effect for this project subject to:

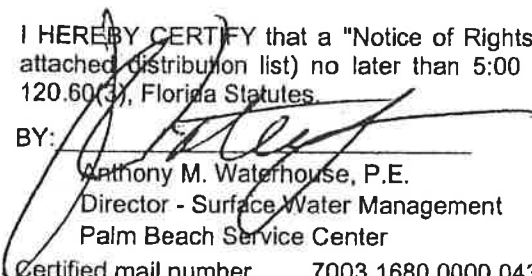
1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 19 General Conditions (See Pages : 2 - 4 of 6),
3. the attached 18 Special Conditions (See Pages : 5 - 6 of 6) and
4. the attached 8 Exhibit(s).

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights," we will assume that you concur with the District's action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a "Notice of Rights" has been mailed to the Permittee (and the persons listed in the attached distribution list) no later than 5:00 p.m. on this 11th day of May, 2004, in accordance with Section 120.60(3), Florida Statutes.

BY:


Anthony M. Waterhouse, P.E.
Director - Surface Water Management
Palm Beach Service Center

Certified mail number 7003 1680 0000 0438 7261

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GENERAL CONDITIONS

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.
5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an annual status report form. Status report forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the supplied Environmental Resource Permit Construction Completion/Certification Form Number 0881. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings is discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "As-built" or "Record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (6) above, and submitted a request for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the

GENERAL CONDITIONS

approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.
9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.
10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..
12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereign lands or other state-owned lands.
13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(3), F.A.C., also known as the "No Notice" Rule.
14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding, unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and

GENERAL CONDITIONS

40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.

17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.
18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

SPECIAL CONDITIONS

1. The construction phase of this permit shall expire on May 11, 2009.
2. Operation of the surface water management system shall be the responsibility of HOMEOWNERS ASSOCIATION. Within one year of permit issuance or concurrent with the engineering certification of construction completion, whichever comes first, the permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association.
3. Discharge Facilities:

Structure: E-10

1-2' WIDE SHARP CRESTED weir with crest at elev. 7.25' NGVD.
 1-.25' dia. CIRCULAR ORIFICE with invert at elev. 5' NGVD.
 22 LF of 1.5' dia. HIGH DENSITY POLYETHYLENE culvert.

Receiving body : Intracoastal Waterway
 Control elev : 3 feet NGVD. /3 FEET NGVD DRY SEASON.

Structure: E-8

1-2' WIDE SHARP CRESTED weir with crest at elev. 7.25' NGVD.
 1-.25' dia. CIRCULAR ORIFICE with invert at elev. 5' NGVD.
 15 LF of 1.5' dia. HIGH DENSITY POLYETHYLENE culvert.

Receiving body : Intracoastal Waterway
 Control elev : 3 feet NGVD. /3 FEET NGVD DRY SEASON.
4. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
5. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.
6. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
7. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.
8. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
9. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.
10. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur, the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.

SPECIAL CONDITIONS

11. Minimum building floor elevation: BASIN: The Beach Club - 9.25 feet NGVD.
12. Minimum road crown elevation: Basin: The Beach Club - 7.30 feet NGVD.
13. All special conditions and exhibits previously stipulated by permit number 50-06160-P remain in effect unless otherwise revised and shall apply to this modification.
14. Prior to the commencement of construction resulting in wetland impacts and in accordance with the work schedule in Exhibit No. 6, the permittee shall submit two certified copies of the recorded conservation easement for the mitigation area and associated buffers. The data should also be supplied in a digital CAD (.dxf) or GIS (ESRI Coverage) format. The files should be in the Florida State Plane coordinate system, East Zone (3601) with a data datum of NAD83, HARN with the map units in feet. This data should reside on a CD or floppy disk and be submitted to the District's Environmental Resource Compliance Division in the service area office where the application was submitted.

The recorded easement shall be in substantial conformance with Exhibit No. 7. Any proposed modifications to the approved form must receive prior written consent from the District. The easement must be free of encumbrances or interests in the easement which the District determines are contrary to the intent of the easement. In the event it is later determined that there are encumbrances or interests in the easement which the District determines are contrary to the intent of the easement, the permittee shall be required to provide release or subordination of such encumbrances or interests.

15. The wetland impacts authorized by this permit may only occur subsequent to or concurrently with construction and implementation of the mitigation plan (refer to Exhibit No. 8). If revisions to the work schedule shown on Exhibit No. 6 and referenced in Special Condition No. 16 are necessary, the permittee shall coordinate with the District's Environmental Resource Compliance Department to ensure compliance with this condition.
16. Activities associated with the implementation of the mitigation, monitoring and maintenance plan(s) shall be completed in accordance with the work schedule attached as Exhibit No. 6. Any deviation from these time frames will require prior approval from the District's Environmental Resource Compliance staff. Such requests must be made in writing and shall include (1) reason for the change, (2) proposed start/finish and/or completion dates; and (3) progress report on the status of the project development or mitigation effort.
17. A revised mitigation program for the Beach Club shall be implemented in accordance with Exhibit No. 8. The permittee shall create 0.187 acres of mangrove wetlands, restore 0.328 acres of mangrove wetlands, enhance 0.166 acres of mangrove wetlands and restore 0.122 acres of upland coastal dune.
18. The following exhibit for the permit is incorporated by reference herein and is located in the permit file:

Exhibit No. 8 -The Beach Club Wetland Restoration/Mitigation Plan, Prepared By C & N Environmental Consultants, Inc., Revised April 26, 2004.

40E-4.321 Duration of Permits

(1) Unless revoked or otherwise modified the duration of an environmental resource permit issued under this chapter or Chapter 40E-40, F.A.C. is as follows:

(a) For a conceptual approval, two years from the date of issuance or the date specified as a condition of the permit, unless within that period an application for an individual or standard general permit is filed for any portion of the project. If an application for an environmental resource permit is filed, then the conceptual approval remains valid until final action is taken on the environmental resource permit application. If the application is granted, then the conceptual approval is valid for an additional two years from the date of issuance of the permit. Conceptual approvals which have no individual or standard general environmental resource permit applications filed for a period of two years shall expire automatically at the end of the two year period.

(b) For a conceptual approval filed concurrently with a development of regional impact (DRI) application for development approval (ADA) and a local government comprehensive plan amendment, the duration of the conceptual approval shall be two years from whichever one of the following occurs at the latest date:

1. the effective date of the local government's comprehensive plan amendment.
2. the effective date of the local government development order.
3. the date on which the District issues the conceptual approval, or
4. the latest date of the resolution of any Chapter 120.57, F.A.C., administrative proceeding or other legal appeals.

(c) For an individual or standard general environmental resource permit, five years from the date of issuance or such amount of time as made a condition of the permit.

(d) For a noticed general permit issued pursuant to Chapter 40E-400, F.A.C., five years from the date the notice of intent to use the permit is provided to the District.

(2)(a) Unless prescribed by special permit condition, permits expire automatically according to the timeframes indicated in this rule. If application for extension is made in writing pursuant to subsection (3), the permit shall remain in full force and effect until:

1. the Governing Board takes action on an application for extension of an individual permit, or
2. staff takes action on an application for extension of a standard general permit.

(b) Installation of the project outfall structure shall not constitute a vesting of the permit.

(3) The permit extension shall be issued provided that a permittee files a written request with the District showing good cause prior to the expiration of the permit. For the purpose of this rule, good cause shall mean a set of extenuating circumstances outside of the control of the permittee. Requests for extensions, which shall include documentation of the extenuating circumstances and how they have delayed this project, will not be accepted more than 180 days prior to the expiration date.

(4) Substantial modifications to Conceptual Approvals will extend the duration of the Conceptual Approval for two years from the date of issuance of the modification. For the purposes of this section, the term "substantial modification" shall mean a modification which is reasonably expected to lead to substantially different water resource or environmental impacts which require a detailed review.

(5) Substantial modifications to individual or standard general environmental resource permits issued pursuant to a permit application extend the duration of the permit for three years from the date of issuance of the modification. Individual or standard general environmental resource permit modifications do not extend the duration of a conceptual approval.

(6) Permit modifications issued pursuant to subsection 40E-4.331(2)(b), F.A.C. (letter modifications) do not extend the duration of a permit.

(7) Failure to complete construction or alteration of the surface water management system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization in order to continue construction unless a permit extension is granted.

Specific authority 373.044, 373.113 F.S. Law Implemented 373.413, 373.416, 373.419, 373.426 F.S. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(4), Amended 7-1-86, 4/20/94, 10-3-95

NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (1999), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply." Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

Petition for Administrative Proceedings

1. A person whose substantial interests are affected by the South Florida Water Management District's (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

a. Formal Administrative Hearing: If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

b. Informal Administrative Hearing: If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

c. Administrative Complaint and Order: If a Respondent objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.

d. State Lands Environmental Resource Permit: Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.

e. Emergency Authorization and Order: A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

f. Order for Emergency Action: A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.

g. Permit Suspension, Revocation, Annulment, and Withdrawal: If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by

any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

CIRCUIT COURT

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15th Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

DISTRICT COURT OF APPEAL

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

LAND AND WATER ADJUDICATORY COMMISSION

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (FLAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with FLAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with FLAWAC within 30 days of rendition of the DEP's order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

PRIVATE PROPERTY RIGHTS PROTECTION ACT

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

MEDIATION

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or

publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

(1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;

(2) a statement of the preliminary agency action;

(3) an explanation of how the person's substantial interests will be affected by the agency determination; and

(4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

VARIANCES AND WAIVERS

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

(a) the caption shall read:

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, telephone number and any facsimile number of the petitioner;

(c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);

(d) the applicable rule or portion of the rule;

(e) the citation to the statute the rule is implementing;

(f) the type of action requested;

(g) the specific facts that demonstrate a substantial hardship or violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) a statement of whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

a) the specific facts that make the situation an emergency; and

b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

WAIVER OF RIGHTS

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

28-106.201

INITIATION OF PROCEEDINGS

(INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(f) A demand for relief.

28-106.301 INITIATION OF PROCEEDINGS
(NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

- (2) All petitions filed under these rules shall contain:
- (a) The name and address of each agency affected and each agency's file or identification number, if known;
 - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
 - (c) A statement of when and how the petitioner received notice of the agency decision;
 - (d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
 - (e) A demand for relief.

28-107.004 SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL

- (3) Requests for hearing filed in accordance with this rule shall include:
- (a) The name and address of the party making the request, for purposes of service;
 - (b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and
 - (c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

42-2.013 REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217

(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.

(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity:

- (a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;

(b) How the rule or order sought to be reviewed affects the interests of the party seeking review;

(c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;

(d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and

(e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

28-107.005 EMERGENCY ACTION

- (1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.
- (2) the 14-day notice requirement of Section 120.569(2)(b), F. S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.

(3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57, and 120.60, F.S.

40E-1.611 EMERGENCY ACTION

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

Last Date For Agency Action: 23-MAY-2004

GENERAL ENVIRONMENTAL RESOURCE PERMIT STAFF REPORT

Project Name: Beach Club The (Boardwalk Modification)

Permit No.: 50-06160-P

Application No.: 031210-17

Application Type: Environmental Resource (General Permit Modification)

Location: Palm Beach County, S10/T45S/R43E

Permittee : Beach Club Partners L L C

Operating Entity : Homeowners Association

Project Area: 5.82 acres

Project Land Use: Residential

Drainage Basin: INTRACOASTAL WATERWAY

Receiving Body: Intracoastal Waterway

Class: CLASS III

Special Drainage District: NA

Total Acres Wetland Onsite: .68

Total Acres Wetland Preserved Onsite: .51

Total Acres Impacted Onsite : .17

Total Acres Presv/Mit Compensation Onsite: .69

Mitigation Previously Permitted: Yes

Conservation Easement To District : Yes

Sovereign Submerged Lands: No

PROJECT PURPOSE:

This application is a request for modification of Permit No. 50-06160-P for the relocation of the previously approved boardwalk within the mitigation area of a 5.82 acre residential development known as The Beach Club. In addition, minor changes to the paving, grading and drainage plans are proposed. Staff recommends approval with conditions.

PROJECT EVALUATION:

PROJECT SITE DESCRIPTION:

The site is the previously permitted Beach Club Residential development which is located south of Hypoluxo Road and north of Gateway Boulevard adjacent to the east side of US Highway 1. The east side of the project is adjacent to the Atlantic Intracoastal Waterway (AIWW).

PROJECT BACKGROUND:

The project was issued Standard General Permit No. 50-06160-P on October 31, 2003.

The original permit included a 0.83 acre on-site mitigation area (including buffers) with a tidal connection through an 18" culvert (with manatee grate) to the Lake Worth Lagoon.

PROPOSED PROJECT:

This application seeks to modify the original permit due to minor design and land use changes which modify the overall foot print of the residential development within the applicant owned area. The proposed modification will result in unavoidable impacts to 0.032 acres of Brazilian Pepper dominated wetlands. The applicant is also proposing to minimize impacts to wetlands by moving the previously permitted boardwalk north.

Proposed is the modification of Permit No. 50-06160-P for the the relocation of the previously approved boardwalk within the mitigation area of a 5.82 acre residential development known as The Beach Club. The applicant proposes to relocate the previously approved boardwalk within the mitigation area and in doing so reconfiguring the mitigation area (refer to Exhibit No. 8). As part of this application the applicant is proposing to modify the overall development footprint and adjust the previously permitted land use, therefore resulting in unavoidable impacts to an additional 0.032 acres of wetlands (refer to Exhibit Nos. 2 & 5). In addition, minor changes to the paving, grading and drainage plans are proposed. The applicant's engineer submitted updated calculations based on the changes to the land use acreages to demonstrate that all applicable criteria will be met.

The total applicant owned area is 5.82 acres of which 1.61 acres is submerged lands, 0.15 acres is beach area, and 0.83 acres is the proposed on-site wetland mitigation area. The net parcel size to be developed is 3.23 acres.

LAND USE:

The 0.58-acre WATER MGNT ACREAGE refers to the swales that will be used to provide water quality treatment. The 1.76 acres OTHER represents 1.61 acres of submerged lands and 0.15 acres of beach area.

Construction:

Project:

	Previously Permitted	This Phase	Total Project	
Building Coverage	.97	.96	.96	acres
Other	1.82	1.76	1.76	acres
Pavement	.79	1.02	1.02	acres
Pervious	.86	.67	.67	acres
Water Mgmt Acreage	.55	.58	.58	acres

	Previously Permitted	This Phase	Total Project	
Wetland	.83	.83	.83	acres
Total:	5.82	5.82	5.82	

WATER QUANTITY :

Discharge Rate :

The applicants engineer submitted calculations to demonstrate that the post-development discharge for the 25-year, 3-day design event will not exceed existing conditions.

Finished Floors :

As shown in the following table and the attached exhibits, minimum finished floor elevations have been set at or above the calculated design storm flood elevation.

Building Storm Frequency : 100 YEAR-3 DAY

Design Rainfall : 17 inches

Basin	Peak Stage (ft, NGVD)	Proposed Min. Finished Floors (ft, NGVD)	FEMA Elevation (ft, NGVD)
The Beach Club	9.22	9.25	7

Road Design :

As shown in the following table and the attached exhibits, minimum road center lines have been set at or above the calculated design storm flood elevation.

Road Storm Frequency : 3 YEAR-1DAY

Design Rainfall: 5.9 inches

Basin	Peak Stage (ft, NGVD)	Proposed Min. Road Crown (ft, NGVD)
The Beach Club	7.28	7.3

Control Elevation :

Basin	Area (Acres)	Ctrl Elev (ft, NGVD)	WSWT Ctrl Elev (ft, NGVD)	Method Of Determination
The Beach Club	5.82	3/3	3.00	Other

Receiving Body :

Basin	Str.#	Receiving Body
The Beach Club	E-10	Intracoastal Waterway
The Beach Club	E-8	Intracoastal Waterway

Discharge Structures: Note: The units for all the elevation values of structures are (ft, NGVD)

Bleeders:

Basin	Str#	Count	Type	Width	Height	Length	Dia.	Invert Angle	Invert Elev.
The Beach Club	E-10	1	Circular Orifice				.25'		5
The Beach	E-8	1	Circular Orifice				.25'		5

Discharge Structures:**Bleeders:**

Club

Culverts:

Basin	Str#	Count	Type	Width	Length	Dia.
The Beach Club	E-10	1	High Density Polyethylene		22'	1.5'
The Beach Club	E-8	1	High Density Polyethylene		15'	1.5'

Weirs:

Basin	Str#	Count	Type	Width	Height	Length	Dia.	Elev.
The Beach Club	E-10	1	Sharp Crested	2'				7.25 (crest)
The Beach Club	E-8	1	Sharp Crested	2'				7.25 (crest)

WATER QUALITY :

Water quality treatment for 2.5 inches times the percent impervious area will be provided in dry swales prior to discharge into the onsite wetlands which will overflow into the Intracoastal Waterway.

Basin	Treatment Method	Vol Req'd (ac-ft)	Vol Prov'd (ac-ft)
The Beach Club	Treatment Swale	.23	.23

WETLANDS:

The site contains a 0.83 acre permitted on-site mitigation area. The mitigation area was designed to consists of a 0.30 acre restoration area, 0.18 acre creation area, 0.20 acre enhancement area, 0.13 acre dune restoration and 0.02 acre buffer. Seagrasses were observed and mapped within the 1.61 acres of sovereign submerged lands (reference permit file - The Beach Club Seagrass Survey).

Wetland Impacts:

The applicant proposes to impact an additional 0.032 acres of Brazilian pepper wetlands with the construction of the proposed additional development area. The proposed relocation of the previously permitted boardwalk located within the mitigation area does not have any additional impacts; however it affected the design of the mitigation (refer to Exhibit No. 8 and Special Condition No. 17). Exhibit Nos. 2 & 5 depict the location and acreage of proposed additional wetland impacts. No impacts are proposed to the existing seagrasses within the 1.61 acres of the proposed project within the Lake Worth Lagoon with the construction of the proposed project modification.

Mitigation Proposal:

The previously permitted mitigation area was adequate to compensate for the proposed additional 0.032 acre of wetland impacts. However, the mitigation area was redesigned to accomodate the proposed relocation of the previously permitted boardwalk within the mitigation area (refer to Exhibit No. 8 and Special Condition No. 17). In addition, the applicant proposes to modify the planting plan to include larger plant material in the restoration and creation areas. The plan includes (18) 15-gallon red mangroves planted 10' on center and (20) 25-gallon red and black mangroves planted 10' on center.

Monitoring/Maintenance:

Management, monitoring and maintenance of the on-site mitigation area will be as previously stated in the original permit. No additional criteria are required as part of this modification.

Wetland Inventory :

CONSTRUCTION NEW -THE BEACH CLUB

ONSITE

Pre-Development		Post-Development				
	Total Existing	Impacted	Undisturbed	Enhanced	Preserved	Restored/ Created
Fresh Water Forested	.18	.17		.01	.01	
Salt Water Forested	.50			.50	.50	
Upland	.00					.18
Total:	.68	.17		.51	.51	.18

Endangered Species:

The project site is adjacent to the Lake Worth Lagoon & AIWW that has the potential presence of endangered or threatened wildlife species, specifically, the West Indian Manatee. This permit does not relieve the applicant from complying with all applicable rules and any other agencies' requirements if, in the future, endangered/threatened species or species of special concern are discovered on the site.

LEGAL ISSUES:

The revised wetland conservation/mitigation area will be legally preserved in the form of a Conservation Easement dedicated to the District (refer to Special Condition No. 14) as reasonable assurance that the mitigation area will be preserved and managed as wetlands in perpetuity. The original conservation easement required pursuant to Application No. 021217-4 has not been recorded. The permittee shall record the conservation easement document provided in the previous authorization with the revised sketch and legal description of the modified mitigation area as shown in Exhibit No. 7. Pursuant to the schedule specified in Exhibit No. 6 and Special Condition No. 16, the recorded easement shall be submitted no later than June 4, 2004.

CERTIFICATION AND MAINTENANCE OF THE WATER MANAGEMENT SYSTEM:

It is suggested that the permittee retain the services of a Professional Engineer registered in the State of Florida for periodic observation of construction of the surface water management (SWM) system. This will facilitate the completion of construction completion certification Form #0881 which is required pursuant to Section 10 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, and Rule 40E-4361(2), Florida Administrative Code (F.A.C.).

Pursuant to Chapter 40E-4 F.A.C., this permit may not be converted from the construction phase to the operation phase until certification of the SWM system is submitted to and accepted by this District. Rule 40E-4.321(7) F.A.C. states that failure to complete construction of the SWM system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization unless a

permit extension is granted.

For SWM systems permitted with an operating entity who is different from the permittee, it should be noted that until the permit is transferred to the operating entity pursuant to Rule 40E-1.6107, F.A.C., the permittee is liable for compliance with the terms of this permit.

The permittee is advised that the efficiency of a SWM system will normally decrease over time unless the system is periodically maintained. A significant reduction in flow capacity can usually be attributed to partial blockages of the conveyance system. Once flow capacity is compromised, flooding of the project may result. Maintenance of the SWM system is required to protect the public health, safety and the natural resources of the state. Therefore, the permittee must have periodic inspections of the SWM system performed to ensure performance for flood protection and water quality purposes. If deficiencies are found, it is the responsibility of the permittee to correct these deficiencies in a timely manner.

SOVEREIGN/SUBMERGED LANDS:

The submerged lands located east of the proposed project fall within an existing sovereign submerged lands deed #24065 (reference Title Determination in permit file). The proposed project is located west of the existing deeded area and therefore is not anticipated to adversely affect sovereign submerged lands.

RELATED CONCERNS:

Water Use Permit Status:

The applicant has indicated that potable water will be used for irrigation and short term dewatering is required for construction of this project. Water Use Permit No. 50-06189-W was issued for dewatering on October 30, 2003. This permit does not release the permittee from obtaining all necessary Water Use authorization(s) prior to the commencement of activities which will require such authorization, including construction dewatering and irrigation, unless the work qualifies for a general permit issued pursuant to Section 40E-20 FAC.

Historical/Archeological Resources:

The District received a letter dated February 3, 2003 (reference Permit File for Application No. 021217-4) from the Florida Department of State, Division of Historical Resources (DHR) indicating that there was an archaeological site recorded within close proximity to the Beach Club project. The letter requested that a professional archaeological and historical survey be conducted. The applicant had a Phase I archaeological survey conducted between May 9-11, 2003 and a Final Report on Archaeological Test Hole Survey was submitted to DHR on July 21, 2003. On September 2, 2003, the District received additional information submitted by the applicant. Included in the response was a letter dated August 7, 2003 from DHR stating that the submitted report was complete, however additional information must be forwarded to their office. The applicant submitted additional information to DHR on August 7, 2003. On October 1, 2003, the District received a letter from DHR dated September 24, 2003, indicating that the agency has no objections to the issuance of this permit.

DCA/CZM Consistency Review:

The District has not received a finding of inconsistency from the Florida Department of Community Affairs or other commenting agencies regarding the provisions of the federal Coastal Zone Management Plan.


Enforcement:

There has been no enforcement activity associated with this application.

STAFF REVIEW:


DIVISION APPROVAL:

NATURAL RESOURCE MANAGEMENT:

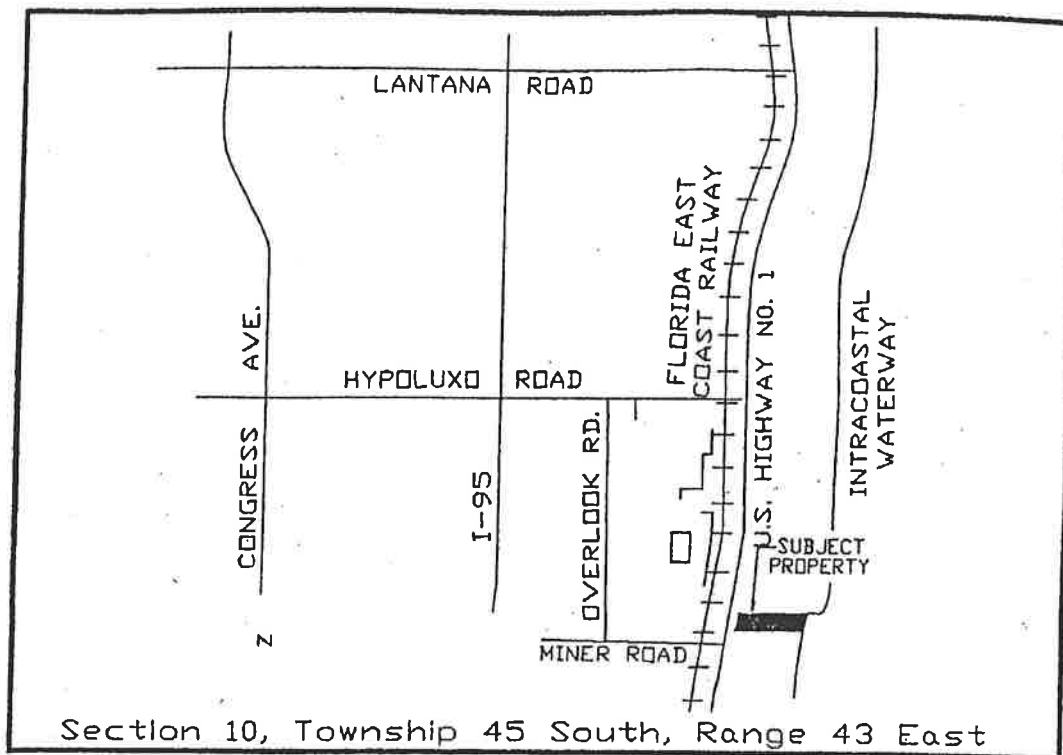

Edward Cronyn

DATE: 5/9/04

SURFACE WATER MANAGEMENT:


Carlos A. DeRojas P.E.

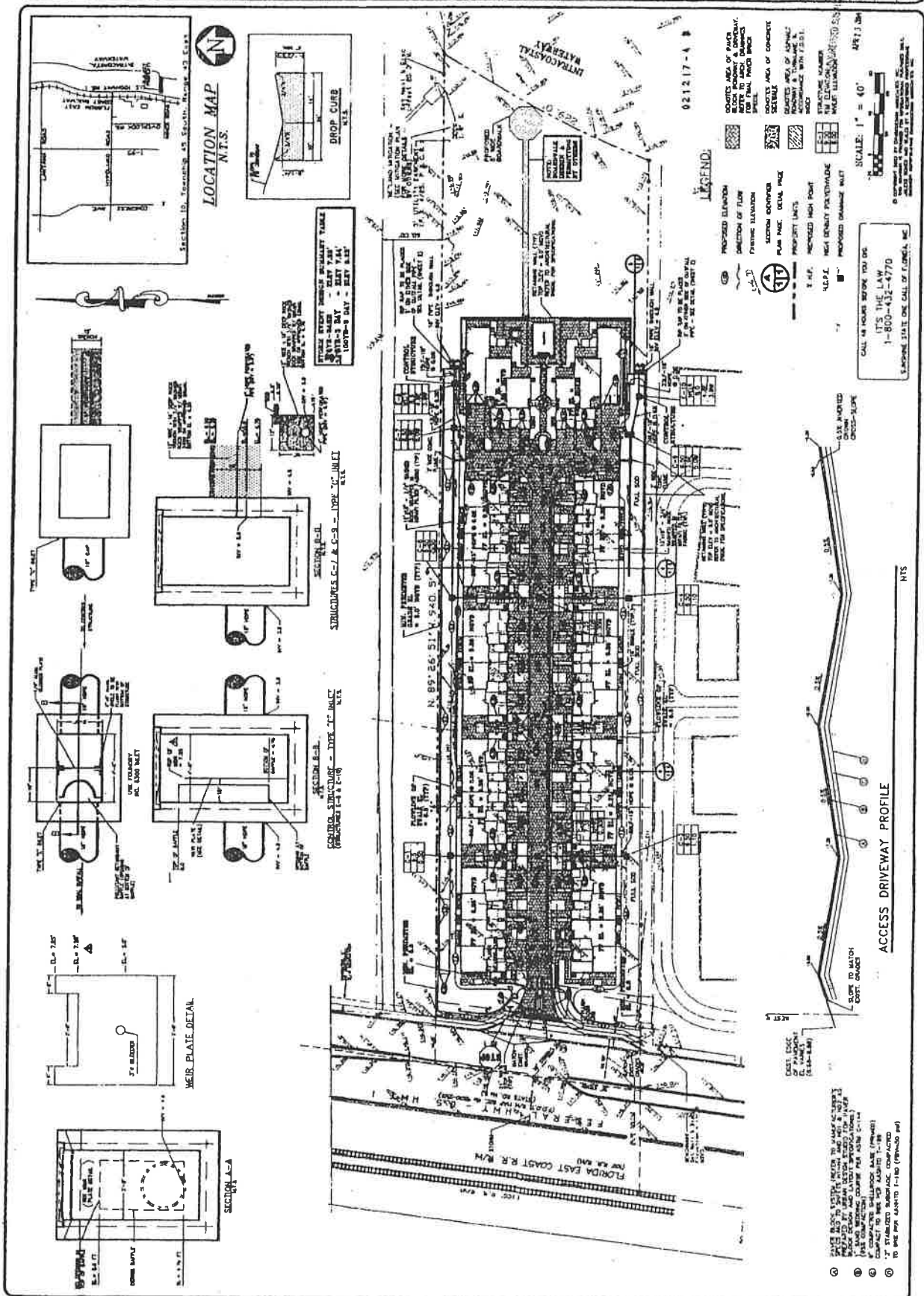
DATE: 5/7/04



LOCATION MAP
N.T.S.



EXHIBIT 1



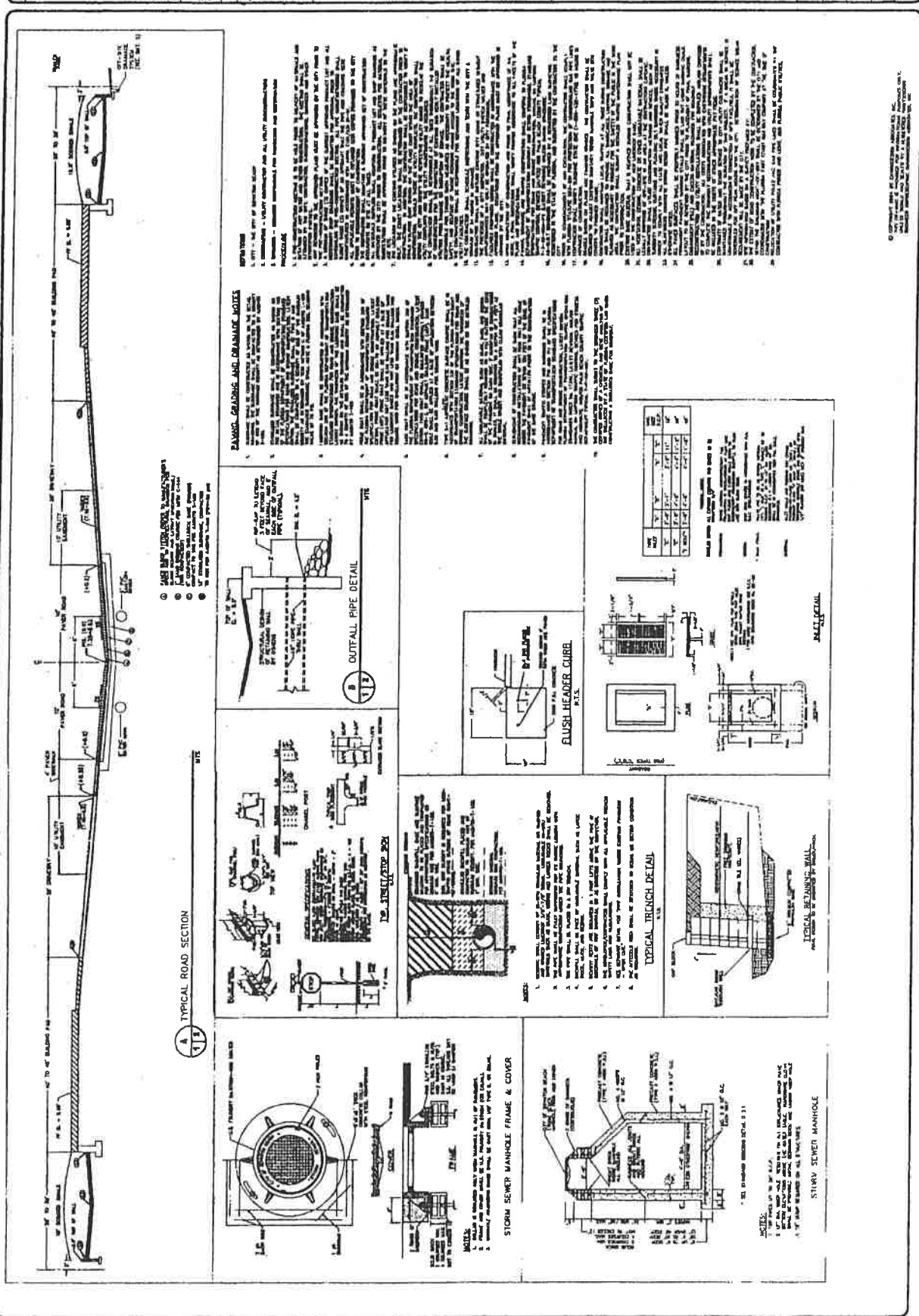
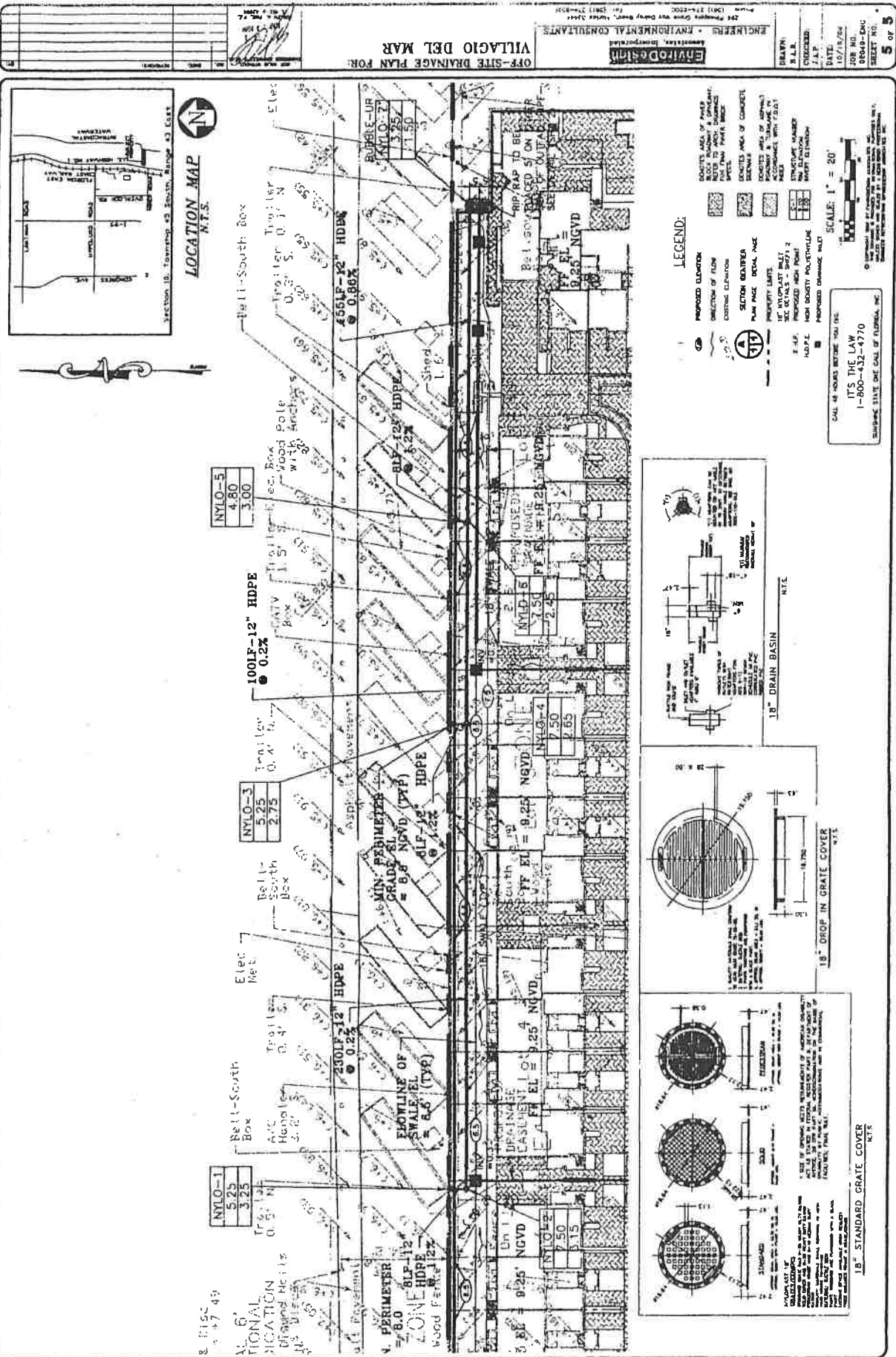


EXHIBIT 3





CAN ENVIRONMENTAL
CONSULTANTS, INC.
10000 N. W. 11th Ave., Suite 100
Miami, Florida 33150
Tel: (305) 754-1000
Fax: (305) 754-1001
E-Mail: info@canenv.com

THE BEACH CLUB
7900 U.S. HIGHWAY, L.L.C.
HYPOLEXO, FLORIDA
BOARDWALK DETAIL



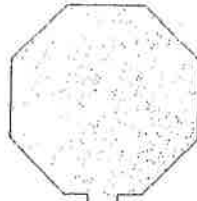
DATE: 1/16/04
DRAWN BY: J. L. LEBLANC
CHECKED BY: J. L. LEBLANC
DATE: 1/16/04
DRAWN BY: J. L. LEBLANC
CHECKED BY: J. L. LEBLANC

ATTACHMENT 1

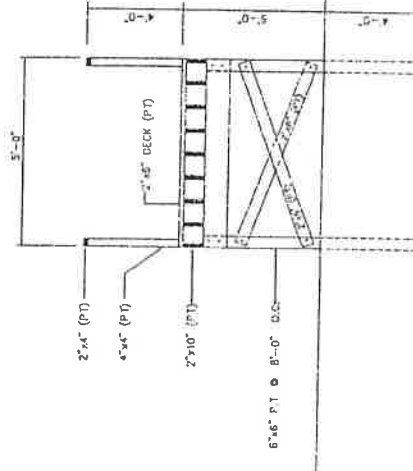
051210-17

MAY 29 2004

REVISED SUBMITTAL



203'-3"



TYPICAL BOARDWALK SECTION
NOT TO SCALE

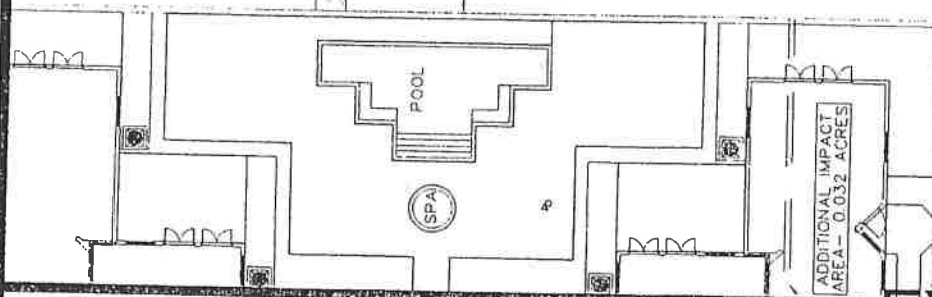


EXHIBIT C

**South Florida Water Management District
Work Schedule Requirements**

Application No : 031210-17

Page 1 of 1

Mitigation Plan ID: BEACH CLUB

Activity

Due Date

RECORDED CONSERVATION EASEMENT

04-JUN-2004

Exhibit No : 6



HAGER, PALBICKE & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

Certificate of Authorization L.B. No. 6772

PLATTING - CONDOMINIUMS - LAND DEVELOPMENT - CONSTRUCTION LAYOUT - BOUNDARY - TOPOGRAPHIC
3850 N.W. Boca Raton Blvd, Suite 3, Boca Raton, Florida 33431 Phone: (561) 395-3600 Fax: (561) 395-2237

SKETCH AND LEGAL DESCRIPTION Conservation Easement

Legal Description:

A portion of Lot 22 and Tract "D" of "VILLAGIO DEL MAR", according to the Plat thereof, as recorded in Plat Book 99, Pages 185 and 186, of the Public Records of Palm Beach County, Florida, said lands lying in section 10, Township 45 South, Range 43, East, Palm Beach County, Florida, and being more particularly described as follows:

COMMENCE at the intersection of the East Right-of-Way Line of Federal Highway (U.S. Highway 1, State Rd. No. 5, being a 100 foot wide Right-of-way), as shown on the said Plat of "VILLAGIO DEL MAR", with the South Line of the said Plat of "VILLAGIO DEL MAR"; thence S.89°26'51"E., along the said South, a distance of 652.47 feet to the **POINT of BEGINNING** of the hereinafter described Easement; thence N.00°39'25"E., a distance of 15.97 feet; thence S.89°29'19"E., a distance of 54.47 feet; thence N.00°33'00"E., a distance of 169.13 feet; thence N.89°27'00"W., a distance of 49.58 feet; thence N.00°33'00"E., a distance of 19.00 feet; thence S.89°26'51"E., along the North Line of the said Plat, a distance of 303.01 feet (the next 2 courses being along the Mean High Water Elevation of +1.74 N.G.V.D. of 1929, of the **INTRACOASTAL WATERWAY in LAKE WORTH**, as located on 05-24-02; and as shown on the said Plat); thence S.29°44'13"W., a distance of 61.52 feet to a point on the arc of a circular curve to the left, at which the radius point bears S.58°38'08"E.; thence Southwesterly along the arc of said curve, having a radius of 949.42 feet and a central angle of 10°05'38", for an arc distance of 167.45 feet; thence N.89°26'51"W., along the said South Line of the said Plat of "VILLAGIO DEL MAR", a distance of 205.31 feet to the **POINT of BEGINNING**.

Said lands contain 0.972 acres more or less.

(Grid bearings and coordinates shown hereon are based upon State Plane Coordinates - Transverse Mercator - Florida East Zone, 1983 datum projection -NAD 1990 adjustment, along the West line of Section 10, Township 45 South, Range 43 East, having a bearing of S.02°17'56"W.).

031210-17

ADD/REVISED SUBMITTAL

EXHIBIT

MAR 24 2004

(sheet 192)

Notes:

- 1.) Elevations when shown refer to the National Geodetic Vertical Datum (N.G.V.D.), of 1929.
- 2.) The lands shown hereon have not been abstracted by this firm regarding matters of interest by other parties, such as easements, rights-of-ways, reservations, etc., such information should be obtained and verified by others through appropriate title verification.
- 3.) This drawing is the property of *Hager, Palbicke & Associates, Inc.* and was prepared for and certified to the party and/or parties indicated hereon and is not transferable or assignable. It shall not be used or reproduced whole or in part without written authorization.
- 4.) All easements shown on the attached drawing are per the record plat (unless otherwise noted).
- 5.) This Sketch and Legal Description does not constitute a Survey.

Legend:

B/L or - Base Line
C/L or - Contour Line

Abbreviations:

A = ARC LENGTH
B.C.R. = BROWARD COUNTY RECORDS
(C) = CALCULATED
C.A.T.V. = CABLE T.V.
CH = CHORD
D = DELTA (CENTRAL) ANGLE
(D) = DEED
D.E. = DRAINAGE EASEMENT
DIA = DIAMETER

DRAIN. = DRAINAGE
EASE. = EASEMENT
ELEC. = ELECTRIC
FPL = FLORIDA POWER & LIGHT
I.P. = IRON PIPE
I.P.C. = IRON PIPE & CAP
I.R. = IRON ROD
I.R.C. = IRON ROD & CAP
L.E. = LANDSCAPE EASEMENT
L.M.E. = LAKE MAINTENANCE EASEMENT

(M) = MEASURED
N.T.S. = NOT TO SCALE
O.R.D. = OFFICIAL RECORDS BOOK
P.B. = PLAT BOOK
P.B.C.R. = PALM BEACH COUNTY RECORDS
P.C. = PAGE
PROP. = PROPOSED
P.C.P. = PERMANENT CONTROL POINT
P.R.M. = PERMANENT REFERENCE MONUMENT
(P) = PLAT

P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
P.O.T. = POINT OF TERMINATION
R = RADIUS
(R) = RECORD
R.W. = RIGHT OF WAY
SEC = SECTION
TYP = TYPICAL
U.E. = UTILITY EASEMENT
UTL = UTILITY

Surveyor's Certification: I hereby certify that the attached "Sketch and Legal Description" complies with the "Minimum Technical Standards" for surveys as contained in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Thomas R. Palbicke, Professional Land Surveyor No. 5061, State of Florida

Not Valid Unless
Signed and Embossed
with the Raised Seal
of the Attesting
Florida Registered
Professional Land Surveyor

Conservation Easement

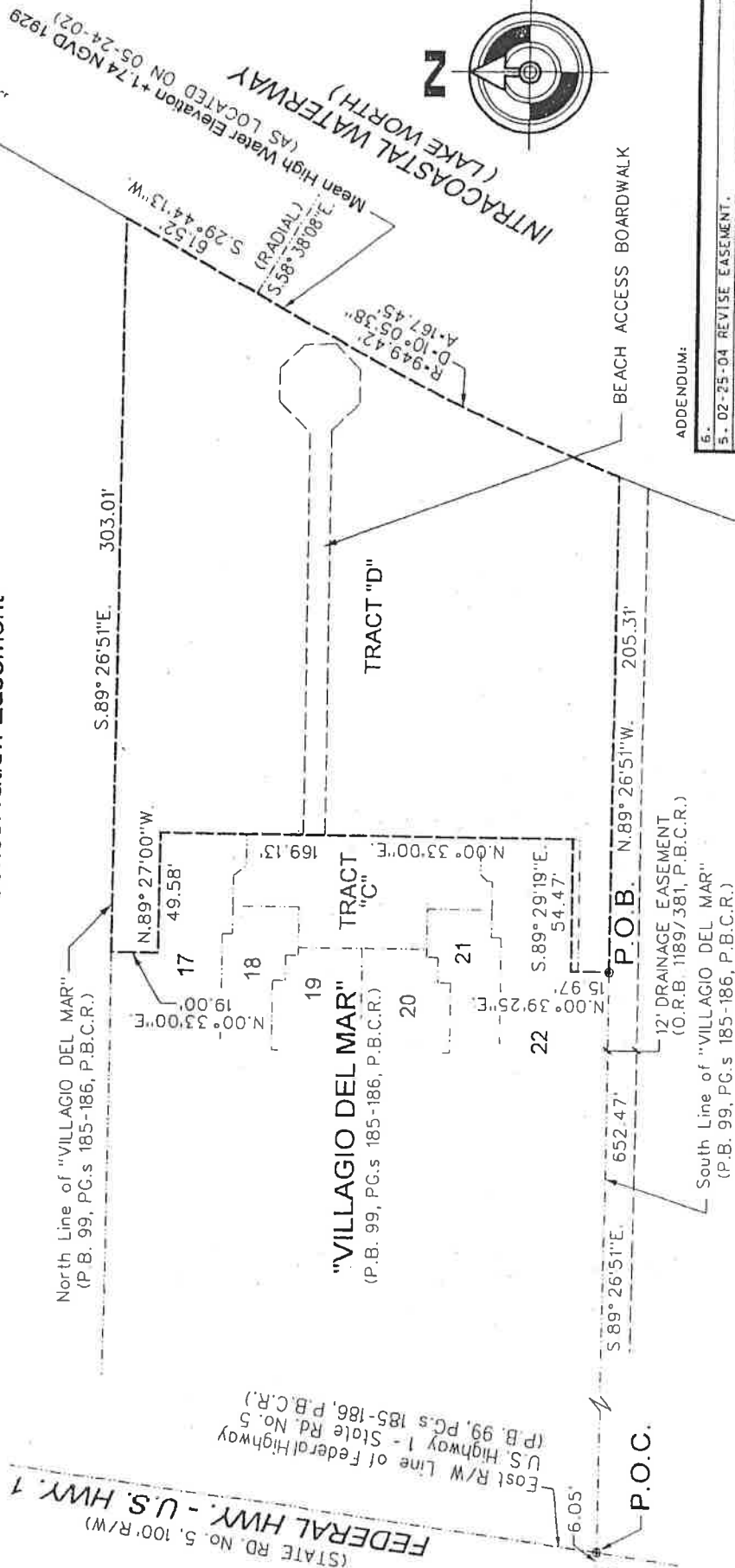
Job No.:

Date: 6/17/2003

Sheet 1 of 2 Sheets

F:\HWAproj\DOCfiles\S\Solymar\Conservation Easement.doc

SKETCH and LEGAL DESCRIPTION Conservation Easement



ADDENDUM:

6. 02-25-04 REVISE EASEMENT.
5. 02-23-04 REVISE EASEMENT.
4. 02-10-03 REVISE EASEMENT.
3. 07-10-03 REVISE EASEMENT.
2. 06-26-03 REVISE EASEMENT.
1. 06-17-03 REVISE EASEMENT.

JOB #:
SCALE: 1" = 50'
DATE: 5-21-03
SHEET 2 OF 2 SHEETS

HAGER, PALBICKE & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
3850 N.W. BOCA RATON BLVD. SUITE 3, BOCA RATON, FLORIDA 33431
PHONE: (561) 395-3500 FAX: (561) 395-2237

EXHIBIT 7
(Sheet 2 of 2)

STAFF REPORT DISTRIBUTION LIST

BEACH CLUB THE (BOARDWALK MODIFICATION)

Application No: 031210-17

Permit No: 50-06160-P

INTERNAL DISTRIBUTION

- X Adnan Mirza - 4220
- X Carolyn H. Farmer - 4250
- X Carlos A. DeRojas, P.E. - 4220
- X Edward Cronyn - 4250
- X ERC Engineering - 4230
- X ERC Environmental - 4230
- X H. Azizi - 4230
- X H. Bittaker, PBCSC - 6150
- X Permit File

EXTERNAL DISTRIBUTION

- X Permittee - Beach Club Partners L L C
- X Engr Consultant - C&N Environmental Consultants Inc.
- X Owner - Beach Club Partners L L C

GOVERNMENT AGENCIES

- X Div of Recreation and Park - District 7 - FDEP
- X Florida Fish & Wildlife Conservation Commission - Bureau of Protected Species Mgmt
- X Palm Beach County - Building Div
- X Palm Beach County - Environmental Res Mgmt
- X Palm Beach County - Health Dept
- X Palm Beach County - Land Development Div
- X Palm Beach County - School Board Growth Mgmt
- X Palm Beach County Engineer
- X USACOE - Ken Huntington

OTHER INTERESTED PARTIES

- X Hypoluxo Harbor Club Homeowners Association, Inc. - Joseph Bouvier
- X Rosa Durando
- X Water Catchment Area Advisory Committee - Ed Dailey
- X Water Management Institute - Michael N. Vanatta

A Re-Plat of "SOLYMAR," recorded in Plat Book 4, Page 25, "Public Records of Palm Beach County, Florida," and a Portion of Government Lot 3 in the South Half of the Southwest Quarter of Section 10, Township 45 South and Range 43 East, Town of Hypoluxo, Palm Beach County, Florida.

PLAT LEGEND:
DINO: 5-21 (E) PLANT AFFRHC
WDBAL (N) (E) HUI (P) L'S NO 2061
F H U (E)

186

