



3. "Association" shall mean and refer to the Flagler Manor Homeowners Association, Inc., a Florida corporation not-for-profit, its successors and assigns.

4. "Association Expenses" shall mean and include the actual and estimated expenses of operating the Association, and the Breakers West Association (hereinafter defined), including any reasonable reserve, all as may be found to be necessary and appropriate by the Board, and by the Breakers West Association, where appropriate, pursuant to the Homeowners Documents (hereinafter defined).

5. "Association Property" shall mean all real and personal property transferred to the Association for the benefit of all Members.

6. "Board" shall mean the Board of Directors of the Association.

7. "Breakers West" shall mean and refer to the planned unit development which is located in Palm Beach County, Florida and known as Breakers West.

8. "Breakers West Association" shall mean and refer to the Breakers West Association, Inc., a Florida corporation not-for-profit, which provides certain community-wide services to Breakers West.

9. "Breakers West Declaration of Covenants and Restrictions" shall mean and refer to that certain declaration and all exhibits thereto recorded in Official Record Book 3834, Page 714, Public Records of Palm Beach County, Florida as amended by that certain First Amendment to Breakers West Declaration, recorded in Official Record Book 4236, Page 609, as amended by that certain Second Amendment recorded in Official Record Book 4642, Page 1050, as amended by that certain Third Amendment recorded in Official Record Book 5010, Page 0504, as amended by that certain Fourth Amendment recorded in Official Record Book 5123, Page 1239, as amended by that certain Fifth Amendment recorded in Official Record Book 5156, Page 1281, as amended by that certain Sixth Amendment recorded in Official Record Book 5164, Page 747, as amended by that certain Seventh Amendment recorded in Official Record Book 5493, Page 1606, as amended by that certain Eighth Amendment recorded in Official Record Book 6312, Page 832, as amended by that certain Ninth Amendment recorded in Official Record Book 6867, Page 818, as amended by that certain Tenth Amendment recorded in Official Record Book 6867, Page 822, as amended by that certain Eleventh Amendment recorded in Official Record Book 6867, Page 826, and as amended by that certain Twelfth Amendment recorded in Official Record Book 7724, Page 1492, all in the Public Records of Palm Beach

County, Florida and as now or hereafter amended by the Breakers West Development Corporation (hereinafter defined).

10. "Breakers West Development Corporation" shall mean and refer to that certain Florida corporation, its successors and assigns, which was the declarant of the Breakers West Declaration of Covenants and Restrictions.

11. "By-Laws" shall mean and refer to the By-Laws of the Association, attached hereto, made a part hereof, and marked Exhibit "C".

12. "Common Area" shall mean those areas of real property shown on the Plat of Flagler Manor (hereinafter defined), together with all improvements thereto, which are devoted to the common use and enjoyment of the Members of the Association. The term "Common Area" may sometimes be used interchangeably with the term "Association Property". The common area shall consist of:

A. All portions of the Property (hereinafter defined), which are submitted to this Declaration, and are dedicated to the Association, that are not Lots or Units;

B. All portions of the Property submitted to this Declaration that are not dedicated to any governmental entity or to the public for a public use, if any.

13. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be reasonably and more specifically determined by the Board.

14. "County" shall mean Palm Beach County, Florida.

15. "Declaration" shall mean the easements, covenants, conditions, restrictions, and all other terms set forth in this document, and as may be amended from time to time.

16. "Developer" shall mean and refer to Flagler Manor Development Company, Inc., a Florida corporation, its successors and assigns.

17. "Development(s)" shall mean and refer to such residential or commercial developments which are now or hereafter located within Breakers West.

18. "Environmental Control Board" or "E.C.B." shall mean and refer to that permanent committee of the Breakers West Association, created for the purpose of establishing and enforcing criteria for the construction of Improvements within the Property.

19. "General Plan of Development" shall mean that portion of the Plat of Flagler Manor dedicated to the Association or submitted to this Declaration, initially or by Subsequent Amendment (hereinafter defined), as approved by the appropriate governmental agencies, and which shall represent the development plan and general uses of the Property.

20. "Flagler Manor" is the name given to a subdivision of 32 Lots (hereinafter defined) located in Breakers West.

21. "Flagler Manor Homeowners Association, Inc." shall mean that certain entity created to maintain, manage, and control the Common Areas. It shall be referred to as the "Association", but it may also be referred to as the "Homeowners Association" or "HOA".

22. "Homeowners Documents" means in the aggregate this Declaration, the Articles, the By-Laws of the Association, the Rules and Regulations of the Association as well as the Breakers West Declaration of Covenants and Restrictions, the Articles of Incorporation of the Breakers West Association, the By-Laws of the Breakers West Association, the Environmental Guidelines for Breakers West, the Limited Warranty, the typical Special Warranty Deed, the form of Contract for Purchase and Sale, the Property Plan or Site Plan, the Escrow Agreement, a site plan of Flagler Manor, the 1994 budget for the Association, and all of the instruments and amendments to same executed in connection with the General Plan of Development.

23. "Institutional Mortgagee" shall mean any lending institution having a first lien on any property subject to this Declaration, including any of the following institutions: an insurance company or subsidiary thereof, a federal or state savings and loan association, a federal or state building and loan association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a federal or state banking association, the Palm Beach County Housing Authority or similar entity, a real estate investment trust, any mortgage banking company authorized to do business in the State of Florida, or Breakers West Development Corporation. Such term shall also include the holder of any mortgage of public record given or assumed by Breakers West Development Corporation, whether a first mortgage or otherwise.

24. "Lot" shall mean tract of land located within the Property which is intended for use as a site for a Unit.

25. "Member" shall mean a member of the Association.

26. "Occupant" shall mean the occupant of a Unit who shall be the owner, the lessee, or their respective guest(s).

27. "Owner" shall mean and refer to one (1) or more Persons (defined below) who hold the record title to any Lot which is created on the Property, but excluding any party holding an interest merely as security for the performance of an obligation.

28. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

29. "Property" or "Properties" shall mean all of the real and personal property submitted to this Declaration. The real property initially submitted to this Declaration is described in Exhibit A.

30. "Roads" shall mean and refer to any street or thoroughfare which is constructed by Developer within the Common Areas, and which is dedicated to the Association, whether same is designated, for example, by way of illustration and not as limitation, as a street, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, or similar designation.

31. "Rules and Regulations" shall mean the rules, regulations, and policies which are attached hereto, made a part hereof, and marked Exhibit "D", and as may be adopted by the Board from time to time by resolution or motion carried.

32. "Single Family" means one person or a group of two or more persons living together and interrelated by bonds of consanguinity, marriage, or legal adoption, or not more than two persons living together who may or may not be interrelated.

33. "Special Assessment" shall mean and refer to those assessments levied in accordance with the further terms of this Declaration.

34. "Subsequent Amendment" shall mean an amendment to this Declaration which subjects additional property to this Declaration, or which withdraws property previously submitted to this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on any land submitted by a Subsequent Amendment to the provisions of this Declaration.

35. "Transfer Date" shall mean the date that the Developer relinquishes the right to appoint all of the Directors to the Board, and conveys legal title to the Common Area to the Association. The transfer date shall occur 120 days after the Developer has closed the sales of all of the Lots or Units contemplated by the General Plan of Development, or after the Developer elects to relinquish its control of the Association, whichever shall first occur.

36. "Unit" shall mean a finished portion of the Properties, for which a certificate of occupancy has been issued by the appropriate jurisdiction and which is intended for use and occupancy as a detached residence for a Single Family. A Unit may also be referred to as a "Single Family home".

35. "Water Management System" shall mean and refer to those lakes, canals and other facilities created and used for drainage of Breakers West, as shown on or described in the South Florida Water Management District Conceptual Surface Water Management Permit, as amended from time to time.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

1. Initial Property. The Property which is initially subject to the easements, covenants, conditions, and restrictions imposed by this Declaration is described in Exhibit A.

2. Additional Property. The Developer may subject additional property to this Declaration, including without limitation, residential property, Common Areas, Roads, and properties of all types, including undeveloped lands and platted subdivisions, and lots by recording in the public records of the County a Subsequent Amendment to this Declaration setting forth any use restrictions, voting rights, maintenance requirements, user fees, dues, or other provisions pertaining to such additional property. Despite the fact that Developer's submission of additional property to this Declaration may result in an overall increase in the Association Expenses, and a resulting increase in the Assessments payable by each Unit, or may result in an increase in the total number of votes or Members in the Association, the Developer shall not be required to obtain the joinder or consent of the Association, any Unit Owner, any other Person (except for the approval, if required, of the Breakers West Association, Breakers West Development Corporation, and Palm Beach County governmental authorities), or any mortgagee of any Unit. Any property submitted to this Declaration by Subsequent Amendment, shall be included in the term "Property". Likewise, the Developer reserves the right to withdraw any portion of the Property from the restrictions, covenants, and conditions of this Declaration, including, without limitation, any residential property, Roads, Common Areas or other areas that may have been submitted initially by this Declaration or by a Subsequent Amendment. The Developer shall have such rights until the Transfer Date. The Developer's right to withdraw any portion of the Property shall not be applicable to any portion of the Property that has been conveyed to an Owner.

3. Phasing. If sales response warrants the development, it is the intention of the Developer to develop the Units in one (1) phase. Development shall be commenced within 90 days of the recording of this Declaration in the public records of the County. Developer reserves the right to modify the architectural appearance, dimensions, and site plan for Flagler Manor. Developer's right to modify the architectural appearance, dimensions, and site plan shall not require the consent of any other person or entity, except for approval, if required, of Breakers West Association, Breakers West Development Corporation, the ECB, or Palm Beach governmental authorities.

### ARTICLE III

#### PROPERTY RIGHTS

1. Use of Common Area. Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and social invitees subject to reasonable regulation by the Board, and in accordance with procedures which it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee. The rights and easements of enjoyment created hereby shall be subject to the following:

A. Right to Borrow Money. The right of the Association to borrow money for the purpose of improving the Common Area and, in connection therewith, to mortgage the Common Area.

B. Protect Against Foreclosure. The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure.

C. Suspension of Rights.

(i) The right of the Association to suspend the enjoyment rights and easements of any Owner for any period during which an Assessment remains unpaid by that Owner.

(ii) The right of the Association to suspend the enjoyment rights and easements of any Owner for any period during which such Owner is in violation of this Declaration, the Declaration of Covenants and Restrictions for Breakers West, any of the rules and regulations promulgated by the Association or the Breakers West Association, or any of the traffic regulations

of the Association or the Breakers West Association.

D. Maintenance. The right of the Association to maintain the Common Property.

E. Rules and Regulations. The rules and regulations governing the use and enjoyment of the Common Property, as promulgated by the Association or the Breakers West Association.

F. Traffic Regulations. The traffic regulations governing the use and enjoyment of the Roads, as promulgated by the Association or the Breakers West Association.

G. Dedications. The right of the Association to dedicate or transfer all, or any part, of the Common Property to any governmental or quasi-governmental agency, authority, utility, water management or water control district.

H. Plat Restrictions. Restrictions contained on any plat, or filed separately, with respect to all or any portion of the Property.

I. Declaration. All of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and all exhibits thereto, and all Rules and Regulations adopted by the Association, as same may be amended from time to time.

J. Breakers West Declaration. All of the provisions of the Breakers West Declaration of Covenants and Restrictions, and the Articles of Incorporation and By-laws for the Breakers West Association and all exhibits thereto, and all rules and regulations adopted by the Breakers West Association, and the traffic regulations, as same may be amended from time to time.

K. Utility Easements. The Owners' easements of enjoyment shall be subject to easements, hereby reserved over, through and underneath the Common Property, and the Lots for present and future utility services to the Property, including, but not limited to, easements for water pipes, sanitary sewer pipes, emergency sewer lines, storm drainage pipes, sprinkler pipes, telephone cables, security wires and street lights. Easements for such utility services are reserved by Developer for all buildings and improvements which have been or may be constructed on the Property and Developer may grant specific easements to utility companies and others as reasonably necessary.

L. Cable Television. The Breakers West Association reserves the right to lease portions of the Breakers West common property to a cable television company or a similar operation for



the purpose of installation of a transmission tower. The Breakers West Development Corporation or the Breakers West Association may grant easements over the Common Area and the Breakers West common property for cable television, cable radio, or similar operations.

M. Bicycle Path. Notwithstanding the fact that parts of the bicycle/pedestrian path in Breakers West may be located within the Property, such paths are subject to an easement for use by all owners of property within Breakers West, their guests, licensees and invitees.

N. Emergency Access. In case of any emergency originating in, or threatening the Property or any Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association or the Breakers West Association, or any other person authorized by the Association or the Breakers West Association, or the management agent under a management agreement, shall have the right to enter the Property or such Unit, for the purpose of remedying, or abating, the cause of such emergency, and such right of entry shall be immediate.

2. Breakers West Association Rights. In the event of a permanent dissolution of the Association or in the event the Association fails to maintain the Common Property, the Breakers West Association shall maintain the Common Property and may collect assessments against Members for the costs thereof, in accordance with Article 7 of the Breakers West Declaration of Covenants and Restrictions. Upon permanent dissolution of the Association, the Members shall immediately hold title to the Common Property as tenants in common.

3. Breakers West Development Corporation Rights. The Owners' easements of enjoyment shall be subject to the rights reserved by the Breakers West Development Corporation, for future development of Breakers West. As a material condition for ownership of a Unit, each Owner, by accepting a deed to a Unit, releases Breakers West Development Corporation from any claim for interference with his quiet enjoyment of his Unit or the Common Property, due to the development of Breakers West, whether or not the construction operations are performed on the Breakers West common property, the Common Area, or the Lots, and each Owner acknowledges and agrees that the Breakers West Development Corporation shall have the sole right of design, construction, development and improvement of the Breakers West common property, and other property owned by the Breakers West Development Corporation within Breakers West.

4. Developer Rights. The Developer reserves the right to amend this Declaration unilaterally prior to the Transfer Date,

without prior notice and without the consent of any Person, provided such amendment is not unequivocally contrary to the General Plan of Development, and further provided Developer obtains the prior written consent to such amendment, if any, required from the Breakers West Association, Breakers West Development Corporation and Palm Beach County governmental agencies.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

1. Membership. The Owner of the fee simple title of record of each Unit shall be a mandatory member of the Association, and the Breakers West Association. Membership shall continue until the Member transfers or conveys its interest of record or the interest is transferred by operation of law, at which time the membership shall automatically be conferred upon the transferee. Each Owner shall have also an interest in the Breakers West Association by and through the Homeowners Association.

2. Homeowners Association. Each Unit owner shall become a member of the Homeowners Association upon acceptance of the special warranty deed to his Unit. As a member of the Homeowners Association, the Owner shall be governed by the Articles of Incorporation and the By-Laws of the Homeowners Association; and shall be entitled to one (1) vote for each Unit owned. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-laws. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated by the Owner in a written instrument provided to the secretary of the Homeowners Association. Provided, however, the Developer shall retain the right to appoint all of the directors to the Board of Directors of the Homeowners Association until the Transfer Date.

3. Breakers West Association. Each Unit Owner shall have an interest in the Breakers West Association upon acceptance of the special warranty deed to his Unit. The rights and privileges of membership are more fully described in the Articles and By-Laws of the Breakers West Association.

#### ARTICLE V

##### USE OF PROPERTY

1. Single Family Residence. The Units shall be used solely as single family residences. Nothing herein shall be deemed to

prevent an Owner from leasing a Unit to a single family, subject to the terms, conditions, and covenants contained in this Declaration.

2. Use Restrictions. The Board shall have the authority to make and enforce standards and restrictions governing the use of the Properties, in addition to those contained herein. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association.

A. Occupants Bound. All provisions of the Homeowners Documents and of any Rules and Regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners, and which provide for sanctions against Owners, shall also apply to all occupants of any Unit.

B. Business Use. The Units shall be used solely for Single Family purposes. Nothing herein shall be deemed to prevent an Owner from leasing a Unit to a Single Family, subject to all of the terms, conditions and covenants contained in this Declaration. The Units shall not be used in any trade, business, professional or commercial capacity. Nothing contained herein shall prohibit the Developer from carrying on any and all types of construction activity necessary to accomplish the General Plan of Development, including the construction and operation of a sales model and office by the Developer until all of the Units have been sold.

C. Nuisance. No Unit shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept in any Unit that will emit a foul or obnoxious odor or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property or to the development as a whole. No immoral, illegal, noxious or offensive activity shall be carried on in any Unit, nor shall anything be done thereon tending to cause a nuisance to any person using any property adjacent to the Unit. There shall not be maintained any plants, animals, devices, or things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.

D. Maintenance of Units. All Units shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist. In the event an Owner fails to maintain his Unit as required, for a period of at least thirty (30) days, the

Association shall have the right, exercisable in its discretion, to clear any rubbish, refuse, or unsightly debris and/or growths from any Unit deemed by the Association to be a health menace, fire hazard or a detraction from the aesthetic appearance of Flagler Manor; provided, however, that at least fifteen (15) days prior notice shall be given by the Association to the Owner of such Unit before such work is done by the Association. In the event the Association, after such notice, causes the subject work to be done, then, and in that event, the costs of such work, together with interest thereon at the maximum rate permitted by the usury laws of the State of Florida, shall be charged to the Owner and shall become a lien on the Unit, which lien shall be effective, have priority and be enforced pursuant to the procedures set forth in this Declaration.

E. Easements. No Unit or material improvement to a Unit shall be built or maintained upon any easement or right-of-way, and said easements and rights-of-way shall at all times be open and accessible to the persons entitled to the use thereof.

F. Restrictions on Access onto Golf Courses. On Units abutting a golf course, Owners, their guests, licensees, invitees and employees shall not use any portion of their Units for purposes of access onto the golf course(s).

G. Laundry. No portion of the Lot shall be used for the drying or hanging of laundry, unless such laundry is screened from public view, so that the laundry is not visible from the Road, from adjoining Lots, or from the golf courses. This provision is not intended to prohibit the drying or hanging of laundry on a Lot.

H. Vehicles. No motorcycle, all-terrain vehicle (including passenger cars with four-wheel drive, i.e. Jeeps, Broncos, and similar vehicles), truck, trailer, boat, van, camper, motorhome, bus, commercial vehicle, or similar vehicle shall be parked on any part of the Properties, any driveway, or designated parking space within the Properties except: (1) within a garage, (2) commercial vehicles, vans, or trucks delivering goods or furnishing services temporarily during daylight hours, and (3) upon such portions of the Properties as the Board may jointly, in their discretion, allow. Vehicles over eighty (80") inches in height, or those vans (including full size and mini-vans) which do not have windows completely circling the vehicle's exterior (similar to windows around a station wagon), and permanent installed seating for four or more passengers, shall be considered to be a prohibited van or truck. The Association shall have the right to authorize the towing away of any vehicles in violation of this rule with the costs and fees,

including attorneys' fees, if any, to be borne by the vehicle owner or violator.

I. Parking and Garages. Vehicles shall be parked only in the garages or in the driveways serving the Units or in the appropriate spaces or designated areas in which parking may be assigned, and then subject to the reasonable rules and regulations adopted by the Board. Vehicles shall not be parked overnight on Roads or swales. All commercial vehicles, recreational vehicles, trailers, campers, camper trailers, boats, watercraft, motorcycles, atvs, and boat trailers must be parked entirely within a garage unless otherwise approved by the Board. No garage shall be used as a living area. No garage shall be altered in such a manner that the number of automobiles which may be parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed.

J. Animals and Pets. No animals shall be raised, bred, or kept in any Unit, except that dogs, cats, or other household pets may be kept in the Unit, provided they are not kept, bred or maintained for any commercial purpose, or in numbers deemed unreasonable by the Board. Notwithstanding the foregoing, no animal may be kept in the Unit, which in the judgment of the Board results in a nuisance or is obnoxious to the residents in the vicinity. No Owner shall be permitted to maintain in his or her Unit a bull terrier (pit bull) or any dog, or dogs of mean or of violent temperament or otherwise evidencing such temperament. Pets shall not be permitted in any of the Common Areas unless under leash. Each pet owner shall be required to clean up after his or her pet. Each Owner by acquiring a Unit agrees to indemnify the Association, the Breakers West Association, and the Breakers West Development Corporation, and hold them harmless against any loss or liability resulting from his or her, his or her family member's, or his or her lessee's ownership of a pet. If a dog or any other animal becomes obnoxious to other Unit Owners by barking or otherwise, the Owner shall remedy the problem, or upon written notice from the Association, he or she will be required to dispose of the pet.

K. Subdivision of Unit. Units shall not be further subdivided or separated by any Owner; and no portion less than all of any such Unit, nor any easement shall be conveyed or transferred by an Owner; provided, however, that this shall not prevent corrective deeds, deeds to resolve boundary disputes and other similar corrective instruments. Developer, however, hereby expressly reserves the right to subdivide, replat, or otherwise modify the boundary lines of any Unit or Units owned by the Developer. Any such division, boundary line change, or replatting shall not be in violation of the applicable municipal

subdivision and zoning regulations.

L. Antennas. No exterior antennas, aeriels, satellite dishes, or other apparatus for the reception or transmission of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit, unless installed by the Breakers West Development Corporation or the Breakers West Association, without the prior written approval of the ECB (hereinafter defined).

M. Energy Conservation Equipment. All solar heating apparatus must conform to the standards set forth in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating, and domestic Water Systems. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as reasonably determined by the ECB. No solar panel, vents, or other roof-mounted, mechanical equipment shall project more than 1.5 feet above the surface of the roof of a Unit; and all such equipment shall be painted consistent with the color scheme of the roof of the Unit. This provision is not intended to prohibit the use of solar energy devices.

N. Windows. All draperies, curtains, shades, or other window coverings installed in a Unit, and which are visible from the exterior of a Unit shall have a white backing, unless otherwise approved by the ECB.

O. Signs. No sign, symbol, name, address, notice, or advertisement shall be inscribed or exposed on or at any window or other part of a Unit or Common Areas without the prior written approval of the Board. The Board or the Developer shall have the right to erect signs as they, in their sole discretion, deem appropriate, subject to approval by the ECB, which shall not be unreasonably withheld.

P. Hurricane Season. Each Unit Owner who intends to be absent from his Unit during the hurricane season (June 1 - November 30 of each year) shall prepare his Unit prior to his departure by doing the following:

- i. Removing all furniture, potted plants, and other movable objects from his yard, patio, and deck; and
- ii. Designating a responsible person or firm, satisfactory to the Association, to care for his Unit should it suffer hurricane damage. Such person or firm shall also contact the Association for permission to install temporary hurricane shutters, which must be removed when no longer necessary for storm protection. At no time shall hurricane shutters be

permanently installed, without the consent of the ECB.

Q. Lighting. Except for seasonal Christmas decorative lights, which may be displayed between December 1 and January 10 only, all exterior lights must be approved by the ECB.

R. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved by the ECB.

S. Irrigation. The Developer shall install a sprinkler system on each Lot, however, irrigation water service shall be at the expense of each Owner. All Owners shall provide reasonable and sufficient water service to the lawn and landscaped areas in order to maintain the appearance of the General Plan of Development. Except for sprinkler or irrigation systems installed by the Developer, no sprinkler or irrigation systems of any type which draw water from lakes, rivers, ponds, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties unless prior written approval from the ECB has been obtained. In the event that a well is approved and drilled on any Lot to supply water for an irrigation system, the irrigation system shall include a rust inhibitor, which shall be kept in good repair at all times, sufficient to prevent any and all rust stains on any part of the Lot, including but not limited to, stains on the Unit. Further, all wells, if any, must be installed in accordance with the regulations of the South Florida Water Management District.

T. Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person, other than the Developer, the Breakers West Association, or the South Florida Water Management District, may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer, the Breakers West Association, and the Breakers West Development Corporation hereby reserve a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic systems are prohibited on the Property.

U. Tree Removal. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved by the ECB.

V. Sight Distance. All property located at street intersections shall be landscaped so as to permit safe sight across street corners. No fence, wall, hedge, shrub or planting shall be placed or permitted to remain where it would create a traffic or sight problem.

W. Lakes and Water Bodies. All lakes, ponds, and

streams within the Properties, if any, shall be aesthetic amenities only, and no other use thereof, including, without limitation, fishing, boating, swimming, playing, or use of personal flotation devices, shall be permitted. The Association, the Breakers West Association, or the Breakers West Development Corporation shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Properties, if any.

X. Recreational Facilities. All recreational facilities and playgrounds furnished by the Breakers West Association, if any, or erected within the Properties, if any, shall be used at the risk of the user, and neither the Association, the Breakers West Association, nor the Breakers West Development Corporation shall be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Y. Rules and Regulations. The Unit Owners shall abide by each and every rule and regulation promulgated from time to time by the Board. The Board shall give an owner in violation of the Rules and Regulations of the Association, written notice of the violation by U.S. Certified Mail, return receipt requested, and fifteen (15) days in which to cure the violation. Should the Association be required to seek enforcement of any provision of this Declaration or the Rules and Regulations and prevail in such action, then the offending Unit Owner (for himself or for his family, guests, invitees, or lessees) shall be liable to the Association for all costs incurred in the enforcement action, including reasonable attorneys' fees, whether incurred in trial or appellate proceedings or otherwise.

Z. Breakers West Association Rules and Regulations. The Unit Owners shall abide by each and every rule and regulation promulgated from time to time by the Breakers West Association. The board of the Breakers West Association shall give an owner in violation of the rules and regulations of the Breakers West Association, written notice of the violation by U.S. Certified Mail, return receipt requested, and fifteen (15) days in which to cure the violation. Should the Breakers West Association be required to seek enforcement of any provision of this Declaration or the Rules and Regulations and prevail in such action, then the offending Unit Owner (for himself or for his family, guests, invitees, or lessees) shall be liable to the Breakers West Association for all costs incurred in the enforcement action, including reasonable attorneys' fees, whether incurred in trial or appellate proceedings or otherwise.



## ARTICLE VI

COMMON AREAS

1. Title to Common Area. The Developer shall not be required to convey title to the Common Area or any portion thereof to the Association until the Transfer Date. Notwithstanding the manner in which title is held, the Association shall be responsible for the management, maintenance, and operation of the Common Areas, and for the payment of all real estate taxes and other assessments which are liens against the Common Area, from and after the recording of this Declaration. On or before the Transfer Date, the Developer shall convey the Common Area to the Association by quitclaim deed. The Developer shall not be required to provide any title insurance or other related title documents to the Association in connection with the conveyance of the Common Areas.

2. Annexation of Additional Property. The Association shall have the power and authority to acquire and annex to the Common Areas other interests in real and personal property as it may deem beneficial to the Members. Any property acquired pursuant to this section shall be annexed to the Common Areas by means of a Subsequent Amendment recorded in the public records of the County.

3. Rules and Regulations Governing Use of Common Areas. The Board shall promulgate rules and regulations governing the use of the Common Areas. Such rules and regulations, and all provisions, restrictions, and covenants as now or hereinafter provided, including, without limitation, all architectural and use restrictions contained in this Declaration and in the Breakers West Declaration of Covenants and Restrictions may be enforced by legal or equitable action as provided herein or therein.

4. Traffic Regulation. The Board of the Breakers West Association shall have the right to post motor vehicle speed limits throughout the Common Areas, and to promulgate other traffic regulations. The Board may also promulgate rules and procedures for the enforcement of the traffic regulations, including, without limitation, the assessment of fines against Owners who violate the traffic regulations and against Owners whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. The fines shall be collected as an individual assessment in accordance with the Breakers West Declaration of Covenants and Restrictions from the Owner who violates the traffic regulations, or from the Owner whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. Before any fine shall be effective, the Owner shall be entitled to notice and an

opportunity to be heard before the Board.

5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE VII

### EASEMENTS

1. Easements for Owners. The Developer hereby grants a perpetual non-exclusive easement to the Association and to the Unit Owners, their families, guests, invitees, licensees and lessees upon, over, and across the sidewalks, walkways, rights-of-way and other Common Areas. The Developer hereby grants an additional perpetual non-exclusive easement to the Association over, across, through, and under all portions of the General Plan of Development for the purpose of performing the maintenance and repair requirements of the Association as described in this Declaration.

2. Easements for Utilities. The Developer hereby also grants a perpetual non-exclusive easement to all utility or service companies servicing the Property upon, over, across, through, and under the Common Areas and such other portions of the Property or Lots on which utility facilities may be located for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and systems including, but not limited to water, irrigation, sewer, gas, telephone, electricity, television cable or communication lines and systems. It shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on said property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in and under the Common Areas, providing such company restores any disturbed area substantially to the condition existing prior to their activity; provided, however, that no utility service line or system may be installed or relocated within the Common Areas without the consent of the Association.

3. Easements for Drainage Facilities. Easements for the installation and maintenance of drainage facilities are granted to the Association, and the Developer as shown on the Plat of Flagler Manor. Within these easement areas, no structure, planting or other material, (other than sod and official golf course accessories) which may interfere with such installation

and maintenance, or which may obstruct or retard the flow of water through drainage channels shall be placed or permitted to remain unless such structure, planting or other material was installed by Developer. The Association and the Breakers West Association shall have access to all such drainage easements for the purpose of operation and maintenance thereof.

4. Easements for Encroachments. The Developer hereby grants an easement for encroachment in the event any improvements upon the Common Areas now or hereafter encroaches upon a Unit, or in the event that any Unit now or hereafter encroaches upon the Common Area or any other Lot, as a result of minor inaccuracies in survey, construction, reconstruction, or due to settlement or movement or otherwise. The encroaching improvements shall remain undisturbed as long as the encroachment exists. This easement for encroachment shall also include an easement for the maintenance and use of the encroaching improvements. Provided, however, that at no time shall there be any encroachment onto the surface water management systems, without the written consent of the South Florida Water Management District.

5. Easements to the Breakers West Association. The officers, agents, employees, and independent contractors of the Breakers West Association shall have a nonexclusive easement to enter upon any portion of the Common Areas for the purpose of performing or satisfying the duties and obligations of the Breakers West Association, as set forth in the Articles and By-Laws of the Breakers West Association.

6. Easements to Institutional Mortgagees. Easements are hereby granted to all Institutional Mortgagees holding a first mortgage upon any portion of the Property for the purpose of access to the property subject to its mortgage.

7. Easements to the Breakers West Development Corporation. Easements are hereby reserved throughout the Common Areas, including without limitation, the Roads located on the Common Area and the easements shown on the Plat of Flagler Manor, by Developer, for the reasonable use of the Breakers West Development Corporation, and the reasonable use of its agents, employees, licensees and invitees, for all purposes.

8. Golf Play Easement. An easement is hereby granted to the Owners, invitees, guests, licensees, employees, agents and members of the Mayacoo Lakes Country Club, to permit the doing of every act necessary and incident to the playing of golf on the golf course adjacent to certain Units. These acts shall include, but not be limited to, the recovery of golf balls from Lots, the flight of golf balls over and upon Lots, the use of the necessary and usual equipment upon the golf courses, the creation of the usual and common noise level associated with the playing of the

game of golf, together with all such other common and usual activities associated with the game of golf and with all the normal and usual activities associated with the operation and maintenance of a golf club. The Developer shall have the right to prescribe in writing to the owner of Units adjacent to the Mayacoo Lakes Country Club golf course the manner and extent to which the rights under this easement shall be exercised.

ARTICLE VIII

MAINTENANCE

1. Association's Responsibility.

A. Common Areas. The Association shall maintain and keep in good repair the Common Areas. The maintenance of the Common Areas shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all plantings and sodding of Common Area road rights-of-way; all perimeter plantings and sod; right-of-way, perimeter, and other Association irrigation facilities and pumps; road and identification signage; drainage easements and other easements; drainage facilities and water control structures; sidewalks located within rights-of-ways; sod, landscaping and other flora located on the Common Areas; and other structures and improvements situated upon the Common Area. The cost to the Association of maintaining the Common Areas shall be assessed equally among the Unit Owners, as part of the Association Expenses pursuant to the provisions of this Declaration.

B. Unit Exterior Surfaces. The Association shall at all times be responsible for the maintenance, care and routine cleaning of the exterior stucco surfaces, the walls and fences (which are originally constructed or installed by the Developer), and roofing of the Units. The Board shall determine the need for maintenance, cleaning, and painting from time to time. The cost to the Association of maintaining the exterior stucco surfaces, the walls and fences (which are originally constructed or installed by the Developer), and roofing of the Units shall be assessed equally among the Unit Owners, as part of the Association Expenses pursuant to the provisions of this Declaration. This provision is not intended to make the Association the insurer of any Unit.

C. Yard Maintenance and Public Property. The Association may maintain property which it does not own, including, without limitation, the yards or grounds of the Units, and property dedicated to the public. The maintenance of the yards or grounds of Units shall include, without limitation,

maintenance, repair, and replacement, subject to any insurance then in effect (if appropriate), of all plantings and sodding of yards or grounds of the Units; all irrigation facilities and pumps, if any for the yards or grounds of the Units; drainage facilities, pipes, lines and easements associated with the yards or grounds of Units; sidewalks located within Lots. The cost to the Association of maintaining the yards or grounds of the Units, and property dedicated to the public shall be assessed equally among the Unit Owners, as part of the Association Expenses pursuant to the provisions of this Declaration. The maintenance of property dedicated to the public shall only be undertaken in the event that the Board determines that such public property maintenance is necessary or desirable. This provision is not intended to make the Association the insurer of any Lot.

2. Owner's Responsibility. All maintenance activities not specifically undertaken by the Association as described above shall be the responsibility of each Owner who shall maintain his or her own Unit, and the structures, driveway, sidewalks, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard, and all applicable covenants.

3. Party Fences. Those walls or fences which are constructed between two adjoining Lots and are to be shared by the Owners of said adjoining Lots are to be known as and are hereby declared to be "Party Fences". Each Owner shall have the right to full use of said fence subject to the limitation that such use shall not infringe on the rights of the Owner of the adjacent Lot or in any manner impair the value of said fence. While the Association shall undertake routine maintenance, care and cleaning of Party Fences, each Owner shall have the right to maintain and to perform superficial repairs to that portion of a Party Fence which faces such Owner's Lot. In the event of damage or destruction of the Party Fence from any casualty loss or other cause whatsoever, other than negligence or willful misconduct of one of the adjacent Lot owners, the Owners of the adjacent Lots shall, at their joint expense, repair and rebuild said fence within 30 days, unless extended by the Board. In the event it is necessary to repair or rebuild a Party Fence, the Owners shall agree on the cost of such repairs or rebuilding, and shall agree on the person or entity to perform such repairs, provided however, all such repairs must be performed by a qualified contractor. If the Owners cannot agree on the cost of such repairs or on the person or entity to perform such repairs, each Owner shall choose a member of the Board to act as their arbiter. The Board members so chosen shall agree upon and choose a third Board member to act as an additional arbiter. All of the said Board members shall thereafter choose the person or entity to perform the repairs and shall assess the costs of such repairs in equal shares to the Owners. Whenever any such fence or any part thereof shall be rebuilt it shall be subject to the procedures of

the ECB set forth in Article XII hereof, and it shall be erected in the same manner and be of the same size and of the same or similar materials and of like quality and color and at the same location where it was initially constructed. Provided, that if such maintenance, repair or construction is brought about solely by the neglect or the willful misconduct of one Lot Owner, any expense incidental thereto shall be borne solely by such wrongdoer. If the Lot Owner shall refuse to repair or reconstruct the fence within 30 days, unless extended by the Board, and to pay his share, all or part of such cost in the case of negligence or willful misconduct, the Association may have such fence repaired or reconstructed and shall be entitled to a lien on the Lot of the Owner so failing to pay for the amount of such defaulting Owner's share of the repair or replacement. In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent Lots shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a workmanlike manner, and consent is hereby given to enter on the adjacent Lots to effect necessary repairs and reconstruction.

4. Damage or Casualty Loss. If a Unit is damaged through an act of God or suffers some other casualty loss, the affected Owner shall promptly have his Unit repaired and rebuilt substantially in accordance with the original architectural plans and specifications of the Unit, subject to the procedures of the ECB set forth in Article XII hereof. If the Unit Owner refuses or fails to pay the cost of such repair or reconstruction, or if insurance proceeds are insufficient to repair or rebuild the affected Unit(s) the Association shall have the right to complete such repair and reconstruction substantially in accordance with the original plans and specifications of the affected building, and the Association shall thereafter have the right to specially assess said Unit Owner(s) for the costs of such repair and reconstruction. The assessment and collection of such assessment authorized pursuant to this paragraph shall be made in accordance with the assessment powers and lien rights of the Association for Association Expenses.

5. Owner's Maintenance Privilege. No Unit Owner shall authorize the painting, refurbishing or modification of the exterior surfaces of his Unit without the prior written consent of the ECB. While normal maintenance of the exterior surfaces, such as pressure cleaning, repainting and refinishing, shall be done uniformly at the same time for all Units by the Association and as an Association Expense, an Owner may perform such maintenance, cleaning, repainting or refinishing at his own expense.

ARTICLE IX

ASSESSMENTS

1. Creation of Assessments. There are hereby created assessments for Association Expenses as may from time to time specifically be authorized by the Board to be commenced at the time and in the manner set forth in this Article. There shall be two (2) types of assessments: (a) Assessments to fund Association Expenses for the benefit of all Members of the Association; and (b) Special Assessments as described in paragraph 3 below.

A. Equal Assessments. Assessments shall be levied equally on all Units. Special Assessments shall be levied as provided in paragraph 3 below. Each Owner, by acceptance of his or her deed is deemed to covenant and agree to pay these assessments.

B. Certificate of Payment. The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment. The Association may require the advance payment of a nominal processing fee for the issuance of such certificate.

C. Quarterly Payments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Assessment for delinquent Members. Unless the Board otherwise provides, the Assessments shall be payable not less frequently than quarter-annually in advance on the first day of January, April, July, and October.

D. No Waiver. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. 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 By-Laws, 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 the County or other governmental authority.

E. Developer Obligation. So long as the Developer has the right unilaterally to subject additional property to this Declaration, then on all Units on which assessments have commenced, and which are subject to this Declaration as of the first day of any fiscal year, the Developer shall be obligated for the difference between the amount of assessments levied on such Units, and the amount of actual expenditures required to operate the Association for the period of time that the Developer has the right to unilaterally subject additional property to this Declaration. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these. In the event Breakers West Development Corporation is the owner of any of the Property, it shall not be liable for the payment of any Assessments to the Association.

F. Subsidy Contracts. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with the Developer or other entities for the payment of some portion of the common expenses.

2. Computation of Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include and shall separately list Association Expenses. The Board shall cause a copy of the budget and the amount of assessments to be levied against each Unit for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the current fiscal year. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so 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.

The budget shall include, without limitation, the following listed line items:

A. Maintenance, repair and replacement. All expenses necessary to meet the Association's responsibility to maintain the Units, lawns, landscaping and irrigation systems located in the yards or on the grounds of each Unit, and to maintain the Common Areas in accordance with the requirements of this Declaration.



B. Breakers West Association. The Association, on behalf of all Units subject to assessment hereunder, shall pay assessments to the Breakers West Association as provided in the Articles and By-Laws of the Breakers West Association. All Unit Owners, including the Developer, shall be assessed and shall pay on an equal basis the assessments levied by the Breakers West Association. The Breakers West Association assessments shall be paid by the Unit Owners to the Association, which shall thereafter remit such assessments to the Breakers West Association. The duty of the Association to pay the Breakers West Association assessment on behalf of all Units shall not be deferred or relieved by any non-payment of Association assessments by any Unit Owner.

C. Utility Charges. All charges levied for utility services to the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, gas, electricity, telephone, sewer and any other type of utility or service charge.

D. Insurance. The premiums on any policy or policies of insurance required under this Declaration, together with the costs of such other policies of insurance, as the Board, with the consent of the Unit Owners at any meeting thereof, shall determine to be in the best interest of the Association. Nothing contained herein is intended to require that the Association insure any Unit or Lot from any liability or casualty risk.

E. Insurance Trustee. If required or appropriate, all expenses necessary to retain and continue to retain a lending institution in the County, having a trust department to act as "Insurance Trustee". The functions of the Insurance Trustee shall include holding all original policies purchased by the Association, being named as loss payee, distributing proceeds of such insurance, assisting in the reconstruction of improvements from insurance premiums and performing such other functions as shall be agreed upon.

F. Taxes. All taxes levied or assessed upon the Common Areas, if any, by any and all taxing authorities, including all taxes, charges and assessments, imposition and liens for public improvements, special charges and assessments; and, in general, all taxes on personal property and improvements which are now and which hereinafter may be placed in the Common Area, including any interest penalties and other charges which may accrue on such taxes.

G. Miscellaneous expenses. The costs of administration for the Association, including any secretaries, accounting service, bookkeepers, or employees necessary to carry out the obligations and covenants of the Association under the

Declaration, including the collection of sums owed by a particular Unit. Bulk rate charges for cable television may be assessed as Association Expenses, if the Association becomes a party to a single billing service for cable television services. In addition, the Association may retain a managing company or contractors to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company or contractor so retained shall be deemed to be part of the Association Expenses.

H. Indemnification. The costs to the Association to indemnify and save harmless Developer, the Breakers West Association, and the Breakers West Development Corporation from and against 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 in or about the Common Areas, if any, from and against all costs, counsel fees, expenses, liabilities occurring in and about such claim, the investigation thereof, or the defense at any level of any action or proceeding brought which may enter therein. Included in the foregoing provisions for indemnification are any expenses the Developer, the Breakers West Association, and the Breakers West Development Corporation may be compelled to incur and bring suit for the purposes of enforcing rights thereunder, or for the purpose of compelling the specific enforcement of the provisions, conditions, covenants and restrictions, contained in this Declaration or the Declaration of Covenants and Restrictions for Breakers West to be kept and performed by the Association and/or the Owners, including the payment of Association Expenses.

Included also is the cost to the Association to indemnify its Board, committee members, and officers for all costs and expenses whatsoever incurred in pursuance of their duties, obligations and functions hereunder. Nothing in the provisions of this subparagraph shall require any Institutional Mortgagee to pay the Association Expenses or portion thereof attributable to costs of the Association to indemnify and save harmless Developer in accordance with such paragraph. Any such Association Expense shall be reallocated amongst the Unit Owners and not the Institutional Mortgagees.

I. Reserve funds. The costs to establish an adequate reserve fund for replacement and/or capital refurbishment of the Common Areas and the payment of other common expenses (the "capital contributions") in the amounts determined proper and sufficient by the Board, if any. Each Owner acknowledges, understands and consents that capital contributions are the exclusive property of the Association as a whole, and that no Owner shall have any interest, claim or right to any such capital contributions or funds composed of the same. The Association

shall be responsible for maintaining the capital contribution in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid.

3. Special Assessments.

A. Consent of Members. In addition to the assessments authorized in paragraph 1 of this Article, the Association may levy a Special Assessment or Special Assessments; provided, such assessment shall have the affirmative vote or written consent of at least fifty-one (51%) percent of the Members of the Association. 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.

B. Repairs. The Association may levy a Special Assessment to obtain all sums necessary to repair, replace, construct or reconstruct ("repair") any buildings or improvements located on the Property damaged by any casualty to the extent insurance proceeds are insufficient for repair. Any difference between the amount of insurance proceeds received on behalf of the Association with respect to repair and the actual cost of the repair ("repair sums") shall be an Association Expense for which the Association shall levy a Special Assessment against all Unit Owners to obtain the funds necessary to pay for such repair sums within ninety (90) days from the date such damage was incurred. The Association shall establish an account with an Institutional Mortgagee located in the County, and deposit into such account all repair sums and all insurance proceeds collected by the Insurance Trustee so that the amounts on deposit will equal the costs of repair. The Association shall proceed so that repairs shall be completed within one (1) year from the date of damage, if possible. Nothing contained herein is intended to require that the Association insure any Unit or Lot from any liability or casualty risk.

C. Reimbursements. The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the provisions of the Declaration, any amendments thereto, the Articles, By-Laws, and the 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.

4. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Unit at the time that a certificate of occupancy is issued for the Unit by the appropriate governmental authority. Assessments shall be due and payable in a manner and on a schedule as the Board of

Directors may provide. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on a Unit.

5. Subordination of the Lien to First Mortgagees. The lien of assessments, including interest, late charges, and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit as provided in this Declaration. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage or as a result of a deed in lieu of foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Association Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Association Expenses or assessments shall be deemed to be Association Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns.

6. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from the payment of Assessments and Special Assessments:

- A. All Common Areas; and
- B. All property dedicated to and accepted by the Breakers West Association, any governmental authority, or public utility.

#### ARTICLE X

##### ESTABLISHMENT AND ENFORCEMENT OF LIENS

1. Lien for Assessments. All assessments, together with interest at a rate not to exceed the highest rate allowed by Florida law as computed from the date the delinquency first occurs, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion

thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Under no circumstances shall the Board suspend the voting rights of a Member for nonpayment of any assessment.

2. Effective Date of Lien. Said lien shall be effective only from and after the time of recordation amongst the Public Records of the County, of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon recording, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Upon full payment of all sums secured by that lien and costs and fees accrued, the party making payment shall be entitled to a recordable Satisfaction of Lien.

3. Remedies. In the event any Owner shall fail to pay his or her assessments within (15) days after the same becomes due, the Association, through its Board, shall have all of the following remedies to the extent permitted by law.

A. Late Charge. To impose a late charge not in excess of \$25.00.

B. Acceleration of Assessments. To accelerate the entire amount of any assessments for the remainder of the year notwithstanding any provisions for the payment thereof in installments.

C. Attorneys Fees and Costs. To advance on behalf of the Owner funds to accomplish the needs of the Association and the amount or amounts of money so advanced, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of said Owner, together with interest at the highest rate allowable by law, may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.

D. Action in Equity. To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in a like manner as the foreclosure of a mortgage on real property.

E. Action at Law. To file an action at law to collect said assessments, plus interest at the highest rate allowable by law plus costs and attorneys' fees, without waiving any lien rights or rights of foreclosure by the Association.

4. Rights upon Foreclosure. The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which the Unit 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 Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment, including the amount of the assessment payable to the Breakers West Association, that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

#### ARTICLE XI

##### INSURANCE

1. Common Area Insurance. The Association shall maintain a policy or policies to insure the Common Area improvements, personal property and supplies, if any, from casualty losses, and shall be in such amounts so that the insured will not be a co-insurer except under deductible clauses required to obtain coverages at a reasonable cost.

A. Casualty Insurance Exclusions. The coverages for casualty losses will EXCLUDE the following:

- (i) Land, foundations, excavations or other items that are usually excluded from insurance coverage; and
- (ii) Floor, wall, and ceiling coverings.

B. Casualty Insurance Inclusions. The coverage for casualty losses will INCLUDE, where applicable, the following:

- (i) Loss or damage by fire or other hazards covered by a standard extended coverage endorsement;
- (ii) All other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement;
- (iii) Agreed Amount and Inflation Guard

Endorsement, when it can be obtained;

(iv) Demolition Cost Endorsements, Contingent Liability from Operation of Building Laws Endorsement, and Increased Cost of Construction Endorsement;

(v) Steam Boiler Endorsement, if applicable, providing at least \$50,000.00 coverage for each accident at each location; and

(vi) A standard mortgagee clause naming, when appropriate, the Federal National Mortgage Association (FNMA) or the servicers for mortgages held by FNMA, their successors and assigns.

C. Policy Waivers. When appropriate and possible, the policies shall waive the insurer's right to:

(i) Subrogation against the Association and against the Owners, individually and as a group;

(ii) The prorata clause that reserves to the insurer the right to pay only a fraction of any loss if other insurance carriers have issued coverage upon the same risk; and

(iii) Avoid liability for a loss that is caused by an act of the Board, or by a member of the Board or by one or more Owners.

D. Other Provisions. In addition, the policy shall provide that:

(i) Any Insurance Trust Agreement will be recognized;

(ii) The policy shall be primary, even if an Owner has other insurance that covers the same loss; and

(iii) The named insured shall be the Association for the use and benefit of the Unit Owners. The "loss payable" clause should show said Association or the designated insurance trustee as the trustee for each Owner and each Owner's mortgagee.

2. Unit Insurance. Each Unit Owner shall maintain a policy or policies to insure his or her Unit from all casualty losses.

3. Reconstruction and Repair after Casualty.

A. Determination. Under ordinary circumstances, Common Area improvements which are damaged by casualty shall be reconstructed and repaired. If a dispute arises as to whether a

Common Area improvement should be repaired or reconstructed, the Board of Directors, with approval of the oldest unsatisfied mortgagee having an effective lien thereon, shall make the determination to repair or reconstruct. The adjoining owners shall be bound by this determination. If a Unit is damaged by a casualty, the affected Unit Owner shall promptly have his Unit repaired and rebuilt substantially in accordance with the architectural plans and specifications of the Unit. The Association shall have the right to specially assess all members of the Association if insurance proceeds are insufficient to repair or rebuild the affected Common Areas in accordance with this paragraph. The assessment and collection of any special assessment authorized pursuant to this paragraph shall be made in accordance with the assessment powers and lien rights of the Association for Association Expenses.

B. Plans and Specifications. Although it is impossible to anticipate all problems which may arise from a casualty, the intent is to try to assure that the General Plan of Development is maintained by requiring damaged Units to be rebuilt or repaired and that unsightly and dangerous conditions are remedied as soon as possible. Any reconstruction and repair must be substantially in accordance with the plans and specifications for such property as originally constructed, and in any event, according to plans and specifications approved by the ECB. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair to the Common Areas, for which the Association is responsible, or if at any time during the work or upon completion of the work the funds available for payment of the costs are insufficient, assessments shall be made by the Association against all Owners in sufficient amounts to provide funds for the payment of those costs. The Assessments shall be made as an Association Expense, except that the cost of construction, reconstruction and repair occasioned by special improvement made at the request of the Owner and not common to other Units shall be assessed to such Unit Owner.

4. Public Liability Coverage. The Association shall obtain comprehensive general liability coverage insuring the Association against any and all claims and demands made by any person or persons for injuries received in connection with the operation and maintenance of the Common Areas and improvements located thereon, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have limits of not less than \$1,000,000.00 covering all claims for personal injury and property damage arising out of a single occurrence. The liability coverage shall include protection against liability for non-owned and hired automobiles, and liability of hazards related to usage. In addition, the coverage shall include protection against liability that results from



actions related to employment contracts in which the Association is a party. All such policies will name the Association (and the Developer until the Transfer Date), as their respective interests may appear, as insured parties under such policy or policies. The original of each policy shall be held by the Board or in the office of the Insurance Trustee.

5. Fidelity Bond Coverage. The Association shall obtain Fidelity Bonds covering officers, directors, employees and other persons who handle or are responsible for handling Association funds. The Fidelity Bonds (or insurance) shall meet the following requirements.

A. Association as Obligee. All such fidelity insurance or bonds shall name the Association as an obligee; and

B. Amount of Insurance. Such fidelity insurance or bonds shall be written in the amount equal to at least 150% of three months operating expenses of the Association, and the amount in reserve as of the end of each fiscal year of the Association; and

C. Waivers. Such fidelity insurance or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or a similar expression; and

D. Notice of Cancellation. Such insurance or bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days prior written notice of the servicer or the insured.

6. Flood Insurance. If any part of the Common Areas are in a special flood hazard area, and are insurable as defined by the Federal Emergency Management Agency, the Association shall insure same. The coverage shall be 100% of the current replacement cost of any Common Area improvements or structures and other insurable common property, or the maximum coverage available for such improvements, structures, or property under the National Flood Insurance Program.

7. Insurer. All insurance shall be issued by a company authorized to do business in the State of Florida.

8. Named Insured. For all policies obtained by the Association, the named insured shall be the Association individually and as trustee for Owners covered by the policy without naming them, and shall include Institutional Mortgagees who hold mortgages upon Units covered by the policy whether or not the mortgagees are named. The Board may authorize the

Insurance Trustee to maintain the policies and receive any proceeds of such policies.

9. Premiums. Premiums on policies purchased by the Association shall be paid as an Association Expense. However, if the amount of a premium is increased because a Unit or its appurtenances is misused or abandoned then the Owner of such Unit is liable for the amount of such increase. The Association will furnish evidence of premium payment to each mortgagee upon request.

10. Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association as trustee or to such institution in Florida with trust powers as may be designated as Insurance Trustee by the Board. The Trustee shall hold the proceeds for the benefit of the Unit Owners and their mortgagees in the following shares:

A. Share of Proceeds. An undivided share for each Unit Owner, that share being the same as such Owner's undivided share in the Association Expenses.

B. Mortgagees. If a mortgagee endorsement of an insurance policy has been issued as to a Unit, the share of the Owner shall be held in trust for the mortgagee and such Owner, as their interests may appear; however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any such Unit shall be reconstructed or repaired, and unless provided by the terms of the mortgage, no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distribution of proceeds made to the Owner and the mortgagee.

11. First Mortgagees. This Article is additionally for the benefit of first mortgagees of Units and may not be amended without the consent of all such mortgagees.

12. Policy Cancellation. All insurance policies purchased by the Association shall require the insurer to notify in writing the Association or the designated Insurance Trustee and each first mortgagee named in any mortgage clause at least 10 days before it cancels or substantially changes the coverage.

13. Association as Agent. The Association is irrevocably appointed agent for each Unit Owner and for each mortgagee or other lienor of a Unit, and for each owner of any other interest in the property, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver

releases upon the payment of claims.

## ARTICLE XII

### ARCHITECTURAL, ENVIRONMENTAL AND LANDSCAPING CONTROLS

1. Environmental Control Board. It is the intent of the Breakers West Development Corporation to create a general plan and uniform scheme of development of Breakers West and to create within Breakers West a residential community of high quality and harmonious Improvements. Accordingly, an Environmental Control Board (the "ECB") has been established which shall be a permanent committee of the Breakers West Association and which shall have the powers, duties and responsibilities set forth in the Breakers West Declaration of Covenants and Restrictions.

2. Improvements. No Improvement (including landscaping) shall be erected, constructed, removed, planted or maintained, including those constructed or to be constructed by Developer, nor shall any addition to or any change, replacement or alteration therein be made on any Unit, Lot, or Common Area until the same shall have been submitted to and approved by the ECB, pursuant to the procedures set forth in the Breakers West Declaration of Covenants and Restrictions.

3. ECB Procedures. All of the procedures and provisions governing the ECB, including without limitation, the approval process for Improvements, shall be as set forth in the Declaration of Covenants and Restrictions for Breakers West.

4. Approved Builder. In addition to the foregoing requirements, no Improvement, (including landscaping) shall be erected, constructed, removed, planted or maintained, nor shall any addition to or any change, replacement or alteration therein be made except by an "Approved Builder". The term "Approved Builder(s)" shall refer to those builders which have been determined by the Breakers West Development Corporation, from time to time to be qualified to participate in the construction of improvements within Breakers West. By acceptance of a deed to a Unit, each Owner acknowledges and agrees that the foregoing requirement is justified by Breakers West Development Corporation's desire to protect its good name, and is reasonable and necessary in order to maintain the high standard of construction within Breakers West, to prevent to the extent practicable, problems arising from the lack of financial strength and building record of the builders, and to protect the overall value and viability of Breakers West, which is in the best interests of all Owners within Breakers West. The list of Approved Builders selected by Breakers West Development Corporation may be changed from time to time by the Breakers West

Development Corporation.

5. Breakers West Development Corporation Exempt.

Notwithstanding anything contained herein to the contrary, any improvements to Breakers West of any nature made or to be made by the Breakers West Development Corporation shall not be subject to the review of the ECB. For so long as Breakers West Development Corporation owns or has any use rights to any property within Breakers West, it shall have the right to transact any business necessary to consummate sales of property throughout Breakers West, including but not limited to, the right to maintain office(s), in location(s) to be selected by it; to have employees in such offices, to construct and maintain sales agency offices, and such other structures or appurtenances which are necessary or desirable for the development and sale of property throughout Breakers West, including without limitation, sales models and parking lots; to post and display a sign or signs on any property owned by Breakers West Development Corporation; and to use the Breakers West Common Property, and to show property owned by it. Sales office signs and all other structures and appurtenances pertaining to the sale or development of property within Breakers West shall not be considered common property and shall remain the property of the Breakers West Development Corporation.

ARTICLE XIII

ADDITIONAL RESTRICTIONS

1. Breakers West Declaration of Covenants and Restrictions. In addition to all of the covenants, restrictions and provisions contained in this Declaration, the Articles of Incorporation and the By-Laws for the Association, and the Rules and Regulations adopted by the Association, as same may be amended from time to time, the Property shall also be subject to all of the covenants, restrictions and provisions, including without limitation all assessments, and lien rights, contained in the Breakers West Declaration of Covenants and Restrictions, the articles of incorporation and the by-laws for the Breakers West Association, all rules and regulations adopted by the Breakers West Association, and all rules and regulations adopted by the ECB, as same may be amended from time to time.

2. Covenants Running With The Property. The agreements, covenants, conditions, restrictions, Assessments, liens and other provisions contained herein shall constitute a servitude upon the Property and each portion thereof, shall run with the Property, shall be binding upon the Owners of any portion thereof, and shall inure to the benefit of the Developer, the Breakers West Development Corporation, the Association, the Breakers West Association, the ECB, and the Owners.

3. Plat. In addition to this Declaration, the Property shall be subject to the additional covenants, restrictions, reservations and other terms and provisions set forth in the plat of the Property, which plat is recorded or to be recorded in the Public Records of the County.

#### ARTICLE XIV

##### DEVELOPER'S RIGHTS

1. Developer's Transfer Right. Subject to the approval of Breakers West Development Corporation, any or all of the special rights and obligations of the Developer may be transferred or assigned to other Persons, provided that the transfer or assignment shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the Public Records of the County. Nothing in this Declaration shall be construed to require Developer or any successor or assign to develop any property other than the property described in Exhibit "A".

2. Developer's Sales Offices. Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and sales of Units shall continue, it shall be expressly permissible for Developer or Breakers West Realty Corporation to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Developer or Breakers West Realty Corporation, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices, and the Developer or Breakers West Realty Corporation shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by the Developer and any facility which may be owned by the Association, as models and sales offices, respectively.

3. Right of Approval. So long as Developer continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Developer's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Developer. Notwithstanding the foregoing, Breakers West

Development Corporation shall have the right to record amendments to the Breakers West Declaration of Covenants and Restrictions in order to add the Property to the property encumbered thereby, and to add other Properties subsequently encumbered by this Declaration to the property encumbered by the Breakers West Declaration of Covenants and Restrictions, or to otherwise amend the Declaration of Covenants and Restrictions for Breakers West to the extent provided therein.

4. Termination of Developer's Rights. This Article may not be amended without the express written consent of the Developer; provided, however, the rights contained in this Article shall terminate upon the Transfer Date.

#### ARTICLE XV

##### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Units in the Properties.

1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

A. Condemnation Loss. Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

B. Delinquent Assessments. Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Homeowners Documents which is not cured within sixty (60) days;

C. Insurance Lapse. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

D. Actions Requiring Consent. Any proposed action which would require the consent of a specified percentage of eligible holders of first mortgages.

2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or Members representing at least two-thirds (2/3) of the total Association vote entitled to be cast thereon consent, the Association shall not:

A. Common Areas. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the Common Area 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 Area shall not be deemed a transfer within the meaning of this subsection).

B. Assessments. Change the method of determining the obligations, assessments, or other charges which may be levied against a Unit.

C. Architectural Regulations. By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area within its jurisdiction or control. (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. Insurance Lapse. Fail to maintain insurance, as required by this Declaration.

E. Use of Insurance Proceeds. Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

3. No Priority. No provision of the Homeowners Documents gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

6. Failure of Mortgagee to Respond. Any Mortgagee 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 Mortgagee within thirty (30) days of the date of the Association's request.

7. Financial Statements. Any holder of a first mortgage shall be entitled, upon written request after reasonable notice, to a financial statement of the Association for the immediately preceding fiscal year.

#### ARTICLE XVI

##### ENFORCEMENT OF DECLARATION

The enforcement of this Declaration may be by proceeding at law for damages or in equity to compel compliance with its terms or to prevent violation or breach of any of the covenants or terms herein. The Developer, the Breakers West Development Corporation, the Association, the Breakers West Association or any Unit Owner may, but shall not be required to, seek enforcement of the Declaration. Any Unit Owner who seeks enforcement of this Declaration shall by his actions be deemed to have indemnified the Developer, the Association, the Breakers West Association and the Breakers West Development Corporation from all liabilities resulting from his actions. Should the party seeking enforcement be the prevailing party in any action, then the person against whom enforcement has been sought shall pay all costs and reasonable attorneys' fees at all trial and appellate levels to the prevailing party. The failure or refusal of the Developer, the Breakers West Development Corporation, the Association, the Breakers West Association, or any Member to enforce any of the provisions of this Declaration shall in no event be deemed to constitute a waiver of the right to do so thereafter.



## ARTICLE XVII

AMENDMENTS

1. Amendment Date. Until the closing of the first conveyance of a Unit by Developer to an Owner, other than Developer, (Amendment Date), any amendment may be made by Developer with consent of the Breakers West Association and any mortgagee who has advanced funds for construction or who is under contract to advance construction funds, if any.

2. Consent of Mortgagee. With the exception of Subsequent Amendments, which may be made at any time; after the Amendment Date, this Declaration may be amended only by consent of fifty-one percent (51%) of all Unit Owners together with the consent of the institutional mortgagee with the highest aggregate mortgage indebtedness on the Units. The aforementioned consent shall be in writing and affixed to the Amendment to this Declaration.

3. Limitation on Amendments. No amendment to the Article entitled "Assessments" or the Article entitled "Enforcement and Establishment of Liens", and no other amendment shall be effective which shall, in a material fashion impair or prejudice the rights or priorities of any Owner, the Developer, or any institutional mortgagee under this Declaration without the specific written approval of the Owner, the Developer or institutional mortgagee affected thereby. In addition, any amendment which would affect the surface water management system, including the water management portions of the Common Areas, must have the prior approval of the South Florida Water Management District.

4. Scrivener's Errors. Prior to the Transfer Date, the Developer may amend this Declaration in order to correct a scrivener's error or other defect or omission without the consent of the Owners or the Board; provided that such amendment is reasonable and does not adversely affect in a material manner an Owner's property rights. Such an amendment shall be signed by the Developer alone and a copy of the amendment shall be furnished to each Owner, the Association, the Breakers West Association, and all institutional mortgagees as soon after recording thereof amongst the public records of the County, as is practicable.

5. Breakers West Association. All amendments both before and after the Transfer Date shall require the prior written approval of the Breakers West Association and the Breakers West Development Corporation.

6. Effective Date of Amendments. An amendment to the Declaration shall become effective upon the recordation amongst

the public records of the County.

## ARTICLE XVIII

### CONVEYANCES

In order to assure a community of congenial residents and thus protect the value of the Units in Flagler Manor, the sale or lease of Units shall be subject to the following provisions, and shall also be subject to the procedures and provisions governing the sale, lease or other transfer of Units as set forth in Article XI of the Breakers West Declaration of Covenants and Restrictions:

1. Notice to Association. The Unit Owner shall notify the Association in writing of his or her intention to sell or lease his or her Unit and furnish with such notification a copy of the contract for purchase and sale or a copy of the lease, whichever is applicable. Except as provided below, it is not the intention of this Article to grant to the Association a right of approval or disapproval of purchasers or lessees. It is, however, the intent of this paragraph to impose an affirmative duty on the Unit Owners to keep the Association fully advised of any changes in occupancy or ownership for the purposes of facilitating the management of the Association's membership records. As this Article is a portion of the Declaration which runs with the land, any transaction which is conducted without compliance with this Article may be voidable by the Association.

2. Lease Agreement Terms. Any and all lease agreements between an Owner and a lessee of such Owner shall be in writing, shall provide for a term of not less than twelve (12) months, and must provide that the lessee shall be subject in all respects to the terms and provisions of this Declaration and that any failure by the lessee under such lease agreement to comply with such terms and conditions shall be a material default and breach of the lease agreement. The lease agreement shall also state the party who will be responsible for the assessments as stated above, and it shall be the obligation of all Unit Owners to supply the Board with a copy of said written agreement prior to the lessee occupying the premises. Unless provided to the contrary in a lease agreement, a Unit Owner, by leasing his Unit, automatically delegates his right of use and enjoyment of the Common Areas and facilities to his lessee; and in so doing, said Owner relinquishes said rights during the term of the lease agreement.

3. Association Approval. Upon receipt of a copy of the contract for purchase and sale or a copy of the lease, the Association shall within ten (10) business days, issue a

Certificate indicating the Association's approval of the transaction. In the event of a sale it shall then be the responsibility of the purchaser to furnish the Association with a recorded copy of the deed of conveyance indicating the owner's mailing address for all future assessments and other correspondence from the Association. Provided, however, prior to the issuance by the Association of a Certificate indicating the Association's approval of the transaction, the purchaser or lessee shall be required to agree to comply with the Rules and Regulations of the Association.

4. Delinquent Unit Owners. Notwithstanding the provisions above, in the event that an Unit Owner is delinquent in paying any assessment, or the Owner or his buyer, family, guests, agents, licensees or invitees are not in compliance with any provisions of the Homeowners Documents, the Association has the right to disapprove of any sale; and in the case of a lease, the right to disapprove of and to void any lease at any time prior to or during the leasehold tenancy until any delinquent assessment is paid and/or until any violation of the Homeowners Documents is corrected.

#### ARTICLE XIX

##### TERMINATION

1. Consent to Termination. This Declaration may be terminated upon the affirmative written consent of eighty percent (80%) of all Unit Owners, the prior written consent of the Breakers West Association, and upon the affirmative written consent of all Institutional Mortgagees holding mortgages encumbering Units.

2. Termination Documents. If this Declaration is terminated in accordance herewith, it is hereby declared by the Developer, and each and every Owner of a Unit by acquiring title to his Unit covenants and agrees, that the termination documents shall require:

A. Use of Units. That all Units shall continue to be used solely as Single Family residences.

B. Common Areas. All Common Areas shall be owned and held in equal shares by the Unit Owners as tenants in common, and each Unit Owner shall remain obligated to pay his pro rata share of expenses to continually maintain the Common Areas.

3. Limitation on Termination. The Unit Owners and their grantees, successors, and assigns by acquiring title to a Unit covenant and agree that no termination of this Declaration shall

be made for a period of twenty-five (25) years from the date of recordation of this Declaration. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the subject property and inure to the benefit of Developer, the Association, the Breakers West Association, the Breakers West Development Corporation, the Owners, Institutional Mortgagees and their respective legal representatives, heirs, successors, and assigns for said period. After this period, the Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such twenty-five (25) year term or any such ten (10) year extension thereof is recorded amongst the Public Records of the County, an instrument signed by at least eighty percent (80%) of all Institutional Mortgagees holding mortgages encumbering the Units agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of twenty-five (25) years or the ten (10) year extension thereof during which the termination instrument is recorded.

4. Water Management System. If the Association is terminated, the property consisting of the surface water management system operated and maintained as part of the Common Areas shall be conveyed to the Breakers West Association, or to an appropriate agency of local government, and if not accepted thereby, then it must be conveyed to a similar non-profit corporation.

#### ARTICLE XX

##### MISCELLANEOUS

1. No Waiver. The failure of the Developer, the Association, the Breakers West Association, the Breakers West Development Corporation, or any Owner to object to an Owner's or another person's failure to comply with the Covenants and Restrictions contained herein shall in no event be deemed a waiver of any right to object to same and to seek compliance therewith in accordance with the provisions herein.

2. Headings. Article and paragraph captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms and provisions of this Declaration.

3. Pronouns. Whenever the context requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any

nouns or pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

4. Severability. In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

5. Partition. The Association may not convey, encumber, abandon, partition or subdivide any of the Common Areas without the approval of all Institutional Mortgagees.

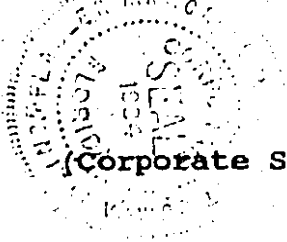
6. Homeowners Documents. The Association is required to make available to Owners, to Institutional Mortgagees, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, Articles of Incorporation, By-Laws, Rules and Regulations and other such documents governing the Association, as well as the books, records, and financial statements of the Association. "Available" shall be defined as obtainable for inspection, upon written request after reasonable notice, during normal business hours or under such other reasonable circumstances. Any holder of a first mortgage shall be entitled, upon written request after reasonable notice, to a financial statement of the Association for the immediately preceding fiscal year.

7. Street Lighting. The Common Area street lighting will be obtained by the Developer from Florida Power & Light Company. The Developer shall secure, by a letter of credit or other acceptable financial assurance, the street lighting for a period of not more than one (1) year after the Transfer Date. The Association shall be responsible and liable for any financial assurances required by Florida Power & Light Company at the expiration of said period.

8. Golf Course Membership. The ownership of a Unit does not confer upon the Owner a vested right to use the facilities in the Breakers Club or in the Mayacoo Lakes Country Club ("Clubs"). Unit Owners shall not have a proprietary interest in the Clubs. Membership and priority of use in any the Clubs shall be determined by the membership rules and regulations prevailing for the particular club at the time of application. Developer hereby disclaims any representations, warranties or relationship to the Clubs or to the rules, regulations, or qualifications to join one or both of the Clubs.

IN WITNESS WHEREOF, the Declaration of Covenants and Restrictions for Flagler Manor has been signed by the Developer and the Association on the day and year first above set forth. The Developer and the Association have caused these presents to

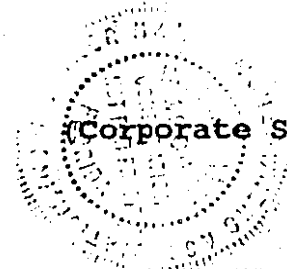
be executed in their names and their corporate seals to be hereunto affixed by their duly authorized officers.



(Corporate Seal)

FLAGLER MANOR DEVELOPMENT COMPANY, INC.

By: William E. Shannon  
William E. Shannon, V.P.



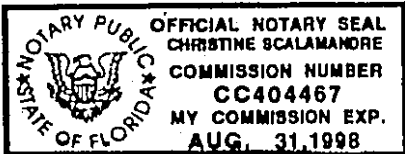
(Corporate Seal)

FLAGLER MANOR HOMEOWNERS ASSOCIATION, INC.

By: Robert S. Kairalla V.P.  
Robert S. Kairalla, V.P.

STATE OF FLORIDA  
COUNTY OF PALM BEACH

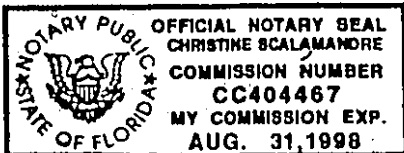
The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of November, 1994 by William E. Shannon, Vice President of FLAGLER MANOR DEVELOPMENT COMPANY, INC., a Florida corporation, on behalf of the corporation. He is personally known to me.



Christine Scalamanore  
Notary Public  
Name: Christine Scalamanore  
My Commission # and CC 404467  
expiration date: Aug. 31, 1998

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of November, 1994 by Robert S. Kairalla, Vice President of FLAGLER MANOR HOMEOWNERS ASSOCIATION, INC., a Florida corporation, on behalf of the corporation. He is personally known to me.



Christine Scalamanore  
Notary Public  
Name: Christine Scalamanore  
My Commission # and CC 404467  
expiration date: Aug 31, 1998

JOINDER OF ASSOCIATION

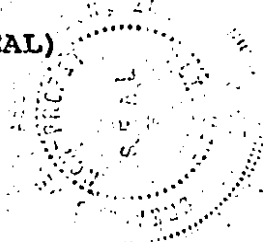
BREAKERS WEST ASSOCIATION, INC., a Florida not-for-profit corporation, hereby joins in this Declaration of Covenants and Restrictions for Flagler Manor for the sole purpose of agreeing to perform its obligations contained herein.

Signed, sealed and delivered in the presence of:

BREAKERS WEST ASSOCIATION, INC., a Florida not-for profit corporation

Hugh W. Perry  
HUGH W. PERRY  
William E. Shannon  
WILLIAM E. SHANNON

By: Gerald J. Wygant  
GERALD J. WYGANT, PRES.  
Its: President  
(CORPORATE SEAL)

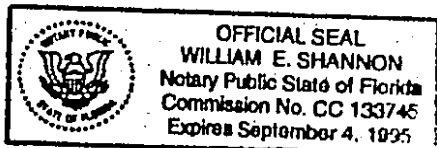


STATE OF FLORIDA )  
COUNTY OF PALM BEACH ) ss.

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of NOVEMBER, 1994, by GERALD J. WYGANT the President of BREAKERS WEST ASSOCIATION, INC., a Florida not-for-profit corp., on behalf of the corporation. He is personally known to me, or has produced \_\_\_\_\_ as identification.

(Notarial Seal)

William E. Shannon  
Notary Public  
Name: WILLIAM E. SHANNON  
My Commission # and  
expiration date: # CC 133745  
EXPIRES: 9/4/95



MORTGAGEE JOINDER

BREAKERS WEST DEVELOPMENT CORPORATION, as holder of that certain mortgage recorded in Official Record Book 8244, Page 1382, Public Records of Palm Beach County, Florida ("Mortgage") hereby joins in this Declaration for the sole purpose of consenting to the terms hereof and for purpose of subordinating the Mortgage to the terms of the Declaration. The subordination of the Mortgage shall not apply to the following matters: (1) Breakers West Development Corporation shall be deemed to be an "Institutional Mortgagee" and have the rights of an Institutional Mortgagee pursuant to the Declaration; (2) Upon foreclosure of the Mortgage or upon acquisition by Breakers West Development Corporation of any interest of Flagler Manor Development Company in the Property, Breakers West Development Corporation shall be entitled to exercise all rights granted to the "Developer" under the Declaration; and (3) No amendments shall be made to the Declaration without the prior written consent of Breakers West Development Corporation until the Mortgage is satisfied of record.

Signed, sealed and delivered in the presence of:

H.W.P.  
HUGH W. PERRY  
William E Shannon  
WILLIAM E. SHANNON

BREAKERS WEST DEVELOPMENT CORPORATION, a Florida corporation

By: [Signature]  
GERALD J. WYGANT  
Its: President  
(CORPORATE SEAL)

STATE OF FLORIDA )  
                          ) ss.  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of NOVEMBER, 1994, by GERALD J. WYGANT the President of BREAKERS WEST DEVELOPMENT CORPORATION, a Florida corporation, on behalf of the corporation. He is personally known to me, or has produced \_\_\_\_\_ as identification.

(Notarial Seal)

William E Shannon  
Notary Public  
Name: WILLIAM E. SHANNON  
My Commission # and  
expiration date: # CC 133745  
EXPIRES: 9/4/95

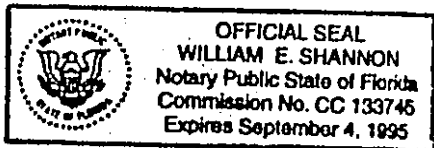




EXHIBIT A

All of the plat of FLAGLER MANOR, according to the Plat thereof, recorded in Plat Book 72, Page 162-164, Public Records of Palm Beach County, Florida.

AND

All of the plat of FLAGLER MANOR REPLAT, according to the Plat thereof, recorded in Plat Book 73, Page 116, Public Records of Palm Beach County, Florida.

# State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of FLAGLER MANOR HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on May 6, 1994, as shown by the records of this office.

The document number of this corporation is N94000002265.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Sixth day of May, 1994



CR2EO22 (2-91)

EXHIBIT *Jim Smith*  
PAGE 1 OF 11 PAGES

*Jim Smith*  
Secretary of State

ARTICLES OF INCORPORATION  
OF  
FLAGLER MANOR  
HOMEOWNERS ASSOCIATION, INC.  
(A Florida Corporation Not-For-Profit)

FILED  
94 MAY -6 PM 12:30  
SECRETARY OF STATE  
TALLAHASSEE FLORIDA

In order to form a corporation not-for-profit, under and in accordance with Chapter 617 of the Florida Statutes, we, the undersigned, hereby associate ourselves into a corporation not-for-profit, for the purpose, and with the powers, hereinafter set forth and to that end, we do, by these Articles of Incorporation, certify as follows:

ARTICLE I

NAME

1. Name. The name of this corporation shall be FLAGLER MANOR HOMEOWNERS ASSOCIATION, INC. ("Association"). The initial address of the Association shall be 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418.

2. Definitions. The words used in these Articles shall have the same meaning as set forth in the Declaration of Covenants and Restrictions for the Association, ("Declaration").

ARTICLE II

PURPOSE

The purpose for which the Association is organized is to engage as a non-profit organization in protecting the value of the property of the Members of the Association, to exercise all the powers and privileges, and to perform all of the duties and obligations of the Association as set forth in the Declaration which is to be recorded in the public records of Palm Beach County, Florida, including, without limitation, the establishment and enforcement of the payment of assessments and other charges contained therein, and to engage in such other lawful activities as may be to the mutual benefit of the Members and their property.

ARTICLE III

POWERS

The Association shall have the following powers which shall be governed by the following provisions:

EXHIBIT B

PAGE 2 OF 11 PAGES

1. Common Law and Statutory Powers. The Association shall have all of the common law and statutory powers of a corporation not-for-profit, which are not in conflict with the terms of these Articles, the Declaration, or the By-Laws of the Association.

2. Necessary Powers. The Association shall have all of the powers and duties set forth in the Declaration, except as limited by these Articles, and all powers and duties reasonably necessary to operate and administer the Properties pursuant to the Declaration, including but not limited to the following:

A. To make and collect assessments against Members to defray the costs and expenses of the Association property.

B. To use the proceeds of assessments in the exercise of its powers and duties.

C. To own, maintain, repair, replace, operate and convey the property of the Association in accordance with the Declaration, and to maintain and operate the water management system as permitted by the South Florida Water Management District, including all lakes, retention areas, culverts and related appurtenances, if any.

D. To purchase insurance upon the property of the Association and insurance for the protection of the Association and its members, in the amounts required by the Declaration.

E. To dedicate or to transfer all or any part of the Association's property to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by not less than fifty-one percent (51%) of the Members, and approved by not less than seventy-five percent (75%) of the institutional mortgagees holding mortgages encumbering Units.

F. To reconstruct the improvements to the Association's property after casualty, and to further improve the Association's properties, as provided in the Declaration.

G. To make and amend reasonable Rules and Regulations regarding the use of the property of the Association in accordance with the requirements set forth in the By-Laws.

H. To contract for the management of the Association property and to delegate to such contractors all powers and duties of the Association except such as are specifically required by the Declaration to have the approval of the Board or the Membership. Any such contract may not exceed one (1) year, and must provide for termination by either party without cause and without payment of a termination fee on not more than ninety

(90) days written notice.

I. To employ personnel for reasonable compensation to perform the services required for proper operation and administration of the Association property.

J. To enforce by legal means the provisions of the Declaration, these Articles, the By-Laws, and the Rules and Regulations for the use of the Association's property as same may be promulgated, modified, or amended from time to time by the Association.

K. To pay taxes and assessments, which are liens against any part of the Association's property.

L. To pay the cost of all power, water, sewer, waste collection, and other utility services rendered to the property of the Association.

M. To grant such permits, licenses, and easements over the Common Areas for utilities, roads, and other purposes reasonably necessary or useful to the Association.

N. To do such other things as may be necessary in order to perform the duties and to exercise the powers provided for the Association in the Declaration.

3. Funds and Title to Properties. All funds and the titles of all properties acquired by the Association and their proceeds shall be held in trust for the members in accordance with the provisions of the Declaration, these Articles, and the By-Laws.

#### ARTICLE IV

##### MEMBERS

1. Members. The Members of the Association shall consist of all of the record owners of Units in Flagler Manor.

2. Change of Membership. Change of membership in the Association shall be established by recording in the public records of the County, a deed or other instrument establishing a record title to a Unit at Flagler Manor, and the delivery to the Association of a copy of such instrument. The owner designated by such instrument thus becomes a Member of the Association and the membership of the prior owner is terminated as of the date of execution of such instrument.

3. Transfer of Membership. The share of a Member in the

<sup>3</sup>  
EXHIBIT B

PAGE 4 OF 11 PAGES

funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except upon transfer of title of his Unit.

4. Voting. The owner of each Unit shall be entitled to one vote as a Member of the Association. The exact number of votes to be cast by Members and the manner of exercising voting rights, shall be determined by the By-Laws; subject, however, to the terms and conditions of the Declaration.

ARTICLE V

TERM

The term for which this Association is to exist shall be perpetual.

ARTICLE VI

INCORPORATORS

The names and residences of the Incorporators to these Articles are as follows:

NAME	ADDRESS
Charles H. Hathaway	4500 PGA Boulevard, Suite 400 Palm Beach Gardens, Fl. 33418
Robert S. Kairalla	4500 PGA Boulevard, Suite 400 Palm Beach Gardens, Fl. 33418
William E. Shannon	4500 PGA Boulevard, Suite 400 Palm Beach Gardens, Fl. 33418

ARTICLE VII

OFFICERS

1. Officers. The affairs of the Association shall be managed by a President, one (1) or several Vice Presidents, a Secretary and a Treasurer, which officers shall be subject to the directions of the Board.

2. Election of Officers. The Board shall elect the President, the Vice President, the Secretary and the Treasurer, and as many Vice Presidents as the Board shall from time to time determine appropriate. Such officers shall be elected annually

by the Board at the first meeting of the Board following the "Annual Members' Meeting" (as described in the By-Laws); provided, however, such officers may be removed by such Board and other persons may be elected by the Board as such officers in the manner provided in the By-Laws. -The President shall be a Director of the Association, but no other officer need be a Director. The same person may hold two (2) offices, the duties of which are not incompatible; provided, however, the offices of President and Vice President shall not be held by the same person, nor shall the same person hold the office of President who holds the office of Secretary.

Officers shall be elected by the Board at the first meeting of the Board following each annual meeting of the Members, provided, however, until the Transfer Date the Developer shall have the right to approve all of the officers elected. The following persons shall serve as the initial officers.

President	Charles H. Hathaway
Vice President	Robert S. Kairalla
Secretary	William E. Shannon
Treasurer	William E. Shannon

#### ARTICLE VIII

##### BOARD OF DIRECTORS

1. Directors. The affairs of the Association will be managed by a Board consisting of not less than three (3) nor more than five (5) Directors. The number of Directors on the Board until the Transfer Date shall be three (3). Thereafter, the number of Directors shall be five (5). After the Developer elects to divest itself of control of the Association, Directors must be Members of the Association.

2. Term of Directors. After the Transfer Date, members of the Board shall serve for a term of two (2) years; provided, however, that two (2) members of the Board elected on the Transfer Date shall serve for initial terms of one (1) year and the other three (3) members of the Board elected on the Transfer Date shall serve for initial terms of two (2) years. Thereafter, the terms of no more than three (3) Board members will end each year.

3. Election of Directors. Directors of the Association

shall be elected at the Annual Members' Meeting in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board shall be filled in the manner provided by the By-Laws.

4. Transfer Date. The first election of Directors shall not be held until 120 days after the Developer has closed all of the sales of the Units contemplated under the General Plan of Development, or until the Developer elects to terminate control of the Association, whichever shall first occur. The Directors named as the first Board, including any replacement members, shall serve until the first election of Directors, and any vacancies in their number occurring before the first election shall be filled by the remaining Directors.

5. First Board. The names and addresses of the persons who are to serve as the first Board are as follows:

NAME	ADDRESS
Robert S. Kairalla	4500 PGA Boulevard, Suite 400 Palm Beach Gardens, Fl. 33418
Charles H. Hathaway	4500 PGA Boulevard, Suite 400 Palm Beach Gardens, Fl. 33418
William E. Shannon	4500 PGA Boulevard, Suite 400 Palm Beach Gardens, Fl. 33418

#### ARTICLE IX

##### INDEMNIFICATION

Every Director, committee member, and officer of the Association (and the Directors, committee members, and officers as a group) shall be indemnified by the Association against all expenses and liabilities, including counsel fees (at all trial and appellate levels and whether or not suit be instituted) reasonably incurred by or imposed upon him or them in connection with any proceeding, litigation or settlement in which he may become involved by reason of his being or having been a Director, committee member, or officer of the Association. The foregoing provisions for indemnification shall apply whether or not he is a Director, committee member, or officer at the time such expenses and/or liabilities are incurred. Notwithstanding the above, in the event of a settlement, the indemnification provisions herein shall not be automatic and shall apply only when the Board approves such settlement and authorizes reimbursement for the costs and expenses of the settlement as in the best interest of the Association. In instances where a Director, committee



member, or officer admits or is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, the indemnification provisions of these Articles shall not apply. Otherwise, the foregoing rights to indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which a Director, committee member, or officer may be entitled whether by statute or common law.

#### ARTICLE X

##### BY-LAWS

The By-Laws of the Association may be adopted, amended, altered, or rescinded as provided therein; provided, however, that at no time shall the By-Laws conflict with these Articles or the Declaration, and provided further, that no amendment, alteration, or rescission may be made which adversely affects the rights and privileges of any Institutional Mortgagee, without the prior written consent of the Institutional Mortgagee so affected, and provided further that until the Transfer Date no amendments, alterations or rescissions of the By-Laws shall be effective unless the Developer, the Breakers West Association, Inc., and the Breakers West Development Corporation shall have joined in and consented thereto in writing. Any attempt to amend, alter, or rescind contrary to these prohibitions shall be of no force or effect.

#### ARTICLE XI

##### AMENDMENTS

1. Amendments Prior to Recording. Prior to the recording of the Declaration amongst the public records of the County, these Articles may be amended only by an instrument in writing signed by all of the Incorporators to these Articles and filed in the Office of the Secretary of State of the State of Florida. The instrument amending these Articles shall identify the particular Article or Articles being amended, give the exact language of such amendments, and a certified copy of each such amendment shall always be attached to any certified copy of these Articles.

2. Amendments After Recording. After the recording of the Declaration amongst the public records of the County, these Articles may be amended in the following manner:

A. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting (whether of the Board or of the Membership) at which such proposed

amendment is to be considered; and

B. A resolution approving the proposed amendment may be first passed by either the Board or the Membership. After such approval of a proposed amendment by one of said bodies, such proposed amendment must be submitted to and approved by the other of said bodies. Approval by the Membership must be by a vote of a majority of the Members present at a meeting of the Members at which a quorum is present and approval by the Board must be by a majority of the Directors present at any meeting of the Directors at which a quorum is present.

3. Amendment by Reference to Title. No Article shall be revised or amended by reference to its title or number only. Proposals to amend existing Articles shall contain the full text of the Articles to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but instead a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial re-wording of Article. See Article \_\_\_\_\_ for present text." Non-material errors or omissions in the Article amendment process shall not invalidate an otherwise properly promulgated amendment.

4. Institutional Mortgagees. Notwithstanding the foregoing provisions of this Article, there shall be no amendment to these Articles which shall abridge, amend or alter the priority of any Institutional Mortgagee, or the validity of any mortgage held by such Institutional Mortgagee without the prior written consent therefor by such Mortgagee.

5. Developer. Notwithstanding the foregoing provisions of this Article, there shall be no amendment to these Articles which shall abridge, amend or alter the rights of Developer, including the right to designate, to select, or to approve the selection of the Directors as provided in the Declaration and By-Laws, without the prior written consent of the Developer.

6. BREAKERS WEST ASSOCIATION, INC.. Notwithstanding the foregoing provisions of this Article, there shall be no amendment to these Articles without the prior written consent of the Breakers West Association, Inc. and Breakers West Development Corporation.

IN WITNESS WHEREOF, the Incorporators have hereunto affixed their signatures, this 5<sup>th</sup> day of May, 1994.

Charles H. Hathaway  
Charles H. Hathaway  
Robert S. Kairalla  
Robert S. Kairalla  
William E. Shannon  
William E. Shannon

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

5<sup>th</sup> The foregoing instrument was acknowledged before me this day of May, 1994, by CHARLES H. HATHAWAY, ROBERT S. KAIRALLA and WILLIAM E. SHANNON. They are personally known to me.

Julie McDonagh  
Notary Public  
Name: Julie McDonagh

Commission # and expiration date:

OFFICIAL NOTARY SEAL  
JULIE MCDONAGH  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC295854  
MY COMMISSION EXP. JUNE 20, 1997

CERTIFICATE DESIGNATING A REGISTERED OFFICE AND  
A REGISTERED AGENT FOR THE SERVICE OF PROCESS  
WITHIN THE STATE OF FLORIDA

In pursuance of Chapter 48.091, Florida Statutes, the following is submitted, in compliance with said Act:

FLAGLER MANOR HOMEOWNERS ASSOCIATION, INC., desiring to organize under the laws of the State of Florida, with its principal office, as indicated in the Articles of Incorporation, at the City of Palm Beach Gardens, County of Palm Beach, State of Florida, has named CHARLES H. HATHAWAY located at 4500 PGA Boulevard, City of Palm Beach Gardens, County of Palm Beach, State of Florida, as its agent to accept service of process within the State of Florida.

ACKNOWLEDGMENT:

Having been named to accept service of process for the above stated corporation, at the place designated in this certificate, I hereby agree to act in this capacity, and agree to comply with the provision of the Act relative to keeping open said office.

BY: Charles H. Hathaway  
Charles H. Hathaway

RECORDER'S MEMO: Legibility  
of Writing, Typing or Printing  
unsatisfactory in this document  
when received.

a:\flagman.art

FILED  
91 MAY -6 PM 12:36  
SECRETARY OF STATE  
TALLAHASSEE FLORIDA

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EXHIBIT B

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BY-LAWS  
OF  
FLAGLER MANOR  
HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1. Name. The name of the Association shall be Flagler Manor Homeowners Association, Inc. ("Association").
2. Principal Office. The initial office of the Association shall be located in Palm Beach County, Florida. The Association may have such other offices, either within or without the State of Florida, as the Board of Directors may determine or as the affairs of the Association may require.
3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration of Covenants and Restrictions for Flagler Manor, ("Declaration"), unless the context shall prohibit.

ARTICLE II

ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, AND PROXIES

1. Membership. The qualification of Members, the manner of their admission to membership, and the termination of such membership shall be as set forth in the Articles.
2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board either within the Property or as convenient thereto as possible and practical.
3. Annual Meetings. The first meeting of the Members, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur at least thirty (30) but not more than ninety (90) days after the close of the Association's fiscal year on a date and at a time set by the Board.
4. Special Meetings. Special meetings of the Membership shall be held at any place within the County, whenever called by the President or Vice President or by a majority of the Board. In addition, it shall be the duty of the President to call a special meeting upon a petition signed by the Members

representing at least ten (10%) percent of the total votes of the Association. The notice of any special meeting shall state the date, 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.

5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. If mailed, the notice of the meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association. The post office certificate of mailing shall be retained as proof of such mailing. The notice shall be signed by an officer of the Association. In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice.

6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or alternate shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until

adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that Members or their alternates representing at least twenty-five (25%) percent of the total votes of the Association remain in attendance, and provided further that any action taken is approved by at least a majority of the Members required to constitute a quorum.

8. Voting. Each Unit shall be entitled to one (1) vote on any Association matter requiring a vote of the Members. The vote to which any Unit is entitled shall not be divisible, and shall be cast by the Member designated and entitled to cast the vote according to the terms and provisions of this Section. In no event shall more than one vote be cast with respect to any one Unit. Except as otherwise provided in this Article, each Member who is designated and entitled to cast the vote for any lot shall be named in a voting certificate signed by all Owners of such Unit and filed with the Association. In the event any such voting certificate is not filed with the Association, the vote to which such Unit is entitled shall not be considered in determining whether a quorum is present, or for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed, except if the Unit is owned jointly by a husband and wife. If the Unit is owned jointly by a husband and wife, the provisions of subsection (D) below shall be applicable. A voting certificate shall be valid until revoked by the Owners of, or until a transfer of title to, the Unit to which the voting certificate pertains.

Voting rights shall be established as follows:

A. In the event an Owner is one person, that person's right to vote shall be established by the recorded title to his Unit.

B. In the event a Unit is owned by more than one person or entity, those persons or entities shall sign a voting certificate designating one of them for the purpose of casting the vote that is appurtenant to their Unit.

C. In the event a Unit is owned by an entity, or an entity is designated as the Owner entitled to cast the vote for a Unit, such entity shall designate a partner, officer, fiduciary, or employee of the entity to cast the vote that is appurtenant to the Unit. The voting certificate for such Unit shall be signed by any duly authorized partner or officer of the entity.

D. Notwithstanding anything to the contrary contained in these Bylaws, in the event a Unit is owned jointly by a husband and wife, the following provisions shall be applicable to the casting of the vote that is appurtenant to their Unit:

(i) The husband and wife may, but shall not be required to, designate one of them as the voting Member;

(ii) In the event the husband and wife do not designate either of them as the person entitled to cast the vote that is appurtenant to their Unit, and if both persons are present at any regular or special meeting of the Members and are unable to concur in their decision upon any subject requiring a vote of the Members, such husband and wife shall lose their right to vote on that particular subject at that particular meeting; and

(iii) In the event the husband and wife do not designate the person entitled to cast the vote appurtenant to their Unit, and only one of them is present at any meeting, the Member present may cast the vote to which their Unit is entitled, without establishing the concurrence of the absent Member.

9. Proxies. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted by a Member to vote for him, and in the Member's place and stead. Proxies shall be in writing and shall be valid only for the particular meeting designated in the proxy and any adjournments of such meeting. In no event shall any proxy be valid for a period longer than 90 days after the date of the meeting designated in the proxy. A proxy must be filed with the Secretary before the appointed time of the meeting in order to be effective. Any proxy may be revoked prior to the time a vote is cast according to such proxy.

10. Majority. As used in these By-Laws, the term "Majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number.

11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person, by alternate, or by proxy of the Members representing one-third (1/3) of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein. If any meeting of the Membership cannot be organized because a quorum is not in attendance, the Members who are present, either in person or by Proxy, may adjourn the meeting from time to time until a quorum is present. In the case of the meeting being postponed, the notice provisions for the adjournment shall be as determined by the Board.

12. Conduct of Meetings. The President, or his designated alternate, shall preside over all meetings of the Association, and the Secretary, or his designated alternate, shall keep the



minutes of the meeting, record in a minute book all resolutions adopted at the meeting, and record all transactions occurring at the meeting. Minutes of all meetings shall be kept in a businesslike manner and shall be available for inspection by the Members and the Board at all reasonable times.

13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken by written agreement in lieu of a meeting, provided written notice of the matter or matters to be agreed upon is given to the Membership at the addresses and within the time periods set forth herein or duly waived in accordance herewith. The decision of the majority of the Membership (as evidenced by written response to be solicited in the notice) shall be binding on the Membership, provided a quorum of the Membership submits a response. The notice shall set forth a time period during which time a response must be made by a Member.

14. Voting Certificate and Ledger. All voting certificates shall be filed with the Secretary. The Secretary shall keep all voting certificates and shall prepare and maintain a ledger listing, by Unit, each Member who is designated to vote on behalf of such Unit.

15. Secret Ballot. At any time prior to a vote upon any matter at any meeting of Members, any Member may require that a vote be made by secret written ballot.

### ARTICLE III

#### BOARD OF DIRECTORS: NUMBER, POWERS, AND MEETINGS

##### 1. Composition and Selection.

A. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. After the Transfer Date, the Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of an Owner which is a corporation or partnership, the person designated in writing to the Secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a Director.

B. Number of Directors. The number of Directors in the Association shall be not less than three (3) nor more than five (5), as provided below. The initial Board shall consist of three (3) members as identified in the Articles. The Board elected on the Transfer Date shall have five (5) Directors,

thereafter, the Board shall determine the number of Directorships for the succeeding year at the Board meeting prior to the Annual Members' Meeting.

2. Nomination of Directors. Nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each Annual Members' Meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled. Nominations shall be permitted from the floor. All nominees and candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

3. Election and Term of Office. The provisions of the Articles setting forth the terms of the Directors service is incorporated herein be reference. The Directors shall hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

4. Removal of Directors and Vacancies.

A. A Director elected by the Membership may be removed from office for any reason deemed by the Members to be in the best interests of the Association, upon the affirmative vote or the agreement in writing of a majority of the Members at a special meeting of the Members. A special meeting of Members to so remove a Director elected by them shall be held, subject to the notice provisions hereof, upon the written request of ten percent (10%) of the Members. However, before any Director is removed from office, he shall be notified in writing at least two (2) days prior to the meeting at which the motion to remove him will be made, and such Director shall be given an opportunity to be heard at such meeting, should he be present, prior to the vote on his removal.

B. The Members shall elect, at a special meeting or at the Annual Members' Meeting, persons to fill vacancies on the Board caused by the removal of a Director elected by the Members.

C. A Director designated by the Developer as provided in the Articles may be removed only by the Developer in its sole discretion and without any need for a meeting or vote. The Developer shall have the unqualified right to name a successor for any Director designated and thereafter removed by it or for any vacancy on the Board as to a Director designated by it, and the Developer shall notify the Board as to any such removal or vacancy and the name of the successor Director and of the commencement date for the term of such successor Director.

D. Any Director elected by the Membership who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a Director, a vacancy may be declared by the Board and it may appoint a successor.

5. Meetings.

A. Organization Meetings. The first meeting of the Board following each annual meeting of the Membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board. No further notice of the organizational meeting shall be necessary, providing that a quorum shall be present at such organizational meeting.

B. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of the time and place of the meeting shall be communicated to Directors not less than two (2) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver or a written consent to holding of the meeting. Notice of any meeting where assessments against Members are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

C. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or Vice President of the Association or by any three (3) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; or (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director. All such notices shall be given at the Director's telephone number or sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least two days (2) before the time set for the meeting. Notices given by personal delivery or telephone shall be delivered or telephoned at least twenty-four (24) hours before the time set for the meeting.

D. Waiver of Notice. The transactions of any meetings of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

E. Quorum of the Board. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. The notice provisions for the reconvened meeting shall be as determined by the Board.

F. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total vote of the Association at a regular or special meeting of the Association; provided any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

G. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of meetings of the Board, recording therein all resolutions adopted by the Board, and all transactions and proceedings occurring at such meetings. Minutes of all Board meetings shall be kept in a businesslike manner and shall be available for inspection by the Members and the Board at all reasonable times.

H. Open Meetings. Except for actions taken without a formal meeting, all meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussions or deliberations unless permission to speak is

requested on his or her behalf by a Director. In such case, the President may limit the time any Member may speak. In the event a Member not serving as a Director or not otherwise invited by the Directors to participate in the meeting attempts to become more than a mere observer at the meetings or conducts himself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he is a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

I. Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

6. Powers and Duties. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Members or the Membership generally.

The Board shall delegate to one of the Directors the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

A. Preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

B. Making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board, the annual assessment for each Member's proportionate share of the Common Expenses shall be payable in equal quarterly installments, each such installment to be due and payable in advance on the first day of each quarter for said

quarter;

C. Providing for the operation, care, upkeep, and maintenance of all of the Common Areas, and maintaining and operating the surface water management system as permitted by the South Florida Water Management District including all lakes, retention areas, culverts and related appurtenances, if any;

D. Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

E. Collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;

F. Making and amending rules and regulations;

G. Opening of bank accounts on behalf of the Association and designating the signatories required;

H. Making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Areas in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

I. Enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

J. Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

K. Paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

L. Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

M. Making available to any prospective purchaser of a Unit, any Owner of a Unit, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Unit and all other books, records, and financial statements of the Association; and

N. Permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Property.

7. Management Agent.

A. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board by these By-Laws, other than the powers set forth above. The Developer, or an affiliate of the Developer, may be employed as managing agent or manager.

B. No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on not more than ninety (90) days written notice.

8. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

A. Accrual accounting, as defined by generally accepted accounting principles, shall be employed;

B. Accounting and controls should conform to the federal income tax basis of accounting;

C. Cash accounts of the Association shall not be commingled with any other accounts;

D. No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

E. Any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

F. Commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

- (i) An income statement reflecting all income and expense activity for the preceding period on an accrual basis;
- (ii) A statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) A variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) A balance sheet as of the last day of the preceding period; and
- (v) A delinquency report listing all Owners who are delinquent in paying the quarterly installments of assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (A quarterly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of the first month of each quarter unless otherwise determined by the Board of Directors).

9. Borrowing. The Board shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Common Areas without the approval of the Members. The Board shall also have the power to borrow money for other purposes; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year.

10. Rights of the Association. In accordance with the Articles and By-Laws, the Association shall have the right to contract with any person for the performance of various duties and functions. Such agreements shall require the consent of a majority of all the Directors.

11. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit or to suspend an Owner's right to vote for nonpayment of assessments. In the event that any occupant of a Unit violates



the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

A. Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

B. Hearing. If a hearing is requested in a timely manner, the hearing shall be held by the body seeking to impose the sanction affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

C. Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, President or Secretary of the Association within thirty (30) days after the hearing before the Covenants Committee.

D. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not

limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE IV

OFFICERS

1. Officers. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board shall, from time to time, elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. Officers shall not receive compensation for their services. The compensation, if any, of all other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from employing an officer as an employee of the Association, or preclude the contracting with an officer for the management of the Association.

A. The President, who shall be a Director, shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the President of a corporation not-for-profit including, but not limited to, the power to appoint committees from among the Members at such times as he may, in his discretion, determine appropriate to assist in conducting the affairs of the Association. He shall preside at all meetings of the Board and the Membership.

B. In the absence or disability of the President, a Vice President shall exercise the powers and perform the duties of the President. The Vice President(s) shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board. In the event there shall be more than one Vice President elected by the Board, then they shall be designated "First", "Second", etc. and shall exercise the powers and perform the duties of the Presidency in such order.

C. The Secretary shall cause to be kept the minutes of all meetings of the Board and the Membership, which minutes shall

be kept in a businesslike manner and shall be available for inspection by Members and Directors at all reasonable times. He shall have custody of the seal of the Association and shall affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President.

D. Treasurer shall have custody of all of the property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the Members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all of the duties incident to the office of the Treasurer.

2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

3. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least one (1) officer or by such other person or persons as may be designated by resolution of the Board.

#### ARTICLE V

#### COMMITTEES

1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board.

2. Covenants Committee. In addition to any other committees which may be established, the Board may appoint a

Covenants Committee consisting of at least three (3) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association, and shall conduct all hearings pursuant to these By-Laws.

#### ARTICLE VI

##### MISCELLANEOUS

1. Fiscal Year. The fiscal year of the Association shall be determined by the Board.

2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Florida law, the Articles, the Declaration, or these By-Laws.

3. Conflicts. If there are conflicts between the provisions of Florida law, the Articles, the Declaration, and these By-Laws, the provisions of Florida law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

4. Books and Records.

A. Inspection by Members and Mortgagees. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, Member, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Property as the Board shall prescribe.

B. Rules of Inspection. The Board shall establish reasonable rules with respect to:

(i) Notice to be given to the custodian of the records;

(ii) Hours and days of the week when such an inspection may be made; and

(iii) Payment of the cost of reproducing copies of documents requested.

C. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

A. If to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

B. If to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this paragraph.

6. Amendments.

A. Prior to the conveyance of the first Unit, Developer may unilaterally amend these By-Laws. After such conveyance, the Developer may unilaterally amend these By-Laws so long as it still owns property submitted to the Declaration for development as part of the Property and so long as the amendment has no material adverse effect upon any right of any Member.

B. Thereafter and otherwise, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent, or any combination thereof, of voting Members representing a majority of the total votes of the Association. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

C. No By-Law shall be revised or amended by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but instead a notation must be inserted immediately preceding the proposed amendment in

substantially the following language: "Substantial re-wording of By-Law. See By-Law \_\_\_\_\_ for present text." Nonmaterial errors or omissions in the By-Law amendment process shall not invalidate an otherwise properly promulgated amendment.

D. No modification or amendment to these By-Laws shall be adopted which would affect or impair the priority of any Mortgagee, the validity of the mortgage held by such Mortgagee, or any of the rights of the Developer, without their prior written consent.

E. No modification or amendment to these By-Laws shall be adopted without the prior written consent of the Breakers West Association, Inc. and the Breakers West Development Corporation.

7. Arbitration. Internal disputes arising from the operation of the Association among Owners, the Board, or their agents and assigns may be resolved by voluntary binding arbitration. Any party to such an arbitration may seek enforcement of the final decision of the arbitrator in a court of competent jurisdiction.

8. Captions and Headings. The captions and headings pertaining to the articles and sections of these By-laws are solely used for ease of reference and in no way shall such captions or headings define, limit or in any way affect the substance of any provisions contained in these By-laws.

9. Severability. In the event any of the terms or provisions contained in these By-laws shall be deemed invalid by a court of competent jurisdiction, such term or provision shall be severable from these By-laws and the invalidity or unenforceability of any such term or provision shall not affect or impair any other term or provision contained in these By-laws.

10. Number and Gender. Whenever used in these By-laws, the singular number shall include the plural, the plural number shall include the singular, and the use of any one gender shall be applicable to all genders.

11. Governing Laws. The terms and provisions contained in these By-laws shall be construed in accordance with and governed by the laws of the State of Florida.

FLAGLER MANOR HOMEOWNERS  
ASSOCIATION, INC.

BY: Charles H. Hathaway Pres.

Attest: William E. Shaver Sec.

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RULES AND REGULATIONS  
FOR  
FLAGLER MANOR

The definitions contained in the Declaration of Covenants and Restrictions for Flagler Manor are incorporated herein as part of these Rules and Regulations.

1. The owners and lessees of each Lot shall abide by each and every term and provision of the Declaration of Covenants and Restrictions, and each and every term and provision of the Articles of Incorporation, and By-Laws of the Association. Likewise, the owners and lessees of each Lot shall abide by each and every term and provision of the Declaration of Covenants and Restrictions for Breakers West, the Articles of Incorporation and the By-Laws of the Breakers West Association, Inc. ("Breakers West Association").

2. No bicycles, tricycles, scooters, baby carriages or other similar vehicles or toys shall be allowed to remain in the Common Areas. The sidewalks and streets shall not be obstructed.

3. Any damage to the Common Areas, property, or equipment of the Association caused by any Owner, his family member, guest, invitee or lessee shall be repaired or replaced at the expense of such Owner.

4. An Owner will not park or position his vehicle so as to prevent access to another Lot. The Owners, their families, guests, invitees, licensees, and lessees will obey the posted parking and traffic regulations installed for the safety and welfare of all Owners.

5. No Owner shall do or permit any assembling or disassembling of motor vehicles except within his garage. Each Lot Owner shall be required to clean his driveway of any oil or other fluid discharged by his motor vehicle.

6. No transmitting or receiving aerial or antenna shall be attached to or hung from any part of a Lot or the Common Areas.

7. No clothesline or other similar device shall be allowed on any portion of the Common Areas.

8. All garbage and refuse from the Lots shall be deposited with care in each Owner's private garbage containers, which shall be placed in a walled-in area so they are not visible from the Roads or from adjoining Units. No garbage or refuse shall be deposited in any Common Area for any reason, except on the correct days of the week for pickup and removal. No littering shall be done or permitted on the Association Property.

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DOROTHY H. WILKEN, CLERK PB COUNTY, FL

9. No commercial vehicle, recreational vehicle (including, without limitation, all terrain vehicles), camper, trailer, boat, motorcycle, van, bus, truck, or similar vehicle shall park or be parked at any time on any portion of the Common Areas, except for commercial vehicles, vans, or trucks delivering goods or furnishing services. Said commercial vehicles, vans or trucks shall not park or be permitted to park overnight on any portion of the Common Areas or on any driveway or other portion of a Lot (except within the confines of a garage). Vehicles shall not be parked overnight on Roads or swales. The Association shall have the right to authorize the towing away of any such vehicles in violation of this rule with costs and fees, including attorneys' fees, if any, to be borne by the vehicle owner or violator.

10. No garage doors shall be permitted to remain open except for temporary purposes, and the Board may adopt further rules for the regulation of the opening of garage doors.

11. Complaints regarding the management of the Association property, or regarding the actions of other Owners, their families, guests, or lessees shall be made in writing to the Association and shall be signed by the complaining Lot Owner.

12. Any consent or approval given under these Rules and Regulations by the Association may be revocable at any time by the Board.

13. These Rules and Regulations may be modified, added to, or repealed in accordance with the By-Laws of the Association.

By Resolution of the Board of Directors  
of Flagler Manor Homeowners  
Association, Inc.

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