

DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
WATERS EDGE AT BRIAR BAY

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THIS INSTRUMENT PREPARED BY:

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DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
WATERS EDGE AT BRIAR BAY

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This DECLARATION includes the following Exhibits:

- Exhibit "A" - Legal Description of the SUBJECT PROPERTY
- Exhibit "B" - Articles of Incorporation of WATERS EDGE AT BRIAR BAY ASSOCIATION, INC.
- Exhibit "C" - Bylaws of the ASSOCIATION

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The property subject to this DECLARATION is also subject to the Master Declaration for Briar Bay, recorded in Official Records Book 13056, at Page 1, of the Public Records of Palm Beach County, Florida, and any amendments or supplements thereto now or hereafter recorded.

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THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF WATERS EDGE AT BRIAR BAY is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by MALLORY SQUARE-PALM BEACH LIMITED PARTNERSHIP, a Florida limited partnership ("DECLARANT").

DECLARANT owns the property described herein, and intends to develop the property as a residential community. The purpose of this DECLARATION is to provide various use and maintenance requirements and restrictions in the best interest of the future owners of dwellings within the property, to protect and preserve the values of the property. This DECLARATION will also establish an association which may own, operate and/or maintain various portions of the property and improvements constructed within the property, will have the right to enforce the provisions of this DECLARATION, and will be given various other rights and responsibilities. The expenses of the association will be shared by the owners of the property, who will be members of the association.

NOW, THEREFORE, DECLARANT hereby declares that the SUBJECT PROPERTY, as herein defined, shall be held, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens, and charges set forth herein, all of which are created in the best interest of the owners and residents of the SUBJECT PROPERTY, and which shall run with the SUBJECT PROPERTY and shall be binding upon all persons having and/or acquiring any right, title or interest in the SUBJECT PROPERTY or any portion thereof, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the SUBJECT PROPERTY, or any portion thereof.

1. DEFINITIONS. The terms used in this DECLARATION, and in the ARTICLES and the BYLAWS, shall have the following meanings, unless the context otherwise requires:

1.1 APPROVING PARTY means DECLARANT, so long as DECLARANT owns any LOT, or until DECLARANT assigns its rights as the APPROVING PARTY to the ASSOCIATION, and thereafter means the ASSOCIATION. DECLARANT reserves the right to assign its rights as the APPROVING PARTY to the ASSOCIATION in whole or in part. Notwithstanding the foregoing, DECLARANT, and not the ASSOCIATION, shall be the APPROVING PARTY with respect to the initial construction of any improvements within the SUBJECT PROPERTY by any builder or developer.

1.2 ARTICLES means the Articles of Incorporation of the ASSOCIATION, as same may be amended from time to time.

1.3 ASSESSMENT means the amount of money which may be assessed against an OWNER for the payment of the OWNER's share of COMMON EXPENSES, and/or any other funds which an OWNER may be required to pay to the ASSOCIATION as provided by this DECLARATION, the ARTICLES or the BYLAWS.

1.4 ASSOCIATION means the corporation established pursuant to the Articles of Incorporation attached hereto as an exhibit.

1.5 BOARD means the Board of Directors of the ASSOCIATION.

1.6 BRIAR BAY DECLARATION means the Master Declaration for Briar Bay, recorded in Official Records Book 13056, at Page 1, of the Public Records of Palm Beach County, Florida, and any amendments or supplements thereto now or hereafter recorded.

1.7 BYLAWS means the Bylaws of the ASSOCIATION, as same may be amended from time to time.

1.8 COMMON AREAS means any property, whether improved or unimproved, or any easement or interest therein, which is now or hereafter (i) owned by the ASSOCIATION, (ii) dedicated to the ASSOCIATION on any recorded plat, (iii) required by any recorded plat or other recorded document to be maintained by the ASSOCIATION, (iv) declared to be a COMMON AREA by this DECLARATION, or (v) intended to be a COMMON AREA by DECLARANT. COMMON AREAS may include, but are not limited to, parks, open areas, lakes, recreational facilities, roads, entranceways, parking areas, and other similar properties, provided that the foregoing shall not be deemed a representation or warranty that any or all of the foregoing types of COMMON AREAS will be provided.

1.9 COMMON EXPENSES means all expenses of any kind or nature whatsoever incurred by the ASSOCIATION, including, but not limited to, the following:

1.10 Expenses incurred in connection with the ownership, maintenance, repair, improvement or operation of the COMMON AREAS, or any other property to be maintained by the ASSOCIATION as provided in this DECLARATION, including, but not limited to, utilities, taxes, assessments, insurance, operation, maintenance, repairs, improvements, and alterations.

1.10.1 Expenses of obtaining, repairing or replacing personal property in connection with any COMMON AREA or the performance of the ASSOCIATION's duties.

1.10.2 Expenses incurred in connection with the administration and management of the ASSOCIATION.

1.10.3 Expenses declared to be COMMON EXPENSES by the provisions of this DECLARATION, or by the ARTICLES or BYLAWS.

1.10.4 Any amounts payable by the ASSOCIATION to any other association or any governmental authority.

1.11 COMMON SURPLUS means the excess of all receipts of the ASSOCIATION over the amount of the COMMON EXPENSES.

1.12 DECLARANT means the PERSON executing this DECLARATION, or any PERSON who may be assigned the rights of DECLARANT pursuant to a written assignment executed by the then present DECLARANT recorded in the public records of the county in which the SUBJECT PROPERTY is located. In addition, in the event any PERSON obtains title to all the SUBJECT PROPERTY then owned by DECLARANT as a result of the foreclosure of any mortgage or deed in lieu thereof, such PERSON may elect to become the DECLARANT or to have any rights of DECLARANT by a written election recorded in the public records of the county in which the SUBJECT PROPERTY is located, and regardless of the exercise of such election, such PERSON may appoint as DECLARANT or assign any rights of DECLARANT to any third party who acquires title to all or any portion of the SUBJECT PROPERTY by written appointment recorded in the public records recorded in the county in which the SUBJECT PROPERTY is located. In any event, any subsequent DECLARANT shall not be liable for any actions or defaults of, or any obligations incurred by, any prior DECLARANT, except as same may be expressly assumed by the subsequent DECLARANT.

1.13 DECLARATION means this document as it may be amended from time to time.

1.14 IMPROVEMENT means any building, fence, wall, patio area, driveway, walkway, landscaping, antenna, sign, mailbox, pool, tennis court, or other structure or improvement, which is constructed, made, installed, placed or developed within or upon, or removed from, any LOT, and all exterior portions of a UNIT including exterior walls, roofs, enclosures, windows, doors, shutters, awnings, gutters and other exterior portions of a UNIT, and any change, alteration, addition or removal of same other than normal maintenance and repair which does not materially alter or change the exterior appearance, condition and color of same.

1.15 INSTITUTIONAL LENDER means the holder of a mortgage encumbering a LOT, which holder in the ordinary course of business makes, purchases, guarantees, or insures mortgage loans, and which is not owned or controlled by the OWNER of the LOT encumbered. An INSTITUTIONAL LENDER may include, but is not limited to, a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension or profit sharing plan, mortgage company, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, or any other similar type of lender generally recognized as an institutional-type lender. For definitional purposes only, an INSTITUTIONAL LENDER shall also mean the holder of any mortgage executed by or in favor of DECLARANT, whether or not such holder would otherwise be considered an INSTITUTIONAL LENDER. For definitional purposes only, an INSTITUTIONAL LENDER shall also mean the holder of any mortgage executed by or in favor of DECLARANT, or which encumbers any portion of the SUBJECT PROPERTY which is owned by DECLARANT, whether or not such holder would otherwise be considered an INSTITUTIONAL LENDER, and notwithstanding anything contained herein to the contrary, the holder of any such mortgage shall be entitled to all rights and protections granted to first mortgagees hereunder, whether or not such mortgage is a first mortgage.

1.16 LOT means any platted lot within the SUBJECT PROPERTY, or any other parcel of land located within the SUBJECT PROPERTY, which has been or is intended to be conveyed by DECLARANT to an OWNER and which contains or is intended to contain a UNIT, and shall include any UNIT constructed upon the LOT.

1.17 OWNER means the record owner(s) of the fee title to a LOT.

1.18 PERSON means an individual, corporation, partnership, trust, or any other legal entity.

1.19 SUBJECT PROPERTY means all of the property subject to this DECLARATION from time to time, which as of the execution of this DECLARATION is the property described in Exhibit "A" attached hereto, and includes any property that is hereafter added to this DECLARATION, and excludes any property that is hereafter withdrawn from this DECLARATION, by an amendment.

1.20 UNIT means the residential dwelling constructed upon a LOT.

2. ASSOCIATION. In order to provide for the administration of the SUBJECT PROPERTY and this DECLARATION, the ASSOCIATION has been organized under the Laws of the State of Florida.

2.1 ARTICLES. A copy of the ARTICLES is attached hereto as Exhibit "B." No amendment to the ARTICLES shall be deemed an amendment to this DECLARATION, and this DECLARATION shall not prohibit or restrict amendments to the ARTICLES, except as specifically provided herein.

2.2 BYLAWS. A copy of the BYLAWS is attached as Exhibit "C." No amendment to the BYLAWS shall be deemed an amendment to this DECLARATION, and this DECLARATION shall not prohibit or restrict amendments to the BYLAWS, except as specifically provided herein.

2.3 Powers of the ASSOCIATION. The ASSOCIATION shall have all of the powers indicated or incidental to those contained in its ARTICLES and BYLAWS. In addition, the ASSOCIATION shall have the power to enforce this DECLARATION and shall have all of the powers granted to it by this DECLARATION. By this DECLARATION, the SUBJECT PROPERTY is hereby submitted to the jurisdiction of the ASSOCIATION.

2.4 Approval or Disapproval of Matters. Whenever the approval, consent, or decision of the OWNERS is required for any matter pursuant to this DECLARATION, the ARTICLES, or the BYLAWS, such approval, consent, or decision shall be made by a majority of the votes of the OWNERS present in person or by proxy at a duly called meeting of the ASSOCIATION at which a quorum exists, in accordance with the ARTICLES and the BYLAWS, except for matters where a greater voting requirement is specified.

2.5 Acts of the ASSOCIATION. Unless the approval or action of the OWNERS and/or a certain specific percentage of the BOARD is specifically required by this DECLARATION, the ARTICLES or BYLAWS, or by applicable law, all approvals or actions required or permitted to be given or taken by the ASSOCIATION shall be given or taken by the BOARD, without the consent of the OWNERS, and the BOARD may so approve an act through the proper officers of the ASSOCIATION without a specific resolution. When an approval or action of the ASSOCIATION is permitted to be given or taken, such action or approval may be conditioned in any manner the ASSOCIATION deems appropriate, or the ASSOCIATION may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal, except as herein specifically provided to the contrary.

2.6 Management and Service Contracts. The ASSOCIATION shall have the right to contract for professional management or services on such terms and conditions as the BOARD deems desirable in its sole discretion, provided, however, that any such contract shall not exceed three (3) years and shall be terminable by either party without cause and without payment of a termination or penalty fee on ninety (90) days or less written notice.

2.7 Membership. All OWNERS shall be members of the ASSOCIATION. Membership as to each LOT shall be established, and transferred, as provided by the ARTICLES and the BYLAWS.

2.8 OWNERS Voting Rights. The votes of the OWNERS shall be established and exercised as provided in the ARTICLES and BYLAWS.

### 3. COMMON AREAS, DUTIES AND OBLIGATIONS OF THE ASSOCIATION.

#### 3.1 Conveyance of COMMON AREAS to ASSOCIATION.

3.1.1 By DECLARANT. DECLARANT shall have the right to convey title to any property owned by it, or any easement or interest therein, to the ASSOCIATION as a COMMON AREA, and the ASSOCIATION shall be required to accept such conveyance. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the public records of the county where the SUBJECT PROPERTY is located.

3.1.2 By Any Other PERSON. Any other PERSON may also convey title to any property owned by such PERSON, or any easement or interest therein, to the ASSOCIATION as a COMMON AREA, but the ASSOCIATION shall not be required to accept any such conveyance, and no such conveyance shall be effective to impose any obligation for the maintenance, operation or improvement of any such property upon the ASSOCIATION, unless the BOARD expressly accepts the conveyance by executing the deed or other instrument of conveyance or by recording a written acceptance of such conveyance in the public records of the county in which the SUBJECT PROPERTY is located.

3.2 Use and Benefit. All COMMON AREAS shall be held by the ASSOCIATION for the use and benefit of the ASSOCIATION and the OWNERS, the residents of the SUBJECT PROPERTY, and their respective guests and invitees, the holders of any mortgage encumbering any LOT from time to time, and any other persons authorized to use the COMMON AREAS or any portion thereof by DECLARANT or the ASSOCIATION, for all proper and reasonable purposes and uses for which the same are reasonably intended, subject to the terms of this DECLARATION, subject to the terms of any easement, restriction, reservation or limitation of record affecting the COMMON AREA or contained in the deed or instrument conveying the COMMON AREA to the ASSOCIATION, and subject to any rules and regulations adopted by the ASSOCIATION. An easement and right for such use is hereby created in favor of all OWNERS, appurtenant to and appertaining to their LOTS.

3.3 Grant and Modification of Easements. The ASSOCIATION shall have the right to grant, modify or terminate easements over, under, upon, and/or across any property owned by the ASSOCIATION, and shall have the further right to modify, relocate or terminate existing easements in favor of the ASSOCIATION.

3.4 Additions, Alterations or Improvements. The ASSOCIATION shall have the right to make additions, alterations or improvements to the COMMON AREAS, and to purchase any personal property, as it deems necessary or desirable from time to time, provided, however that the approval of the OWNERS shall be required if any recreational facility is removed or substantially and adversely affected, or for any addition, alteration, or improvement or any purchase of personal property, exceeding a sum equal to one (1) month's total ASSESSMENTS for COMMON EXPENSES payable by all of the MEMBERS, or if the cost of the foregoing shall in any fiscal year exceed in the aggregate a sum equal to two (2) months' ASSESSMENTS for COMMON EXPENSES payable by all of the OWNERS. The foregoing approval shall in no event be required with respect to expenses incurred in connection with the maintenance, repair or replacement of existing COMMON AREAS, or any existing improvements or personal property associated therewith. The cost and expense of any such additions, alterations or improvements to the COMMON AREAS, or the purchase of any personal property, shall be a COMMON EXPENSE. In addition, so long as DECLARANT owns any portion of the SUBJECT PROPERTY, DECLARANT shall have the right to make any additions, alterations or improvements to the COMMON AREAS as may be desired by DECLARANT in its sole discretion from time to time, at DECLARANT's expense.

3.5 Utilities. The ASSOCIATION shall pay for all utility services for the COMMON AREAS, or for any other property to be maintained by the ASSOCIATION, as a COMMON EXPENSE.

3.6 Taxes. The ASSOCIATION shall pay all real and personal property taxes and assessments, if any, assessed against any property owned by the ASSOCIATION, as a COMMON EXPENSE.

3.7 Insurance. The ASSOCIATION shall purchase insurance as a COMMON EXPENSE, as follows:

3.7.1 Hazard Insurance protecting against loss or damaged by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard all-risk endorsement, covering 100% of the current replacement cost of all COMMON AREAS and property owned by the ASSOCIATION, excluding land, foundations, excavations, landscaping, and other items normally excluded from insurance coverage. The ASSOCIATION shall not use hazard insurance proceeds for any purpose other than the repair, replacement or reconstruction of any damaged or destroyed property without the approval of at least two-thirds (2/3) of the votes of the OWNERS.

3.7.2 Comprehensive General Liability Insurance protecting the ASSOCIATION from claims for bodily injury, death or property damage providing for coverage of at least \$1,000,000 for any single occurrence or such lesser amount as is approved by the OWNERS.

3.7.3 Blanket Fidelity Bonds for anyone who handles or is responsible for funds held or administered by the ASSOCIATION, covering the maximum funds that will be in the custody or control of the ASSOCIATION or any managing agent, which coverage shall be at least equal to the sum of three (3) months assessments on all LOTS plus reserve funds.

3.7.4 Such other insurance as may be desired by the ASSOCIATION, such as flood insurance, errors and omissions insurance, workman's compensation insurance, or any other insurance.

3.7.5 All insurance purchased by the ASSOCIATION must include a provision requiring at least 30 days written notice to the ASSOCIATION before the insurance can be cancelled or the coverage reduced for any reason.

3.7.6 Any deductible or exclusion under the policies shall be a COMMON EXPENSE and shall not exceed \$2,500.00 or such other sum as is approved by the BOARD.

3.7.7 Upon request, each INSTITUTIONAL LENDER shall have the right to receive a copy or certificate of the insurance purchased by the ASSOCIATION, and shall have the right to require at least 30 days written notice to the INSTITUTIONAL LENDER before any insurance can be cancelled or the coverage reduced for any reason. Each INSTITUTIONAL LENDER shall have the right upon notice to the ASSOCIATION to review and approve, which approval shall not be unreasonably withheld, the form, content, issuer, coverage and deductibles of all insurance purchased by the ASSOCIATION, and to require the ASSOCIATION to purchase insurance complying with the reasonable and customary requirements of the INSTITUTIONAL LENDER. In the event of a conflict between the INSTITUTIONAL LENDERS, the requirements of the INSTITUTIONAL LENDER holding mortgages encumbering LOTS which secure the largest aggregate indebtedness shall control.

3.7.8 Waiver. If the BOARD determines that the insurance required to be purchased by the ASSOCIATION pursuant to this Paragraph would be unduly expensive, or if such insurance is not obtainable, the ASSOCIATION may purchase insurance with less coverage than specified above, provided the BOARD gets the approval of the OWNERS as to such action.

3.8 Default. Any OWNER or INSTITUTIONAL LENDER may pay for any utilities, taxes or assessments, or insurance premiums which are not paid by the ASSOCIATION when due, or may secure new insurance upon the lapse of an insurance policy, and shall be owed immediate reimbursement therefor from the ASSOCIATION, plus interest and any costs of collection, including attorneys' fees.

3.9 Damage or Destruction. In the event any improvement (other than landscaping) within any COMMON AREA is damaged or destroyed due to fire, flood, wind, or other casualty or reason, the ASSOCIATION shall restore, repair, replace or rebuild (hereinafter collectively referred to as a "repair") the damaged improvement to the condition the improvement was in immediately prior to such damage or destruction, unless otherwise approved by two-thirds (2/3) of the votes of the OWNERS. If any landscaping within any COMMON AREA or any other property maintained by the ASSOCIATION is damaged or destroyed, the ASSOCIATION shall only be obligated to make such repairs to the landscaping as is determined by the BOARD in its discretion. Any excess cost of repairing any improvement over insurance proceeds payable on account of any damage or destruction shall be a COMMON EXPENSE, and the ASSOCIATION shall have the right to make a special ASSESSMENT for any such expense.

3.10 Maintenance of COMMON AREAS and other Property. The ASSOCIATION shall maintain all COMMON AREAS and property owned by the ASSOCIATION, and all improvements thereon, in good condition at all times. If pursuant to any easement the ASSOCIATION is to maintain any improvement within any property, then the ASSOCIATION shall maintain such improvement in good condition at all times. In addition, the ASSOCIATION shall have the right to assume the obligation to operate and/or maintain any property which is not owned by the ASSOCIATION if the BOARD, in its sole discretion, determines that the operation and/or maintenance of such property by the ASSOCIATION would be in the best interests of the residents of the SUBJECT PROPERTY. Without limitation, the ASSOCIATION shall have the right to assume the obligation to operate and/or maintain any walls or fences on or near the boundaries of the SUBJECT PROPERTY, and any pavement, landscaping, sprinkler systems, sidewalks, paths, signs, entrance features, or other improvements, in or within 40 feet of any public or private road right-of-ways within or contiguous to the SUBJECT PROPERTY. To the extent the ASSOCIATION assumes the obligation to operate and/or maintain any property which is not owned by the ASSOCIATION, the ASSOCIATION shall have an easement and right to enter upon such property in connection with the operation in or maintenance of same, and no such entry shall be deemed a trespass. Such assumption by the ASSOCIATION of the obligation to operate and/or maintain any property which is not owned by the ASSOCIATION may be evidenced by a supplement to this DECLARATION, or by a written document recorded in the public records of the county in which the SUBJECT PROPERTY is located, and may be made in connection with an agreement with any OWNER, the DECLARANT, or any governmental authority otherwise responsible for such operation or maintenance, and pursuant to any such document the operation and/or maintenance of any property

may be made a permanent obligation of the ASSOCIATION. The ASSOCIATION may also enter into agreements with any other PERSON, or any governmental authority, to share in the maintenance responsibility of any property if the BOARD, in its sole and absolute discretion, determines this would be in the best interest of the OWNER. Notwithstanding the foregoing, if any OWNER or any resident of any UNIT, or their guests or invitees, damages any COMMON AREA or any improvement thereon, or any other portion of the SUBJECT PROPERTY to be maintained by the ASSOCIATION, the OWNER shall be liable to the ASSOCIATION for the cost of repair or restoration to the extent not covered by the ASSOCIATION's insurance, and to the extent such liability exists under the laws of the State of Florida.

3.11 Surface Water Management System. It is acknowledged the surface water management and drainage system for the SUBJECT PROPERTY is one integrated system, and accordingly shall be deemed a COMMON AREA, and an easement is hereby created over the entire SUBJECT PROPERTY for surface water drainage and for the installation and maintenance of the surface water management and drainage system for the SUBJECT PROPERTY, provided however that such easement shall be subject to improvements constructed within the SUBJECT PROPERTY as permitted by controlling governmental authorities from time to time. The surface water management and drainage system of the SUBJECT PROPERTY shall be developed, operated, and maintained in conformance with the requirements of the South Florida Water Management District and/or any other controlling governmental authority. The ASSOCIATION shall maintain as a COMMON EXPENSE the entire surface water management and drainage system for the SUBJECT PROPERTY, including but not limited to all lakes, canals, swale areas, retention areas, culverts, pipes, pumps, catch basins, and related appurtenances, regardless of whether or not same are within the SUBJECT PROPERTY or are owned by the ASSOCIATION. Such maintenance shall be performed in conformance with the requirements of the South Florida Water Management District, and any other controlling governmental authority, and an easement for such maintenance is hereby created. Such maintenance responsibility on the part of the ASSOCIATION shall not be deemed to include the maintenance of the banks of any lake or canal, or the maintenance of any landscaping, within any portion of the SUBJECT PROPERTY which is not a COMMON AREA or contiguous to a COMMON AREA or which is not otherwise to be maintained by the ASSOCIATION pursuant to this DECLARATION. Such maintenance responsibility may, but is not required to, include any portion of the surface water management and drainage system for the SUBJECT PROPERTY which is owned and maintained by the Briar Bay Community Association, Inc. pursuant to the BRIAR BAY DECLARATION, or by any controlling governmental authority.

3.12 Mortgage and Sale of COMMON AREAS. The ASSOCIATION shall not encumber, sell or transfer any COMMON AREA owned by the ASSOCIATION without the approval of 2/3 of the votes of all of the OWNERS, excluding DECLARANT, provided, however, that the ASSOCIATION may dedicate any COMMON AREA to any governmental authority with the approval of the OWNERS. Notwithstanding the foregoing, if DECLARANT changes the location of any unconveyed LOTS such that a portion of the COMMON AREA would be within a relocated LOT, then the ASSOCIATION shall have the right without the approval of the OWNERS to convey such portion of the COMMON AREAS to DECLARANT, and in connection therewith, DECLARANT shall convey to the ASSOCIATION any property which will be a COMMON AREA due to the relocation of the LOTS. If ingress or egress to any LOT is through any COMMON AREA, any conveyance or encumbrance of such COMMON AREA shall be subject to an appurtenant easement for ingress and egress in favor of the OWNER(S) of such LOT, unless alternative ingress and egress is provided to the OWNER(S).

3.13 Cable Television and Home Security Monitoring. The ASSOCIATION shall have the right, but not the obligation, to enter into an agreement with a cable television company to provide cable television services to all of the UNITS and shall further have the right, but not the obligation, to enter into an agreement to provide home security monitoring services for all of the UNITS, on such terms and conditions as the BOARD may determine from time to time, and any charges for such services shall be a COMMON EXPENSE. Notwithstanding anything contained herein to the contrary, the ASSOCIATION shall not provide such services so long as same are provided by the Briar Bay Community Association, Inc. pursuant to Paragraph 2.18 of the BRIAR BAY DECLARATION.

4. EASEMENTS. Each of the following easements are hereby created, which shall run with the land and, notwithstanding any of the other provisions of this DECLARATION, may not be substantially amended or revoked in such a way as to unreasonably interfere with their proper and intended uses and purposes, and each shall survive the termination of this DECLARATION.



4.1 Easements for Pedestrian and Vehicular Traffic. Easements for pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist upon the COMMON AREAS and be intended for such purpose; and for pedestrian and vehicular traffic and parking over, through, across and upon such portion of the COMMON AREAS as may from time to time be paved and intended for such purposes, same being for the use and benefit of the OWNERS and the residents of the SUBJECT PROPERTY, their mortgagees, and their guests and invitees.

4.2 Perpetual Nonexclusive Easement in COMMON AREAS. The COMMON AREAS shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive appurtenant easement in favor of all OWNERS and residents of the SUBJECT PROPERTY from time to time, and their guests and invitees, for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended.

4.3 Service and Utility Easements. Easements in favor of governmental and quasi-governmental authorities, utility companies, cable television companies, ambulance or emergency vehicle companies, and mail carrier companies, over and across all roads existing from time to time with the SUBJECT PROPERTY, and over, under, on and across the COMMON AREAS, as may be reasonably required to permit the foregoing, and their agents and employees, to provide their respective authorized services to and for the SUBJECT PROPERTY. Also, easements as may be required for the installation, maintenance, repair and providing of utility services, equipment and fixtures in order to adequately serve the SUBJECT PROPERTY, including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, television antenna and cable television facilities, and electronic security. However, easements affecting any LOT which serve any other portion of the SUBJECT PROPERTY shall only be under the LOT, and shall only be for utility services actually constructed, or reconstructed, and for the maintenance thereof, unless otherwise approved in writing by the OWNER of the LOT. An OWNER shall do nothing on his LOT which interferes with or impairs the utility services using these easements. The BOARD or its designee shall have a right of access to each LOT to inspect, maintain, repair or replace the utility service facilities contained under the LOT and to remove any improvements interfering with or impairing the utility services or easement herein reserved at the expense of the applicable OWNER, and an easement for such entry is hereby reserved; provided such right of access shall not unreasonably interfere with the OWNER's permitted use of the LOT.

4.4 Encroachments. If any portion of the COMMON AREAS encroaches upon any LOT; if any UNIT or other improvement encroaches upon any LOT or upon any portion of the COMMON AREAS; or if any encroachment shall hereafter occur as a result of (i) construction or reconstruction of any improvements; (ii) settling or shifting of any improvements; (iii) any addition, alteration or repair to the COMMON AREAS made by or with the consent of the ASSOCIATION, (iv) any repair or restoration of any improvements (or any portion thereof) or any UNIT after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any UNIT or the COMMON AREAS; or (v) any non-purposeful or non-negligent act of an OWNER except as may be authorized by the BOARD, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

4.5 Easements for overhanging troughs or gutters, downspouts and the discharge therefrom of rainwater and the subsequent flow thereof over the LOTS and the COMMON AREAS.

4.6 Additional Easements. DECLARANT (so long as it owns any LOT) and the ASSOCIATION, on their behalf and on behalf of all OWNERS, each shall have the right to (i) grant and declare additional easements over, upon, under and/or across the COMMON AREAS in favor of DECLARANT or any person, entity, public or quasi-public authority or utility company, or (ii) modify, relocate, abandon or terminate existing easements benefitting or affecting the SUBJECT PROPERTY. In connection with the grant, modification, relocation, abandonment or termination of any easement, DECLARANT reserves the right to relocate roads, parking areas, utility lines, and other improvements upon or serving the SUBJECT PROPERTY. So long as the foregoing will not unreasonably and adversely interfere with the use of LOTS for dwelling purposes, no consent of any OWNER or any mortgagee of any LOT shall be required or, if same would unreasonably and adversely interfere with the use of any LOT for dwelling purposes, only the consent of the OWNERS and INSTITUTIONAL LENDERS of LOTS so affected shall be required. To the extent required, all OWNERS hereby irrevocably appoint DECLARANT and/or the ASSOCIATION as their attorney-in-fact for the foregoing purposes.

4.7 Sale and Development Easement. DECLARANT reserves and shall have an easement over, upon, across and under the SUBJECT PROPERTY as may be reasonably required by DECLARANT in

connection with the development, construction, sale and promotion, or leasing, of any LOT or UNIT within the SUBJECT PROPERTY or within any other property owned by DECLARANT.

## 5. MAINTENANCE OF THE SUBJECT PROPERTY.

5.1 By the ASSOCIATION. The ASSOCIATION shall operate, maintain, repair and replace, as a COMMON EXPENSE, the following portions of the SUBJECT PROPERTY, and shall have an easement over the LOTS and the irrevocable right of access to the LOTS and the UNITS from time to time during reasonable hours as may be necessary in connection with the ASSOCIATION's maintenance obligations:

5.1.1 COMMON AREAS. The ASSOCIATION shall maintain all COMMON AREAS, or other areas for which the duty to maintain has been delegated to and accepted by the ASSOCIATION, and all paving, parking areas, landscaping and improvements contained thereon from time to time.

5.1.2 Landscaping. The ASSOCIATION shall be responsible for the maintenance and care of all landscaping within the COMMON AREAS, and in the unpaved portion of contiguous road right-of-ways. In addition, the ASSOCIATION shall have the right from time to time, in the sole and absolute discretion of the BOARD, to assume the obligation to maintain landscaping within the LOTS. The ASSOCIATION shall plant, remove and/or replace sod, plants, flowers, shrubbery and trees when in the sole discretion of the ASSOCIATION same is appropriate and in the best interest of the SUBJECT PROPERTY. The ASSOCIATION's responsibility shall include mowing, trimming, pruning, edging, fertilizing, weed control, and landscape related insect and disease control. Notwithstanding the foregoing, if any OWNER installs landscaping on the OWNER's LOT which is materially more expensive to maintain than the landscaping on the other LOTS, then while the ASSOCIATION is maintaining the landscaping within the LOTS, the ASSOCIATION will have the right to assess the OWNER of such LOT for the extra cost of maintaining the special landscaping on such LOT, or in the alternative the ASSOCIATION may require the applicable OWNER to maintain such special landscaping as hereafter provided, and if the applicable OWNER fails to pay any such extra cost or maintain such landscaping, the ASSOCIATION will have the right to remove same in the sole discretion of the ASSOCIATION, without liability to the OWNER.

5.1.3 Utility Services. The ASSOCIATION shall maintain all utility lines and facilities, and drainage facilities, lines and equipment, not owned or maintained by any governmental authority or utility company, except for utility services located within any LOT, which serve only the LOT or the UNIT on the LOT.

5.1.4 Subdivision Wells and Water Sprinkler System. The ASSOCIATION shall maintain and repair wells (if any), pipes and water sprinkler systems throughout the SUBJECT PROPERTY, except for wells, pipes and sprinkler systems serving the fenced or walled-in area of any LOT. Notwithstanding the foregoing, if any OWNER installs any improvements on the OWNER'S LOT which requires a reconfiguration of the sprinkler system on the OWNER'S LOT, the OWNER shall be liable to the ASSOCIATION for the cost of same. Notwithstanding the foregoing, the OWNER of any LOT shall be required to maintain and replace the pump, if any, serving the sprinkler system for the LOT if such pump only services that one LOT.

5.1.5 Surface Water Management System. The ASSOCIATION shall operate and maintain the surface water management system for the SUBJECT PROPERTY, including but not limited to all lakes, canals, swale areas, retention areas, culverts, pipes, pumps, catch basins, and related facilities, in conformance with the requirements of the South Florida Water Management District and any other controlling governmental authority.

5.1.6 Sidewalks and Street Lighting. The ASSOCIATION shall maintain any common sidewalks within the SUBJECT PROPERTY, but not any sidewalk or walkway exclusively serving only one LOT. The ASSOCIATION shall also maintain any common street lighting within the SUBJECT PROPERTY, other than any street lighting exclusively serving one LOT, and shall maintain and pay for any utility services used in connection with such common street lighting.

5.1.7 Other Property. The ASSOCIATION shall have the right to maintain such other areas within or contiguous to the SUBJECT PROPERTY as the BOARD determines from time to time is in the best interest of the OWNERS, and the cost of any such maintenance shall be a COMMON EXPENSE. In particular, the ASSOCIATION shall have the right to maintain landscaping within any road right-of-way contiguous to the SUBJECT PROPERTY, to the edge of the pavement within such

right-of-way, and if any lake or canal is contiguous to the SUBJECT PROPERTY, the ASSOCIATION shall have the right to maintain landscaping to the waterline of any such lake or canal. The ASSOCIATION may also enter into agreements with any other PERSON, or any governmental authority, to share in the maintenance responsibility of any property if the BOARD, in its sole and absolute discretion, determines this would be in the best interest of the OWNER.

5.1.8 Special Maintenance Required by OWNERS. If any OWNER or any resident of any UNIT, or their guests or invitees, damages any COMMON AREA or any improvement thereon, the OWNER of such UNIT shall be liable to the ASSOCIATION for the cost of repair or restoration to the extent not covered by the ASSOCIATION's insurance.

5.2 By the OWNERS. Each OWNER shall maintain his UNIT and all improvements upon his LOT in first class condition, except those portions of the UNIT and LOT which are to be maintained by the ASSOCIATION as provided above. The exterior of all UNITS including but not limited to roofs and walls (except for periodic painting and cleaning to be performed by the ASSOCIATION), doors, garage doors, windows, patio areas, pools, screenings, awnings, and other portions of the exterior of the UNITS shall be maintained in first-class condition and repair and in a neat and attractive manner. Exterior maintenance, including painting, shall be periodically performed as reasonably necessary. Any OWNER intending to paint his UNIT or the other IMPROVEMENTS on this LOT shall obtain the consent of the APPROVING PARTY as to the color of the paint that will be used, which in any event shall be harmonious with other IMPROVEMENTS within the SUBJECT PROPERTY. No unsightly peeling of paint or discoloration of same, mildew, rust deposits, dirt, or deterioration shall be permitted. All sidewalks, driveways and parking areas within the OWNER's LOT or serving the OWNER's UNIT shall be cleaned and kept free of debris; and cracks, damaged and/or eroding areas on same shall be repaired, replaced, and/or resurfaced as necessary. In addition, if any OWNER installs landscaping which is more extensive than the landscaping upon the other LOTS, at the request of the ASSOCIATION the OWNER will be required to maintain such landscaping, and if the OWNER fails to do so, the ASSOCIATION shall have the right to remove such landscaping.

## 6. ARCHITECTURAL CONTROL FOR EXTERIOR CHANGES.

6.1 Purpose. The APPROVING PARTY shall have the right to exercise architectural control over all IMPROVEMENTS, to assist in making the entire SUBJECT PROPERTY a community of high standards and aesthetic beauty. Such architectural control may include all architectural aspects of any IMPROVEMENT including, but not limited to, size, height, site planning, set-back exterior design, materials, colors, open space, landscaping, waterscaping, and aesthetic criteria.

6.2 OWNER to Obtain Approval. No OWNER shall make any IMPROVEMENT, and no OWNER shall apply for any governmental approval or building or other permit for any IMPROVEMENT, unless the OWNER first obtains the written approval of the IMPROVEMENT from the APPROVING PARTY.

6.3 Request for Approval. Any request for approval by the APPROVING PARTY of any IMPROVEMENT shall be in writing and shall be accompanied by plans and specifications or other details as the APPROVING PARTY may deem reasonably necessary in connection with its determination as to whether or not it will approve same. The plans and specifications submitted for approval shall show the nature, kind, shape, height, materials, color, and location of all proposed IMPROVEMENTS. If the APPROVING PARTY deems the plans and specifications deficient, the APPROVING PARTY may require such further detail in the plans and specifications as the APPROVING PARTY deems necessary in connection with its approval of same, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, and descriptions or samples of exterior materials and colors, and until receipt of the foregoing, the APPROVING PARTY may postpone review of any plans submitted for approval. The APPROVING PARTY shall have the right to charge a reasonable fee to any PERSON requesting architectural approval, including where applicable the fee of any architect or engineer hired by the APPROVING PARTY to review any plans or specifications, provided that the APPROVING PARTY shall not be required to use the services of any architect or engineer in connection with its exercise of architectural approval. The APPROVING PARTY shall not be obligated to review or approve any plans and specifications until such fee is paid. Approval of any request shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable improvement of any property, but may be withheld due to aesthetic considerations.

6.4 Approval. The APPROVING PARTY shall notify the OWNER of its approval or disapproval, or that the APPROVING PARTY requires additions to the plans and specifications or other materials,

by written notice within 30 days after request for such approval is made in writing to the APPROVING PARTY, and all documents, plans and specifications, and other materials required by the APPROVING PARTY in connection with such approval have been submitted. In the event the APPROVING PARTY fails to disapprove any request within such 30 day period, the request shall be deemed approved and upon request the APPROVING PARTY shall give written notice of such approval, provided the party requesting such approval pays any fee charged by the APPROVING PARTY in connection with the approval. In consenting to any proposed IMPROVEMENT, the APPROVING PARTY may condition such consent upon changes being made and any such approval shall be deemed a disapproval unless and until the party requesting the approval agrees to the changes. If the APPROVING PARTY approves, or is deemed to have approved, any IMPROVEMENT, the OWNER requesting approval may proceed to make the IMPROVEMENT in strict conformance with the plans and specifications approved or deemed to have been approved, subject to any conditions of the APPROVING PARTY's approval, and shall not make any material changes without the approval of the APPROVING PARTY. If the APPROVING PARTY approves any IMPROVEMENT, same shall not require the APPROVING PARTY, or any subsequent APPROVING PARTY to approve any similar IMPROVEMENT in the future, and the APPROVING PARTY shall have the right in the future to withhold approval of similar IMPROVEMENTS requested by any other OWNER.

6.5 Architectural Guidelines and Criteria. The APPROVING PARTY may adopt and modify from time to time, in its discretion, minimum guidelines, criteria and/or standards which will be used by it in connection with its exercise of architectural control, provided however that same shall not apply to any previously existing or approved IMPROVEMENT. The foregoing may include, but are not limited to, minimum square footage, maximum height, minimum set-back, and minimum landscaping requirements.

6.6 Inspections. Upon the completion of any IMPROVEMENT, the applicable OWNER shall give written notice of the completion to the APPROVING PARTY. Within 90 days thereafter, the APPROVING PARTY shall have the right to inspect the IMPROVEMENT and notify the OWNER in writing that the IMPROVEMENT is accepted, or that the IMPROVEMENT is deficient because it was not completed in conformance with the approved plans and specifications or in a manner otherwise acceptable to the APPROVING PARTY, specifying the particulars of such deficiencies. Within 30 days thereafter the OWNER shall correct the deficiencies set forth in the notice, and upon completion of the work the APPROVING PARTY shall again be given a notice of the completion, and the provisions of this Paragraph shall again become operative. If the APPROVING PARTY fails to notify the OWNER of any deficiencies within 90 days after receipt of a notice of completion the IMPROVEMENT shall be deemed to have been accepted by the APPROVING PARTY.

6.7 Remedy for Violations. In the event this section is violated in that any IMPROVEMENT is made without first obtaining the approval of the APPROVING PARTY, or is not made in strict conformance with any approval given or deemed given by the APPROVING PARTY, the APPROVING PARTY shall specifically have the right to injunctive relief to require the applicable OWNER to stop, remove and/or alter any IMPROVEMENT in a manner which complies with the requirements of the APPROVING PARTY, or the APPROVING PARTY may pursue any other remedy available to it. If DECLARANT is the APPROVING PARTY, then in connection with the enforcement of this section, DECLARANT shall have all of the rights of enforcement granted to the ASSOCIATION pursuant to this DECLARATION, including but not limited to the right to impose fines, and to assess and lien for costs and expenses incurred in enforcing this section, except that any fines shall be paid to the ASSOCIATION. In connection with the enforcement of this section, the APPROVING PARTY shall have the right to enter onto any LOT and make any inspection necessary to determine that the provisions of this Paragraph have been complied with. The failure of the APPROVING PARTY to object to any IMPROVEMENT prior to the completion of the IMPROVEMENT shall not constitute a waiver of the APPROVING PARTY's right to enforce the provisions of this section. Any action to enforce this Section must be commenced within 1 year after notice of the violation by the APPROVING PARTY, or within 3 years after the date of the violation, whichever occurs first. The foregoing shall be in addition to any other remedy set forth herein for violations of this DECLARATION. Notwithstanding anything contained within this DECLARATION to the contrary, the APPROVING PARTY shall have the exclusive authority to enforce the provisions of this Paragraph.

6.8 No Liability. Notwithstanding anything contained herein to the contrary, the APPROVING PARTY shall merely have the right, but not the duty, to exercise architectural control, and shall not be liable to any OWNER due to the exercise or non-exercise of such control, or the approval or disapproval of any IMPROVEMENT. Furthermore, the approval of any plans or specifications or any IMPROVEMENT

shall not be deemed to be a determination or warranty that such plans or specifications or IMPROVEMENT are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the APPROVING PARTY, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and the APPROVING PARTY shall not be liable for any defect or deficiency in such plans or specifications or IMPROVEMENT, or any injury resulting therefrom.

6.9 Compliance with Governmental Requirements. In addition to the foregoing requirements, any IMPROVEMENT made by any OWNER must be in compliance with the requirements of all controlling governmental authorities, and the OWNER shall be required to obtain an appropriate building permit from the applicable governmental authority when required by controlling governmental requirements. Any consent or approval by the APPROVING PARTY to any IMPROVEMENT may be made conditioned upon the OWNER obtaining a building permit for same, or providing the APPROVING PARTY written evidence from the controlling governmental authority that such permit will not be required, and in that event the OWNER shall not proceed with any IMPROVEMENT until such building permit or evidence that a building permit is not required is obtained and submitted to the APPROVING PARTY.

6.10 Construction by Licensed Contractor. If a building permit is required for any IMPROVEMENT made by any OWNER or PARCEL ASSOCIATION, then the IMPROVEMENT must be installed or constructed by a licensed contractor unless otherwise approved by the APPROVING PARTY, and in any event must be constructed in a good and workmanlike manner.

6.11 Certificate. Within 10 days after the request of any OWNER, the APPROVING PARTY shall issue without charge a written certification in recordable form as to whether or not the IMPROVEMENTS located upon the OWNER's LOT comply with the provisions of this DECLARATION.

6.12 Effect of BRIAR BAY DECLARATION. Any OWNER seeking architectural approval from the APPROVING PARTY shall also be required to obtain such approval pursuant to the BRIAR BAY DECLARATION, to the extent required thereunder.

## 7. USE RESTRICTIONS.

7.1 Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted, without the prior written consent of the APPROVING PARTY.

7.2 Automobiles, Vehicles and Boats. Only automobiles, vans constructed as private passenger vehicles with permanent rear seats and side windows, pick-up trucks of a type customarily used as private passenger vehicles with a carrying capacity of 1/2 ton or less, and other vehicles manufactured and used as private passenger vehicles, may be parked within the SUBJECT PROPERTY overnight without the prior written consent of the APPROVING PARTY, unless kept within an enclosed garage. In particular and without limitation, without the prior written consent of the APPROVING PARTY, no truck with more than two axles; no vehicle containing commercial lettering or signs on the outside of the vehicle or commercial equipment outside of the vehicle; and no recreational vehicle, camper, trailer, or vehicle other than a private passenger vehicle as specified above, and no boat, may be parked or stored outside of a UNIT overnight. No overnight parking is permitted on any streets, lawns, or areas other than driveways and garages, without the consent of the APPROVING PARTY. Notwithstanding the foregoing, automobiles owned by governmental law enforcement agencies are expressly permitted. The OWNER and residents of any UNIT may not keep more than two vehicles within the SUBJECT PROPERTY on a permanent basis without the prior written consent of the APPROVING PARTY. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to, the SUBJECT PROPERTY. All vehicles parked within the SUBJECT PROPERTY must be in good condition and repair, and no vehicle which does not contain a current license plate or which cannot operate on its own power shall be parked within the SUBJECT PROPERTY outside of an enclosed garage for more than 24 hours, and no major repair of any vehicle shall be made on the SUBJECT PROPERTY. All vehicles parked within the SUBJECT PROPERTY must be painted with colors and in a manner which is customary for private passenger vehicles, and which is not offensive or distasteful in the reasonable opinion of the APPROVING PARTY. No motorcycle, motorbike, moped, all-terrain vehicle, or other such vehicle is permitted to be operated within the SUBJECT PROPERTY unless such vehicle is licensed for street use and equipped with appropriate noise-muffling equipment so that its operation does not create an annoyance to the residents of the SUBJECT PROPERTY, and

if the APPROVING PARTY determines the operation of any such vehicle creates an annoyance to the residents of the SUBJECT PROPERTY, then after written demand from the APPROVING PARTY, the vehicle shall not be operated within the SUBJECT PROPERTY.

7.3 Basketball Backboards. No permanently installed basketball backboards are permitted. No portable basketball backboards may be kept outside of a UNIT overnight or when not in use.

7.4 Business or Commercial Use. No trade, business, profession, or commercial activity, or any other non-residential use, shall be conducted by a UNIT OWNER or resident of a UNIT outside of the UNIT, if in connection therewith customers, patients or the like come to the UNIT or if such non-residential use is otherwise apparent from the exterior of the UNIT. The foregoing shall not preclude (i) the leasing of UNITS in accordance with this DECLARATION; or (ii) activities associated with the construction, development and sale of the SUBJECT PROPERTY or any portion thereof.

7.5 Clotheslines and Outside Clothes Drying. No clotheslines or clothespoles shall be erected, and no outside clothes-drying is permitted, except where such activity is advised or mandated by governmental authorities for energy conservation purposes, in which event the APPROVING PARTY shall have the right to approve the portions of any LOT used for outdoor clothes-drying purposes and the types of devices to be employed in this regard, which approval must be in writing. In any event outdoor clothes drying will only be permitted behind a UNIT, in an area which is screened from view from adjoining roads within the SUBJECT PROPERTY. Only portable outdoor clothes-drying facilities approved by the APPROVING PARTY will be permitted, and same shall be removed when not in use.

7.6 COMMON AREAS. Nothing shall be stored, constructed, placed within, or removed from any COMMON AREA by any OWNER other than DECLARANT, unless approved by the APPROVING PARTY.

7.7 Damage and Destruction. In the event any UNIT or other IMPROVEMENT is damaged or destroyed, the OWNER of the UNIT or IMPROVEMENT, shall repair and restore same as soon as is reasonably practical to the same condition that the UNIT or IMPROVEMENT was in prior to such damage or destruction, or shall remove the damaged UNIT or IMPROVEMENT and restore the applicable LOT to a clean, neat and safe condition as soon as is reasonably practical, unless otherwise approved by the APPROVING PARTY.

7.8 Driveways. No asphalt or gravel driveways, walkways or sidewalks are permitted, and all driveways, sidewalks and walkways must be constructed with an upgraded, stabilized hard surface approved by the APPROVING PARTY. All driveways and walkways must be constructed with concrete, stamped concrete or brick pavers.

#### 7.9 Easements.

7.9.1 "Drainage and/or Utility Easements" means such easements on those portions of the SUBJECT PROPERTY so designated on any plat or any recorded easement for the installation and maintenance of utility and/or drainage facilities. Such easements are for the installation, maintenance, construction, and repair of drainage facilities, including, but not limited to, canals, pumps, pipes, inlets, and outfall structures and all necessary appurtenances thereto and underground utility facilities, including, but not limited to, power, telephone, sewer, water, gas, irrigation, lighting, and television transmission purposes. Within these easements, no improvement or other material shall be placed or permitted to remain or alteration made which:

7.9.1.1 May damage or interfere with the installation and maintenance of utilities without the prior written consent of the affected utility company and the APPROVING PARTY; provided, however, the installation of a driveway or sod shall not require the consent of the affected utility companies unless the APPROVING PARTY imposes such requirements; or

7.9.1.2 May materially damage the direction of flow or drainage channels in the easements or may materially obstruct or retard the flow of water through drainage channels in the easements without the prior written consent of the APPROVING PARTY and applicable governmental agencies.

The portions of the SUBJECT PROPERTY designated as Drainage and/or Utility Easements and all improvements thereon shall be maintained continuously by the OWNER of such portion of the

SUBJECT PROPERTY, except for those improvements for which a public authority or utility company is responsible.

7.9.2 "Water Management and/or Retention Easements" means such easements on those portions of the SUBJECT PROPERTY so designated on any plat or any other recorded instrument for the storage of storm water and/or maintenance of adjacent water bodies. The portion of any LOT subject to the Water Management and/or Retention Easements shall be maintained by the OWNER thereof in an ecologically sound condition for water retention, irrigation, drainage, and water management purposes in compliance with all applicable governmental requirements. DECLARANT and the OWNERS shall have the right to use the Water Management and/or Retention Easements to drain surface water from their LOTS. No IMPROVEMENT shall be placed within a Water Management and/or Retention Easement other than sod unless approved in writing by the APPROVING PARTY. No OWNER shall do anything which shall adversely affect the surface water management system of the SUBJECT PROPERTY without the prior written consent of the APPROVING PARTY and all applicable governmental agencies.

7.10 Exterior Changes, Alterations and Improvements. No OWNER or PARCEL ASSOCIATION shall make any IMPROVEMENT, without the prior written consent of the APPROVING PARTY, as required by Paragraph 5 of this DECLARATION.

7.11 Fences. Fences shall not be permitted in front of any UNIT or within a line extending perpendicular from the side-walls of a UNIT from a point on each side-wall which is located 10 feet from the front wall of the UNIT. No fences shall be installed without the consent of the APPROVING PARTY as to the location, height, and type of the fence. The APPROVING PARTY, in approving any fence or wall as elsewhere provided, shall have the right to require all fences and walls throughout the SUBJECT PROPERTY to be one or more specified standard type(s) of construction and material, and shall have the right to prohibit any other types of fences and/or walls, and shall further have the right to change such standard as to any new fences or walls from time to time, as the APPROVING PARTY deems appropriate. All fences must be maintained in good condition at all times.

7.12 Garages. No garage shall be permanently enclosed, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage area. All garage doors shall remain closed when not in use.

7.13 Garbage and Trash. Garbage, trash, refuse or rubbish shall be regularly picked up, shall not be permitted to unreasonably accumulate, and shall not be placed or dumped on any portion of the SUBJECT PROPERTY, including any COMMON AREA, not intended for such use, or on any property contiguous to the SUBJECT PROPERTY. Garbage, trash, refuse or rubbish that is required to be placed along any road or in any particular area in order to be collected may be so placed after 5:00 p.m. on the day before the scheduled day of collection, and any trash facilities must be removed on the collection day. Except when so placed for collection, all containers, dumpsters or garbage facilities shall be kept inside a UNIT or other area intended for such use which shall be fenced-in area and screened from view in a manner approved by the APPROVING PARTY and kept in a clean and sanitary condition. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. No noxious or offensive odors shall be permitted.

7.14 Garbage Containers, Oil and Gas Tanks, Air Conditioners. All garbage and refuse containers, air conditioning units, oil tanks, bottled gas tanks, and all permanently affixed swimming pool equipment and housing shall be underground or placed in walled-in or landscaped areas, and shall be appropriately landscaped, as approved by the APPROVING PARTY so that they will be substantially concealed or hidden from any eye-level view from any street or adjacent property.

7.15 Insurance. Each UNIT OWNER shall be required to maintain property insurance in an amount equal to the then-current replacement cost of the OWNER'S UNIT, excluding foundation and excavating costs and other items normally excluded from coverage. Such insurance shall contain protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily insured against with respect to UNITS similar in construction as the OWNER'S UNIT, including, but not limited to vandalism and malicious mischief and all other risks normally covered by a standard "all risk" endorsement, where available. At the request of the ASSOCIATION, each OWNER shall provide the ASSOCIATION with a copy of the insurance policy or a certificate thereof, and the ASSOCIATION may require each UNIT OWNER to add the ASSOCIATION'S name to the property insurance in a manner so that the

ASSOCIATION will be given written notice prior to the cancellation or expiration of any insurance policy. The proceeds of any property insurance policy payable on account of any damage or destruction shall be used to the extent necessary to rebuild the UNIT to the same condition that same was in prior to such damage or destruction, or as otherwise approved by the APPROVING PARTY. In the event any UNIT OWNER fails to maintain such insurance or provide the ASSOCIATION with evidence of same within 10 days after written demand by the ASSOCIATION, the ASSOCIATION shall have the right but not the obligation to obtain property insurance for such UNIT OWNER, at the UNIT OWNER'S expense. Notwithstanding anything contained herein to the contrary, the ASSOCIATION shall have no interest in any insurance proceeds payable on account of any property insurance.

7.16 Lakes and Canals. No swimming or boating is allowed in any lake or canal within or contiguous to the SUBJECT PROPERTY. No OWNER shall deposit or dump any garbage or refuse in any lake or canal within or contiguous to the SUBJECT PROPERTY. No OWNER shall install any improvement upon a LOT within 20 feet of any lake or canal without the prior written consent of the APPROVING PARTY, including but not limited to landscaping (other than grass), fences, walls, or any other improvements. No OWNER shall create any beach or sandy area contiguous to any lake or canal within the SUBJECT PROPERTY, and all lake banks shall be sodded unless otherwise approved by the APPROVING PARTY.

7.17 Landscaping. The landscaping of any UNIT, and any material modifications, additions, or substitutions thereof, must be approved by the APPROVING PARTY. When the ASSOCIATION is not maintaining the landscaping within the LOTS, the OWNER of each LOT containing a UNIT shall be required to maintain the landscaping on his LOT, and on any contiguous buffer strip whether or not owned by the ASSOCIATION, and on any contiguous property between his LOT and the pavement edge of any abutting road or the waterline of any abutting lake or canal, all in accordance with the landscaping plans approved by the APPROVING PARTY, and in accordance with the provisions of this DECLARATION and the requirements of any controlling governmental authority. Underground sprinkler systems shall be installed, maintained and used to irrigate all landscaping on the LOT, or any other landscaping which the OWNER of the LOT is required to maintain pursuant to this Paragraph. No OWNER shall do anything to adversely affect the common irrigation system or the operation of same as determined by the BOARD. All landscaped areas shall be primarily grass, and shall not be paved or covered with gravel or any artificial surface without the prior written consent of the APPROVING PARTY. All dead or diseased sod, plants, shrubs, trees, or flowers shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be promptly removed. Notwithstanding anything contained herein to the contrary, each OWNER shall be responsible for the replacement of any landscaping on the OWNER'S LOT, regardless of whether the ASSOCIATION is responsible for the maintenance of the landscaping. No artificial grass, plants, or other artificial vegetation shall be placed or maintained outside of a UNIT without the consent of the APPROVING PARTY.

7.18 Leases. All leases of a UNIT must be in writing and specifically be subject to this DECLARATION, the ARTICLES and the BYLAWS, and copies delivered to the ASSOCIATION prior to occupancy by the tenant(s). No lease shall be for a period of less than 3 months, and no UNIT OWNER may lease his UNIT more than 2 times in any consecutive 12 month period, without the consent of the APPROVING PARTY. At the discretion of the APPROVING PARTY, any OWNER desiring to lease his UNIT shall be required to place in escrow with the ASSOCIATION a sum as determined by the ASSOCIATION, not exceeding one month's rent for the UNIT, which may be used by the ASSOCIATION to repair any damage to the COMMON AREAS or other portions of the SUBJECT PROPERTY resulting from the acts or omissions of the tenants of the UNIT. Any balance remaining in the escrow account shall be returned to the OWNER within 30 days after the tenant and all subsequent tenants move out of the UNIT.

7.19 Mailboxes. No mailboxes are permitted without the consent of the APPROVING PARTY, except for mailboxes which are identical to mailboxes originally provided for the UNITS.

7.20 Maintenance. All UNITS, and other IMPROVEMENTS existing within the SUBJECT PROPERTY at all times be maintained in first class condition and good working order, in a clean, neat and attractive manner, and in accordance with all applicable governmental requirements. Exterior maintenance shall be periodically performed as reasonably necessary. All sidewalks, driveways and parking areas within a LOT or a UNIT shall be cleaned and kept free of debris; and cracks, damaged and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary.



7.21 Nuisances. No nuisances shall be permitted within the SUBJECT PROPERTY, and no use or practice which is an unreasonable source of annoyance to the residents within the SUBJECT PROPERTY or which shall interfere with the peaceful possession and proper use of the SUBJECT PROPERTY by its residents shall be permitted. No unreasonably offensive or unlawful action shall be permitted, and all laws, zoning ordinances and regulations of all controlling governmental authorities shall be complied with at all times by the OWNERS.

7.22 Occupancy. No UNIT shall be permanently occupied by more than two persons for each bedroom in the UNIT. In addition, temporary guests are permitted so long as they do not create an unreasonable source of noise or annoyance to the other residents of the SUBJECT PROPERTY.

7.23 Outside Antennas and Flag Poles. No outside signal receiving or sending antennas, dishes or devices are permitted which are visible from the exterior of a UNIT without the consent of the APPROVING PARTY, except for digital satellite dishes not exceeding 18" in diameter which are located in the rear of the UNIT on the LOT and not visible from adjoining streets, or in such other location as is approved by the APPROVING PARTY. The foregoing shall not prohibit any antenna or signal receiving dish owned by the APPROVING PARTY which services the entire SUBJECT PROPERTY. No flag poles are permitted without the consent of the APPROVING PARTY.

7.24 Outside Storage of Personal Property. The personal property of any resident of the SUBJECT PROPERTY shall be kept inside the resident's UNIT or a fenced or a walled-in yard, except for tasteful patio furniture and accessories, Bar-B-Q grills, playground equipment approved by the APPROVING PARTY, and other personal property commonly kept outside, which must be kept in the rear of the LOT and must be neat appearing and in good condition.

7.25 Pets. No animals, livestock or poultry of any kind shall be permitted within the SUBJECT PROPERTY except for common household domestic pets. As regards cats and dogs, only 2 such pets are permitted in any UNIT except with the written consent of the APPROVING PARTY, which may be granted or withheld in the APPROVING PARTY's discretion. No pit bull terriers are permitted without the consent of the APPROVING PARTY, which may be withheld in its sole discretion. In any event, only dogs and cats will be permitted outside of the permanently enclosed air conditioned living space of a UNIT, and no pet other than a cat or dog shall be permitted outside of such portion of a UNIT, including but not limited to any screened in porch or patio, without the consent of the APPROVING PARTY. No dog shall be kept outside of a UNIT, or in any screened-in porch or patio, unless someone is present in the UNIT. Any pet must be carried or kept on a leash when outside of a UNIT or fenced-in area. No pet shall be permitted to go or stray on any other LOT without the permission of the OWNER of the LOT. Any pet must not be an unreasonable nuisance or annoyance to the other residents of the SUBJECT PROPERTY. Any resident shall immediately pick up and remove any solid animal waste deposited by his pet on the SUBJECT PROPERTY, except for designated pet-walk areas, if any. No commercial breeding of pets is permitted within the SUBJECT PROPERTY. The APPROVING PARTY may require any pet to be immediately and permanently removed from the SUBJECT PROPERTY due to a violation of this Paragraph.

7.26 Portable Buildings. No portable, storage, temporary or accessory buildings or structures, sheds, or tents, shall be erected, constructed or located upon any LOT for storage or otherwise, without the prior written consent of the APPROVING PARTY, and in any event any permitted such building or structure must be screened from view from adjoining roads.

7.27 Roofs for Porches, Patios or Additions. Any roof or ceiling on any porch, patio, or other addition to any UNIT must be approved by the APPROVING PARTY, and in any event must be of the same type and color as the existing roof on the UNIT, or an aluminum frame with a screen enclosure.

7.28 Signs. No sign shall be placed upon any LOT or other portion of the SUBJECT PROPERTY, and no signs shall be placed in or upon any UNIT which are visible from the exterior of the UNIT, without the prior written consent of the APPROVING PARTY. In the event any sign is installed on any LOT or on the exterior of any UNIT which violates this Paragraph, the APPROVING PARTY shall have the right to remove such sign without notice to the OWNER, and the removal shall not be deemed a trespass and the APPROVING PARTY shall not be liable to the OWNER for the removal or for any damage or loss to the sign.

7.29 Solar Collectors. Solar collectors are permitted, provided that the APPROVING PARTY shall have the right to approve the type and the specific location where any solar collector will be

installed on a roof with an orientation to the south or within 45 degrees east or west of due south, provided that such determination does not impair the effective operation of the solar collector.

7.30 Subdivision. No LOT shall be further subdivided without the prior written consent of the APPROVING PARTY.

7.31 Surface Water Management. No OWNER or any other PERSON shall do anything to adversely affect the surface water management and drainage of the SUBJECT PROPERTY without the prior written approval of the APPROVING PARTY and any controlling governmental authority, including but not limited to the excavation or filling in of any lake, pond, or canal, or the changing of the elevation of any other portion of the SUBJECT PROPERTY, provided the foregoing shall not be deemed to prohibit or restrict the initial construction of improvements upon the SUBJECT PROPERTY by DECLARANT or by the developer of any portion of the SUBJECT PROPERTY in accordance with permits issued by controlling governmental authorities. In particular, no OWNER other than DECLARANT shall install any landscaping or place any fill on the OWNER's LOT which would adversely affect the drainage of any contiguous LOT.

7.32 Swimming Pools. No above-ground swimming pools, spas, or the like, shall be installed or placed within any LOT without the consent of the APPROVING PARTY.

7.33 Window Treatments. Window treatments shall consist of drapery, blinds, shutters, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding 90 days after an OWNER or tenant first moves into a UNIT or when permanent window treatments are being cleaned or repaired.

7.34 Rules and Regulations. The APPROVING PARTY may adopt additional reasonable rules and regulations relating to the use, maintenance and operation of the SUBJECT PROPERTY. Copies of such rules and regulations and amendments shall be furnished by the APPROVING PARTY to any OWNER upon request.

7.35 Additional Restrictions. Nothing contained herein shall prohibit the OWNER of any LOTS from imposing restrictions upon such LOTS in addition to, or more restrictive than, the restrictions contained herein, provided, however, that any such restrictions shall not be effective to permit that which is expressly prohibited by the restrictions contained herein.

7.36 Waiver. The APPROVING PARTY shall have the right to waive the application of one or more of these restrictions, or to permit a deviation from these restrictions, where in the discretion of the APPROVING PARTY special circumstances exist which justify such waiver or deviation, or where such waiver or deviation, when coupled with any conditions imposed for the waiver or deviation by the APPROVING PARTY, will not materially and adversely affect any other OWNERS. In granting any waiver or deviation, the APPROVING PARTY may impose such conditions and restrictions as the APPROVING PARTY may deem necessary, and the OWNER shall be required to comply with any such restrictions or conditions in connection with any waiver or deviation. In the event of any such waiver or permitted deviation, or in the event any party fails to enforce any violation of these restrictions, such actions or inactions shall not be deemed to prohibit or restrict the right of the APPROVING PARTY, or any other person having the right to enforce these restrictions, from insisting upon strict compliance with respect to all other LOTS, nor shall any such actions be deemed a waiver of any of the restrictions contained herein as same may be applied in the future. Furthermore, any approval given by the APPROVING PARTY as to any matter shall not be deemed binding upon the APPROVING PARTY in the future, and shall not require the APPROVING PARTY to grant similar approvals in the future as to any other LOT or OWNER.

7.37 Exceptions. The foregoing use and maintenance restrictions shall not apply to DECLARANT, or to any portion of the SUBJECT PROPERTY while owned by DECLARANT, and shall not be applied in a manner which would prohibit or restrict the development of any portion of the SUBJECT PROPERTY and the construction of any UNITS, BUILDINGS and other IMPROVEMENTS thereon, or any activity associated with the sale or leasing of any UNITS within the SUBJECT PROPERTY, by DECLARANT, or any activity associated with the construction, sale or leasing of any UNITS within any other property owned by DECLARANT or any affiliate of DECLARANT. Specifically, and without limitation, DECLARANT shall have the right to, (i) construct any UNITS, BUILDINGS or IMPROVEMENTS within the SUBJECT PROPERTY, and make any additions, alterations, improvements, or changes thereto, (ii) maintain sales, leasing, general office and construction operations on any LOT,

for use in connection with the SUBJECT PROPERTY or any other property; (iii) place, erect or construct portable, temporary or accessory buildings or structures upon any portion of the SUBJECT PROPERTY for sales, leasing, general office, construction, storage or other purposes; (iv) temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in connection with the development or construction activities; and (v) post, display, inscribe or affix to the exterior of a UNIT or upon any portion of the SUBJECT PROPERTY, signs and other materials used in developing, constructing, selling, leasing, or promoting any portion of the SUBJECT PROPERTY or any other property.

## 8. ZERO LOT LINE RESTRICTIONS.

### 8.1 Definitions.

8.1.1 ADJACENT LOT means a LOT or COMMON AREA which is adjacent to a ZERO LOT along all or a portion of the ZERO LOT LINE of the ZERO LOT.

8.1.2 ZERO LOT LINE means a boundary of a LOT located within 4 feet of a ZERO WALL constructed or planned to be constructed upon the LOT.

8.1.3 MAINTENANCE EASEMENT means a non-exclusive appurtenant easement for construction, repair, maintenance and drainage purposes, over and upon any portion of an ADJACENT LOT which is within 4 feet of a ZERO WALL, which is for the benefit of the OWNER of the ZERO LOT.

8.1.4 ZERO LOT means a LOT containing a ZERO WALL, or which will contain a ZERO WALL when a UNIT is constructed upon the LOT.

8.1.5 ZERO WALL means any wall of a UNIT constructed or planned to be constructed, or other wall extending from the UNIT running parallel to the ZERO LOT LINE, which is located or will be located within 4 feet of any lot line of the LOT.

8.2 MAINTENANCE EASEMENT. There is hereby reserved upon each ADJACENT LOT a MAINTENANCE EASEMENT for the benefit of the OWNER of the adjacent ZERO LOT. No permanent structures may be constructed or permitted to remain within the MAINTENANCE EASEMENT which would materially and adversely affect the ability of the OWNER of the ZERO LOT to construct, repair or maintain the UNIT on the ZERO LOT or any ZERO WALL without the written consent of the OWNER of the ZERO LOT and the APPROVING PARTY. If any fence or wall is constructed between a ZERO WALL and the UNIT on the ADJACENT LOT which denies access to the MAINTENANCE EASEMENT by the OWNER of the ZERO LOT, then a gate or door approved by the APPROVING PARTY must be constructed to provide such access. The OWNER of the ZERO LOT shall have the right to enter upon the MAINTENANCE EASEMENT upon 24 hours written notice to the OWNER of the ADJACENT LOT during the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, to construct, repair or maintain the UNIT on the ZERO LOT, including a ZERO WALL, or any fence along the ZERO LOT LINE, or at any time in the event of an emergency or to prevent imminent damage, and shall also have the right to enter such other portions of the ADJACENT LOT as may be reasonably necessary in connection therewith, and the OWNER of the ADJACENT LOT shall provide such access to the OWNER of the ZERO LOT. In connection with such construction, repair and maintenance, the OWNER of the ZERO LOT shall use reasonable efforts to minimize damage to any landscaping or improvements within the ADJACENT LOT, and shall not be liable for any damage to the landscaping or improvements within the ADJACENT LOT unless such damage is caused by the gross negligence or wilful acts of the OWNER of the ZERO LOT, or such OWNER's contractors. Upon the completion of such construction, repair or maintenance, the OWNER of the ZERO LOT shall remove all materials and equipment and clean up and restore the ADJACENT LOT in a reasonable manner. Notwithstanding the foregoing, the OWNER of the ZERO LOT shall not be required to repair or restore any improvements constructed or installed in violation of the provisions of this DECLARATION.

8.3 ADJACENT LOT OWNERS' Obligations. The OWNER of any ADJACENT LOT shall not attach any fence, wall or other improvements to the ZERO WALL on the ADJACENT ZERO LOT, except such as are attached in connection with the original construction of the UNIT on the ZERO LOT or the ADJACENT LOT, and shall not paint or otherwise alter the ZERO WALL, without the prior written consent of the OWNER of the ZERO LOT. The ZERO WALL shall not be used as a playing surface for any sport or game. No landscaping within a MAINTENANCE EASEMENT shall interfere with the flow of surface water drainage within the MAINTENANCE EASEMENT. The OWNER of the ADJACENT LOT shall not cause the elevation of the soil adjacent to the ZERO WALL to be less than 2 inches above the

slab of the UNIT on the ZERO LOT. No excavations may be made within the MAINTENANCE EASEMENT for any purpose without the written consent of the OWNER of the ZERO LOT. The OWNER of the ADJACENT LOT shall not do anything which causes damage to the UNIT or the ZERO WALL on the ZERO LOT, and if the OWNER of the ADJACENT LOT does anything which causes such damage, including but not limited to the discoloration of the paint on the ZERO WALL due to the irrigation of the landscaping on the ADJACENT LOT, then the OWNER of the ADJACENT LOT will be liable for such damage to the OWNER of the ZERO LOT.

8.4 Encroachments and Overhangs. There is hereby reserved an easement for encroachments and overhangs for the original construction of the UNIT, and in particular any ZERO WALL, constructed upon the ZERO LOT, into the ADJACENT LOT. Nothing herein shall be deemed to grant any OWNER the right to modify the original construction of the UNIT upon the ZERO LOT to encroach further into the ADJACENT LOT.

## 9. ASSESSMENT FOR COMMON EXPENSES.

9.1 Each OWNER of a UNIT shall be responsible for the payment to the ASSOCIATION of ASSESSMENTS for COMMON EXPENSES for each UNIT owned by the OWNER, which amount shall be assessed to the OWNER as described below. In addition, each OWNER shall be responsible for the payment to the ASSOCIATION of any ASSESSMENTS owed by the prior OWNER, except for any ASSESSMENTS owed by DECLARANT, and except as otherwise provided in this DECLARATION.

9.2 Prior to the beginning of each fiscal year of the ASSOCIATION, the BOARD shall adopt a budget for such fiscal year which shall estimate all of the COMMON EXPENSES to be incurred by the ASSOCIATION during the fiscal year. The BOARD shall then establish the ASSESSMENT for COMMON EXPENSES for each UNIT, which shall be equal and shall be determined by dividing the total amount to be assessed for COMMON EXPENSES by the number of UNITS for which ASSESSMENTS for COMMON EXPENSES are to be made pursuant to the budget. The ASSOCIATION shall then notify each OWNER in writing of the amount, frequency and due dates of the ASSESSMENT for COMMON EXPENSES. From time to time during the fiscal year, the BOARD may modify the budget, and pursuant to the revised budget or otherwise, the BOARD may, upon written notice to the OWNERS, change the amount, frequency and/or due dates of the ASSESSMENTS for COMMON EXPENSES. If the expenditure of funds for COMMON EXPENSES is required in addition to funds produced by regular ASSESSMENTS for COMMON EXPENSES, the BOARD may make special ASSESSMENTS for COMMON EXPENSES, which may include ASSESSMENTS to provide funds to pay for an existing or proposed deficit of the ASSOCIATION, or for any additions, alterations, or improvements to any COMMON AREA, or for any other purpose. Special ASSESSMENTS for COMMON EXPENSES shall be levied in the same manner as hereinbefore provided for regular ASSESSMENTS, and shall be payable in one lump sum or as otherwise determined by the BOARD in its sole discretion and as stated in the notice of any special ASSESSMENT for COMMON EXPENSES. In the event any ASSESSMENTS for COMMON EXPENSES are made payable in equal periodic payments, as provided in the notice from the ASSOCIATION, such periodic payments shall automatically continue to be due and payable in the same amount and frequency unless and until (i) the notice specifically provides that the periodic payments will terminate or change upon the occurrence of a specified event or date or the payment of the specified amount, or (ii) the ASSOCIATION notifies the OWNER in writing of a change in the amount and/or frequency of the periodic payments. In no event shall any ASSESSMENTS for COMMON EXPENSES be due less than ten (10) days from the date of the notification of such ASSESSMENTS.

9.3 ASSESSMENTS for COMMON EXPENSES shall not be payable with respect to any LOT not containing a UNIT unless required by law, and in the event the OWNER of any LOT not containing a UNIT is required by law to pay ASSESSMENTS for COMMON EXPENSES same shall be 10% of the ASSESSMENTS for COMMON EXPENSES for a LOT containing a UNIT, and except for the foregoing, the ASSESSMENTS for COMMON EXPENSES against each LOT shall be equal. The full ASSESSMENT for COMMON EXPENSES as to each LOT upon which a UNIT is constructed shall commence on the first day of the third full calendar month after a certificate of occupancy for the UNIT is issued, or upon the conveyance of the LOT by DECLARANT or by the builder of the UNIT on the LOT, or upon the first occupancy of the UNIT, whichever occurs first.

9.4 In addition to ASSESSMENTS for COMMON EXPENSES, after a certificate of occupancy for a UNIT constructed upon a LOT is issued by the controlling governmental authority, upon the first to occur of the next conveyance of the LOT or the first occupancy of the UNIT, the OWNER of the LOT shall pay to the ASSOCIATION a contribution to a working capital fund of the ASSOCIATION in an

amount equal to two (2) months' ASSESSMENTS for COMMON EXPENSES, which shall be in addition to the OWNER's responsibility for ASSESSMENTS for COMMON EXPENSES. The working capital fund shall be used by the ASSOCIATION for start-up expenses or otherwise as the ASSOCIATION shall determine from time to time and need not be restricted or accumulated.

9.5 Notwithstanding the foregoing, until such time as DECLARANT no longer appoints a majority of the directors of the ASSOCIATION, or until DECLARANT notifies the ASSOCIATION in writing that DECLARANT elects to pay ASSESSMENTS for COMMON EXPENSES as in the case of any other OWNER, DECLARANT shall not be liable for ASSESSMENTS for COMMON EXPENSES for any LOTS owned by DECLARANT, but in lieu thereof, DECLARANT shall be responsible for all COMMON EXPENSES actually incurred by the ASSOCIATION in excess of the ASSESSMENTS for COMMON EXPENSES and any other income receivable by the ASSOCIATION, including working capital fund contributions. During such period when DECLARANT is not liable for ASSESSMENTS for COMMON EXPENSES for LOTS owned by DECLARANT, the ASSESSMENTS for COMMON EXPENSES shall be established by DECLARANT based upon DECLARANT's estimate of what the expenses of the ASSOCIATION would be if all UNITS and IMPROVEMENTS contemplated within the SUBJECT PROPERTY were completed, so that ASSESSMENTS for COMMON EXPENSES during such period will be approximately what said ASSESSMENTS would be if the development of the SUBJECT PROPERTY as contemplated by DECLARANT was complete. Notwithstanding the foregoing, in the event the ASSOCIATION incurs any expense not ordinarily anticipated in the day-to-day management and operation of the SUBJECT PROPERTY, including but not limited to expenses incurred in connection with lawsuits against the ASSOCIATION, or incurred in connection with damage to property, or injury or death to any person, which are not covered by insurance proceeds, the liability of DECLARANT for such COMMON EXPENSES shall not exceed the amount that DECLARANT would be required to pay if it was liable for ASSESSMENTS for COMMON EXPENSES as any other OWNER, and any excess amounts payable by the ASSOCIATION shall be assessed to the other OWNERS.

9.6 Notwithstanding anything contained herein to the contrary, during the period when DECLARANT is not liable for ASSESSMENTS for COMMON EXPENSES the ASSOCIATION will not be required to fund any reserve or other accounts shown in the ASSOCIATION's budget, and may use funds otherwise allocated for such reserve or other accounts to pay for the COMMON EXPENSES incurred by the ASSOCIATION. Thereafter the ASSOCIATION will only be required to fund that portion of any reserve account or other account which is reflected in the budget which is attributable to UNITS owned by UNIT OWNERS other than DECLARANT.

## 10. DEFAULT.

### 10.1 Monetary Defaults and Collection of Assessments.

10.1.1 Late Fees and Interest. If any ASSESSMENT is not paid within ten (10) days after the due date, or if any check for any ASSESSMENT is dishonored, the ASSOCIATION shall have the right to charge the applicable OWNER a late or bad check fee of ten (10%) percent of the amount of the ASSESSMENT, or Twenty-Five (\$25.00) Dollars, whichever is greater, plus interest at the then highest rate of interest allowable by law from the due date until paid. If there is no due date applicable to any particular ASSESSMENT, then the ASSESSMENT shall be due ten (10) days after written demand by the ASSOCIATION.

10.1.2 Acceleration of ASSESSMENTS. If any OWNER is in default in the payment of any ASSESSMENT owed to the ASSOCIATION for more than 30 days after written demand by the ASSOCIATION, the ASSOCIATION upon written notice to the defaulting OWNER shall have the right to accelerate and require such defaulting OWNER to pay to the ASSOCIATION ASSESSMENTS for COMMON EXPENSES for the next twelve (12) month period, based upon the then existing amount and frequency of ASSESSMENTS for COMMON EXPENSES, plus interest at the highest rate permitted by law from the date of such notice until the accelerated ASSESSMENTS for COMMON EXPENSES are paid. In the event of such acceleration, the defaulting OWNER shall continue to be liable for any increases in the regular ASSESSMENTS for COMMON EXPENSES, for all special ASSESSMENTS for COMMON EXPENSES, and/or for all other ASSESSMENTS payable to the ASSOCIATION.

10.1.3 Lien for ASSESSMENTS. The ASSOCIATION has a lien on each LOT for unpaid ASSESSMENTS owed to the ASSOCIATION by the OWNER of such LOT, and for late fees and interest, and for reasonable attorneys' fees incurred by the ASSOCIATION incident to the collection of the ASSESSMENT or enforcement of the lien, and all sums advanced and paid by the ASSOCIATION for

taxes and payment on account of superior mortgages, liens or encumbrances in order to preserve and protect the ASSOCIATION's lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the LOT is located, stating the description of the LOT, the name of the record OWNER, and the amount due as of the recording of the claim of lien. A recorded claim of lien shall secure all sums set forth in the claim of lien, together with all ASSESSMENTS or other moneys owed to the ASSOCIATION by the OWNER until the lien is satisfied. The lien is in effect until all sums secured by it have been fully paid or until the lien is barred by law. The claim of lien must be signed and acknowledged by an officer or agent of the ASSOCIATION. Upon payment in full of all sums secured by the lien, the person making the payment is entitled to a satisfaction of the lien in recordable form.

10.1.4 Collection and Foreclosure. The ASSOCIATION may bring an action in its name to foreclose a lien for ASSESSMENTS in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid ASSESSMENTS without waiving any claim of lien, and the applicable OWNER shall be liable to the ASSOCIATION for all costs and expenses incurred by the ASSOCIATION in connection with the collection of any unpaid ASSESSMENTS, and the filing, enforcement, and/or foreclosure of the ASSOCIATION'S lien, including reasonable attorneys' fees whether or not incurred in legal proceedings, and all sums paid by the ASSOCIATION for taxes and on account of any other mortgage, lien, or encumbrance in order to preserve and protect the ASSOCIATION'S lien. The BOARD is authorized to settle and compromise the ASSOCIATION'S lien if the BOARD deems a settlement or compromise to be in the best interest of the ASSOCIATION.

10.1.5 Rental and Receiver. If an OWNER remains in possession of his UNIT and the claim of lien of the ASSOCIATION against his LOT is foreclosed, the court, in its discretion, may require the OWNER to pay a reasonable rental for the UNIT, and the ASSOCIATION is entitled to the appointment of a receiver to collect the rent.

10.1.6 Subordination of Lien. Where any person obtains title to a LOT pursuant to the foreclosure of a first mortgage of record, or where the holder of a first mortgage accepts a deed to a LOT in lieu of foreclosure of the first mortgage of record of such lender, such acquirer of title, its successors and assigns, shall not be liable for any ASSESSMENTS or for other moneys owed to the ASSOCIATION which are chargeable to the former OWNER of the LOT and which became due prior to acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the payment of such funds is secured by a claim of lien recorded prior to the recording of the foreclosed or underlying mortgage. The unpaid ASSESSMENTS or other moneys are COMMON EXPENSES collectable from all of the OWNERS, including such acquirer and his successors and assigns. The new OWNER, from and after the time of acquiring such title, shall be liable for payment of all future ASSESSMENTS for COMMON EXPENSES and such other expenses as may be assessed to the OWNER's LOT. Any person who acquires a LOT, except through foreclosure of a first mortgage of record or deed in lieu thereof, including, without limitation, persons acquiring title by sale, gift, devise, operation of law or by purchase at a judicial or tax sale, shall be liable for all unpaid ASSESSMENTS and other moneys due and owing by the former OWNER to the ASSOCIATION, and shall not be entitled to occupancy of the UNIT or enjoyment of the COMMON AREAS, or of the recreational facilities as same may exist from time to time, until such time as all unpaid ASSESSMENTS and other moneys have been paid in full.

10.1.7 Assignment of Claim and Lien Rights. The ASSOCIATION, acting through its BOARD, shall have the right to assign its claim and lien rights for the recovery of any unpaid ASSESSMENTS and any other moneys owed to the ASSOCIATION, to any third party.

10.1.8 Unpaid ASSESSMENTS Certificate. Within 15 days after written request by any OWNER or any INSTITUTIONAL LENDER holding or making a mortgage encumbering any LOT, the ASSOCIATION shall provide the OWNER or INSTITUTIONAL LENDER a written certificate as to whether or not the OWNER of the LOT is in default with respect to the payment of ASSESSMENTS or with respect to compliance with the terms and provisions of this DECLARATION, and any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any LOT shall be protected thereby.

10.1.9 Application of Payments. Any payments made to the ASSOCIATION by any OWNER shall first be applied towards any sums advanced and paid by the ASSOCIATION for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the ASSOCIATION in order to preserve and protect its lien, next toward reasonable attorneys' fees incurred by the ASSOCIATION incidental to the collection of assessments and other moneys owed to

the ASSOCIATION by the OWNER and/or for the enforcement of its lien; next towards interest on any ASSESSMENTS or other moneys due to the ASSOCIATION, as provided herein, and next towards any unpaid ASSESSMENTS owed to the ASSOCIATION, in the inverse order that such ASSESSMENTS were due.

10.1.10 Exception for DECLARANT. Notwithstanding the foregoing, DECLARANT shall not be liable for any interest or late fees for any ASSESSMENTS or other funds owed to the ASSOCIATION, and the ASSOCIATION shall not have a lien against any LOT for any ASSESSMENTS or other monies owed to the ASSOCIATION by DECLARANT.

10.1.11 Subordination. The lien of the ASSOCIATION for ASSESSMENTS or other moneys due to the ASSOCIATION shall be subject and subordinate to any lien in favor of the Briar Bay Community Association, Inc. pursuant to the BRIAR BAY DECLARATION, regardless of when such lien is recorded.

10.2 Non-Monetary Defaults. In the event of a violation by any OWNER or any tenant of an OWNER, or any person residing with them, or their guests or invitees, (other than the non-payment of any ASSESSMENT or other moneys) of any of the provisions of this DECLARATION, the ARTICLES, the BYLAWS or the Rules and Regulations of the ASSOCIATION, the ASSOCIATION shall notify the OWNER and any tenant of the OWNER of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the OWNER or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the ASSOCIATION, or if any similar violation is thereafter repeated, the ASSOCIATION may, at its option:

10.2.1 Fine the OWNER or tenant as provided below and/or suspend, for a reasonable period of time, the rights of an OWNER or an OWNER'S tenants, guests, or invitees, or both, to use the COMMON AREAS (but such suspension shall not impair the right of an OWNER or tenant to have vehicular and pedestrian access to and from the OWNER'S LOT, including, but not limited to, the right to park); and/or

10.2.2 Commence an action to enforce the performance on the part of the OWNER or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

10.2.3 Commence an action to recover damages; and/or

10.2.4 Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the ASSOCIATION, or performing any maintenance required to be performed by this DECLARATION.

All expenses incurred by the ASSOCIATION in connection with the correction of any failure, plus a service charge of ten (10%) percent of such expenses, and all expenses incurred by the ASSOCIATION in connection with any legal proceedings to enforce this DECLARATION, including reasonable attorneys' fees whether or not incurred in legal proceedings, shall be assessed against the applicable OWNER, and shall be due upon written demand by the ASSOCIATION. The ASSOCIATION shall have a lien for any such ASSESSMENT and any interest, costs or expenses associated therewith, including attorneys' fees incurred in connection with such ASSESSMENT, and may take such action to collect such ASSESSMENT or foreclose said lien as in the case and in the manner of any other ASSESSMENT as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of the County in which the SUBJECT PROPERTY is located.

10.3 Fines and Suspensions.

10.3.1 The amount of any fine shall not exceed \$50.00 per violation, or such other amount as is permitted by law. Notwithstanding the foregoing, if any violation of this DECLARATION or the Rules and Regulations is of a continuing nature, and if the OWNER or tenant fails to cure any continuing violation within 30 days after written notice of such violation, or if such violation is not capable of being cured within such 30 day period, if the OWNER or tenant fails to commence action reasonably necessary to cure the violation within such 30 day period or shall thereafter fail to diligently

proceed to cure the violation as soon as is reasonably practical, in addition to the initial fine a daily fine may be imposed until the violation is cured in an amount not to exceed \$10.00 per day, to the extent permitted by law.

10.3.2 Prior to imposing any suspension or fine, the OWNER or tenant shall be given written notice of the fact that the ASSOCIATION is considering the imposition of the suspension or fine, including (i) a statement of the provisions of the DECLARATION, BYLAWS or Rules and Regulations which have allegedly been violated, (ii) the proposed length of the suspension or amount of the fine, and (iii) the right of the OWNER or tenant to request a hearing by written request to the ASSOCIATION within 14 days after the ASSOCIATION's notice. If the OWNER or tenant desires a hearing, they must so notify the ASSOCIATION in writing within 14 days after the ASSOCIATION's notice, and in that event a hearing shall be held in accordance with applicable law upon not less than 14 days written notice to the OWNER or tenant. At the hearing, the OWNER or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and the suspension or fine previously imposed may be approved, disapproved or modified. If the OWNER or tenant fails to timely request a hearing, or fails to attend the hearing, the proposed fine or suspension set forth in the ASSOCIATION's notice shall be deemed imposed.

10.3.3 Any fine imposed shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after the decision at the hearing. Any fine levied against an OWNER shall be deemed an ASSESSMENT, and if not paid when due all of the provisions of this DECLARATION relating to the late payment of ASSESSMENTS shall be applicable. In any event, the ASSOCIATION shall not have the right to impose any suspension or fine against DECLARANT or any builder of new homes within the SUBJECT PROPERTY.

10.3.4 The BOARD may, and to the extent required by law shall, delegate the right to impose suspension or fines, set the amount thereof, and/or conduct hearings pursuant to this paragraph, to a Committee of the ASSOCIATION.

10.4 Negligence. An OWNER shall be liable and may be assessed by the ASSOCIATION for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the ASSOCIATION. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a LOT or UNIT, or the COMMON AREAS.

10.5 Responsibility of an OWNER for Occupants, Tenants, Guests, and Invitees. To the extent otherwise provided by law, each OWNER shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his UNIT, and for all guests and invitees of the OWNER or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the COMMON AREAS, or any liability to the ASSOCIATION, the OWNER shall be assessed for same as in the case of any other ASSESSMENT, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the ASSOCIATION. Furthermore, any violation of any of the provisions of this DECLARATION, of the ARTICLES, or the BYLAWS, by any resident of any UNIT, or any guest or invitee of an OWNER or any resident of a UNIT, shall also be deemed a violation by the OWNER, and shall subject the OWNER to the same liability as if such violation was that of the OWNER.

10.6 Right of ASSOCIATION to Evict Tenants, Occupants, Guests and Invitees. With respect to any tenant or any person present in any UNIT or any portion of the SUBJECT PROPERTY, other than an OWNER and the members of his immediate family permanently residing with him in the UNIT, if such person shall materially violate any provision of this DECLARATION, the ARTICLES, or the BYLAWS, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the SUBJECT PROPERTY, or shall willfully damage or destroy any COMMON AREAS or personal property of the ASSOCIATION, then upon written notice by the ASSOCIATION such person shall be required to immediately leave the SUBJECT PROPERTY and if such person does not do so, the ASSOCIATION is authorized to commence an action to evict such tenant or compel the person to leave the SUBJECT PROPERTY and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable OWNER, and the ASSOCIATION may collect such ASSESSMENT and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the ASSOCIATION.



10.7 No Waiver. The failure of the ASSOCIATION to enforce any right, provision, covenant or condition which may be granted by this DECLARATION, the ARTICLES, or the BYLAWS, shall not constitute a waiver of the right of the ASSOCIATION to enforce such right, provision, covenant or condition in the future.

10.8 Rights Cumulative. All rights, remedies and privileges granted to the ASSOCIATION pursuant to any terms, provisions, covenants or conditions of this DECLARATION, the ARTICLES or the BYLAWS, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the ASSOCIATION from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

10.9 Enforcement By or Against other Persons. In addition to the foregoing, this DECLARATION may be enforced by DECLARANT (so long as DECLARANT is an OWNER), or the ASSOCIATION, by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this DECLARATION, including attorneys' fees, shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this DECLARATION. In addition to the foregoing, any OWNER shall have the right to bring an action to enforce this DECLARATION against any person violating or attempting to violate any provision herein, to restrain such violation or to require compliance with the provisions contained herein, but no OWNER shall be entitled to recover damages or to enforce any lien created herein as a result of a violation or failure to comply with the provisions contained herein by any person, and the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees.

11. TERM OF DECLARATION. All of the foregoing covenants, conditions, reservations and restrictions shall run with the land and continue and remain in full force and effect at all times as against all OWNERS, their successors, heirs or assigns, regardless of how the OWNERS acquire title, for a period of fifty (50) years from the date of this DECLARATION, unless within such time, one hundred (100%) percent of the OWNERS execute a written instrument declaring a termination of this DECLARATION (as it may have been amended from time to time). After such fifty (50) year period, unless sooner terminated as provided above, these covenants, conditions, reservations and restrictions shall be automatically extended for successive periods of ten (10) years each, until a majority of the votes of the entire membership of the ASSOCIATION execute a written instrument declaring a termination of this DECLARATION (as it may have been amended from time to time). Any termination of this DECLARATION shall be effective on the date the instrument of termination is recorded in the public records of the county in which the SUBJECT PROPERTY is located, provided, however, that any such instrument, in order to be effective, must be approved in writing and signed by the DECLARANT so long as the DECLARANT owns any LOT, or holds any mortgage encumbering any LOT.

## 12. AMENDMENT.

12.1 This DECLARATION may be amended upon the approval of not less than 2/3 of the OWNERS, except that if any provision of this DECLARATION requires more than a 2/3 vote of the OWNERS to approve any action, such provision may not be amended to require a lesser vote, and may not be deleted, without the same number of votes required to approve such action. In addition, so long as DECLARANT owns any portion of the SUBJECT PROPERTY, this DECLARATION may be amended from time to time, by DECLARANT and without the consent of the ASSOCIATION or any OWNER, and no amendment may be made by the OWNERS without the written joinder of DECLARANT. Such right of DECLARANT to amend this DECLARATION shall specifically include, but shall not be limited to, (i) amendments adding any property which will be developed in a similar manner as the SUBJECT PROPERTY, or deleting any property from the SUBJECT PROPERTY which will be developed differently than the SUBJECT PROPERTY (provided that any such amendment shall require the joinder of the owners of such property or any portion thereof if the owners are different than DECLARANT, and further provided that DECLARANT shall not have the obligation to add any property to or delete any property from the SUBJECT PROPERTY), and (ii) amendments required by any INSTITUTIONAL LENDER or governmental authority in order to comply with the requirements of same. In order to be effective, any amendment to this DECLARATION must first be recorded in the public records of the county in which the SUBJECT PROPERTY is located, and in the case of an amendment made by the OWNERS, such amendment shall contain a certification by the President and Secretary of the ASSOCIATION that the amendment was duly adopted.

12.2 No amendment shall discriminate against any OWNER or class or group of OWNERS, unless the OWNERS so affected join in the execution of the amendment. No amendment shall change the number of votes of any OWNER or increase any OWNER's proportionate share of the COMMON EXPENSES, unless the OWNERS affected by such amendment join in the execution of the amendment. No amendment may prejudice or impair the priorities of INSTITUTIONAL LENDERS granted hereunder unless all INSTITUTIONAL LENDERS join in the execution of the amendment. No amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, DECLARANT, unless DECLARANT joins in the execution of the amendment.

12.3 Notwithstanding anything contained herein to the contrary, any amendment to this DECLARATION which would adversely 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.

### 13. SPECIAL PROVISIONS REGARDING INSTITUTIONAL LENDERS.

13.1 Notice of Action. Upon written request to the ASSOCIATION by an INSTITUTIONAL LENDER holding, insuring or guaranteeing a first mortgage encumbering any LOT, identifying the name and address of the holder, insurer or guarantor and the LOT number or address, any such holder, insurer or guarantor will be entitled to timely written notice of:

13.1.1 Any condemnation or casualty loss which affects a material portion of the SUBJECT PROPERTY or the LOT;

13.1.2 Any 60-day default in the payment of ASSESSMENTS or charges owed to the ASSOCIATION or in the performance of any obligation hereunder by the OWNER of the LOT;

13.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the ASSOCIATION;

13.1.4 Any proposed action which would require the consent of a specified percentage of INSTITUTIONAL LENDERS.

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

13.3 Payment of Taxes and Insurance. Any INSTITUTIONAL LENDER may pay any taxes or assessments owed to any governmental authority by the ASSOCIATION which are in default, or any overdue insurance premiums required to be purchased by the ASSOCIATION pursuant to this DECLARATION, or may secure new insurance upon the lapse of a policy, and shall be owed immediate reimbursement therefor from the ASSOCIATION plus interest at the highest rate permitted by law and any costs of collection, including attorneys' fees.

#### 14. MISCELLANEOUS.

14.1 Conflict With ARTICLES or BYLAWS. In the event of any conflict between the ARTICLES and the BYLAWS and this DECLARATION, this DECLARATION, the ARTICLES, and the BYLAWS, in that order, shall control.

14.2 Authority of ASSOCIATION and Delegation. Nothing contained in this DECLARATION shall be deemed to prohibit the BOARD from delegating to any one of its members, or to any officer, or to any committee or any other person, any power or right granted to the BOARD by this DECLARATION including, but not limited to, the right to exercise architectural control and to approve any deviation from any use restriction, and the BOARD is expressly authorized to so delegate any power or right granted by this DECLARATION.

14.3 Severability. The invalidation in whole or in part of any of these covenants, conditions, reservations and restrictions, or any section, subsection, sentence, clause, phrase, word or other provision of this DECLARATION shall not affect the validity of the remaining portions which shall remain in full force and effect.

14.4 Validity. In the event any court shall hereafter determine that any provisions as originally drafted herein violate the rule against perpetuities, the period specified in this DECLARATION shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law.

14.5 Assignment of DECLARANT's Rights. Any or all of the rights, privileges, or options provided to or reserved by DECLARANT in this DECLARATION, the ARTICLES, or the BYLAWS, may be assigned by DECLARANT, in whole or in part, as to all or any portion of the SUBJECT PROPERTY, to any person or entity pursuant to an assignment recorded in the public records of the county in which the SUBJECT PROPERTY is located. Any partial assignee of any of the rights of DECLARANT shall not be deemed the DECLARANT, and shall have no other rights, privileges or options other than as are specifically assigned. No assignee of DECLARANT shall have any liability for any acts of DECLARANT or any prior DECLARANT unless such assignee is assigned and agrees to assume such liability.

14.6 Performance of ASSOCIATION's Duties by DECLARANT. DECLARANT shall have the right from time to time, at its sole discretion, to perform at DECLARANT's expense the duties and obligations required hereunder to be performed by the ASSOCIATION, and in connection therewith to reduce the budget of the ASSOCIATION and the ASSESSMENTS for COMMON EXPENSES payable by the OWNER, provided however that any such performance on the part of DECLARANT may be discontinued by DECLARANT at any time, and any such performance shall not be deemed to constitute a continuing obligation on the part of DECLARANT.

14.7 Actions Against DECLARANT. The ASSOCIATION shall not institute any legal proceedings against DECLARANT, or any principal of DECLARANT, or any other person or entity related to or affiliated with DECLARANT or any principal of DECLARANT, or spend or commit to spend any ASSOCIATION funds in connection with such legal proceedings, or make a special ASSESSMENT for funds to pay for costs or attorneys' fees in connection with any such legal proceedings, without the consent of 75% of the votes of all of the OWNERS obtained at a special meeting of the OWNERS called expressly for the purpose of approving such action, and without the consent of INSTITUTIONAL LENDERS holding a majority of the mortgages that encumber the LOTS.

14.8 Modification of Development Plan and Obligations With Respect to the Property Described. DECLARANT reserves the right at any time and from time to time to modify the development plan for all or any portion of the SUBJECT PROPERTY, and in connection therewith to develop UNITS which are different from the UNITS presently or hereafter planned from time to time, and in the event DECLARANT changes the type, size or nature of the UNITS or other improvements constructed within the SUBJECT PROPERTY, DECLARANT shall have no liability therefor to any OWNER. In addition, DECLARANT makes no representations or warranties as to the manner in which any other property outside of the SUBJECT PROPERTY will be developed, and shall have no liability to any OWNER as regards the development of any other property in or around the SUBJECT PROPERTY.

14.9 Utility Deposits. It is acknowledged that various utility deposits may be required for utility services for the COMMON AREAS which will be supplied as a COMMON EXPENSE, and in the event DECLARANT pays for such deposits, DECLARANT shall be entitled to reimbursement from the

ASSOCIATION when funds are available for such reimbursement, and until DECLARANT is reimbursed for any deposits paid by it, DECLARANT shall be entitled to any refunds of any utility deposits from the appropriate authority holding same, and if any deposit is refunded to the ASSOCIATION, same shall be promptly paid to DECLARANT by the ASSOCIATION upon receipt.

IN WITNESS WHEREOF, DECLARANT has executed this DECLARATION this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESSES:

MALLORY SQUARE-PALM BEACH LIMITED PARTNERSHIP, a Florida limited partnership,

\_\_\_\_\_  
Print Name:

By: FL MSII/SEPII GP, L.C., a Florida limited liability company, its General Partner

\_\_\_\_\_  
Print Name:

By: HEARTHSTONE, INC., a California corporation, dba in Florida as HEARTHSTONE ADVISORS, INC., its Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000, by \_\_\_\_\_, as \_\_\_\_\_ of HEARTHSTONE, INC., a California corporation, dba in Florida as HEARTHSTONE ADVISORS, INC., Manager of FL MSII/SEPII GP, L.C., a Florida limited liability company, General Partner of MALLORY SQUARE-PALM BEACH LIMITED PARTNERSHIP, a Florida limited partnership, on behalf of the partnership. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:

ARTICLES OF INCORPORATION  
OF  
WATERS EDGE AT BRIAR BAY ASSOCIATION, INC.

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The undersigned incorporator, for the purpose of forming a corporation not-for-profit pursuant to the laws of the State of Florida, Florida Statutes, Chapter 617, hereby adopts the following Articles of Incorporation:

PREAMBLE

MALLORY SQUARE-PALM BEACH LIMITED PARTNERSHIP, a Florida limited partnership ("DECLARANT"), owns certain property in Palm Beach County, Florida (the "SUBJECT PROPERTY"), and intends to execute and record a Declaration of Covenants and Restrictions of Waters Edge at Briar Bay (the "DECLARATION") which will affect the SUBJECT PROPERTY. This association is being formed as the association to administer the DECLARATION, and to perform the duties and exercise the powers pursuant to the DECLARATION, as and when the DECLARATION is recorded in the Public Records of Palm Beach County, Florida, with these Articles of Incorporation attached as an exhibit. All of the definitions contained in the DECLARATION shall apply to these Articles of Incorporation, and to the Bylaws of the Association.

ARTICLE 1. - NAME AND ADDRESS

The name of the corporation is WATERS EDGE AT BRIAR BAY ASSOCIATION, INC., hereinafter referred to as the "ASSOCIATION." The initial address of the principal office of the ASSOCIATION and the initial mailing address of the ASSOCIATION is 2825 University Drive, Suite 300, Coral Springs, Florida 33065.

ARTICLE 2. - PURPOSE

The purposes for which the ASSOCIATION is organized are as follows:

- 2.1 To operate as a corporation not-for-profit pursuant to Chapter 617 of the Florida Statutes.
- 2.2 To enforce and exercise the duties of the ASSOCIATION as provided in the DECLARATION.
- 2.3 To promote the health, safety, welfare, comfort, and social and economic benefit of the members of the ASSOCIATION.

ARTICLE 3. - POWERS AND DUTIES

The ASSOCIATION shall have the following powers and duties:

3.1 All of the common law and statutory powers of a corporation not-for-profit under the laws of the State of Florida.

3.2 To administer, enforce, carry out and perform all of the acts, functions, rights and duties provided in, or contemplated by, the DECLARATION, including but not limited to, the following:

3.2.1 To own, purchase, sell, mortgage, encumber, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.

3.2.2 To make and collect ASSESSMENTS against OWNERS to defray the costs, expenses and losses incurred or to be incurred by the ASSOCIATION, and to use the proceeds thereof in the exercise of the ASSOCIATION'S powers and duties.

3.2.3 To enforce the provisions of the DECLARATION, these ARTICLES, and the BYLAWS.

3.2.4 To make, establish and enforce reasonable rules and regulations governing the use of COMMON AREAS, LOTS, UNITS and other property under the jurisdiction of the ASSOCIATION.

3.2.5 To grant and modify easements, and to dedicate property owned by the ASSOCIATION to any public or quasi-public agency, authority or utility company for public, utility, drainage and cable television purposes.

3.2.6 To borrow money for the purposes of carrying out the powers and duties of the ASSOCIATION.

3.2.7 To exercise control over exterior alterations, additions, improvements, or changes in accordance with the terms of the DECLARATION.

3.2.8 To obtain insurance as provided by the DECLARATION.

3.2.9 To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the ASSOCIATION and for proper operation of the properties for which the ASSOCIATION is responsible, or to contract with others for the performance of such obligations, services and/or duties.

3.2.10 To sue and be sued.

3.2.11 To operate and maintain the surface water management system for the SUBJECT PROPERTY as permitted by the South Florida Water Management District, including all lakes, retention areas, culverts and related appurtenances, as may be applicable.

3.2.12 To contract for cable television, security and other services for the SUBJECT PROPERTY.

#### ARTICLE 4. - MEMBERS

4.1 The members of the ASSOCIATION shall consist of all of the record owners of LOTS. Membership shall be established as to each LOT upon the recording of the DECLARATION. Upon the transfer of ownership of fee title to, or fee interest in, a LOT, whether by conveyance, devise, judicial decree, foreclosure, or otherwise, and upon the recordation amongst the public records in the county in which the SUBJECT PROPERTY is located of the deed or other instrument establishing the acquisition and designating the LOT affected thereby, the new OWNER designated in such deed or other instrument shall thereupon become a member of the ASSOCIATION, and the membership of the prior OWNER as to the LOT designated shall be terminated, provided, however, that the ASSOCIATION shall not have the responsibility or obligation of recognizing any such change in membership until it has been delivered a true copy of the applicable deed or other instrument, or is otherwise informed of the transfer of ownership of the LOT. Prior to the recording of the DECLARATION, the incorporator shall be the sole member of the ASSOCIATION.

4.2 The share of each member in the funds and assets of the ASSOCIATION, and the COMMON SURPLUS, and any membership in this ASSOCIATION, cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the LOT for which that membership is established.

4.3 On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each LOT. In the event any LOT is owned by more than one person and/or by an entity, the vote for such LOT shall be cast in the manner provided by the BYLAWS. Any person or entity owning more than one LOT shall be entitled to one vote for each LOT owned. In addition to the foregoing,

DECLARANT shall have three votes for each vote of any member other than DECLARANT so long as DECLARANT is entitled to appoint the Directors of the ASSOCIATION.

4.4 The BYLAWS shall provide for an annual meeting of the members of the ASSOCIATION and shall make provision for special meetings.

ARTICLE 5. - TERM OF EXISTENCE

The ASSOCIATION shall have perpetual existence.

ARTICLE 6. - INCORPORATOR

The name and street address of the incorporator is: Eric A. Simon, Esq., 2825 University Drive, Suite 300, Coral Springs, Florida 33065.

ARTICLE 7. - DIRECTORS

7.1 The property, business and affairs of the ASSOCIATION shall be managed by a BOARD which shall consist of not less than three (3) directors, and which shall always be an odd number. The BYLAWS may provide for a method of determining the number of directors from time to time. In the absence of a determination as to the number of directors, the BOARD shall consist of three (3) directors. Directors are not required to be members of the ASSOCIATION.

7.2 All of the duties and powers of the ASSOCIATION existing under the DECLARATION, these ARTICLES and the BYLAWS shall be exercised exclusively by the BOARD, its agents, contractors or employees, subject to approval by the members only when specifically required.

7.3 The DECLARANT shall have the right to appoint all of the directors so long as the DECLARANT owns any LOT. The DECLARANT may waive its right to elect one or more directors by written notice to the ASSOCIATION, and thereafter such directors shall be elected by the members. When the DECLARANT no longer owns any LOT within the SUBJECT PROPERTY, all of the directors shall be elected by the members in the manner provided in the BYLAWS.

7.4 Directors may be removed and vacancies on the BOARD shall be filled in the manner provided by the BYLAWS, however any director appointed by the DECLARANT may only be removed by the DECLARANT, and any vacancy on the BOARD shall be appointed by the DECLARANT if, at the time such vacancy is to be filled, the DECLARANT is entitled to appoint the directors.

7.5 The names and addresses of the initial directors, who shall hold office until their successors are appointed or elected, are as follows:

Robert Shelley, 2825 University Drive, Suite 300, Coral Springs, Florida 33065  
Eric A. Simon, 2825 University Drive, Suite 300, Coral Springs, Florida 33065  
Cindy Voller, 2825 University Drive, Suite 300, Coral Springs, Florida 33065

ARTICLE 8. - OFFICERS

The officers of the ASSOCIATION shall be a president, vice president, secretary, treasurer and such other officers as the BOARD may from time to time by resolution create. The officers shall serve at the pleasure of the BOARD, and the BYLAWS may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers. The names of the officers who shall serve until their successors are designated by the BOARD are as follows:

President . . . . . Robert Shelley  
Vice President. . . . . Cindy Voller  
Vice President/Secretary/Treasurer. . . . Eric A. Simon

## ARTICLE 9.- INDEMNIFICATION

9.1 The ASSOCIATION shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the ASSOCIATION) by reason of the fact that he is or was a director, employee, officer or agent of the ASSOCIATION, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the ASSOCIATION; and with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duties to the ASSOCIATION unless and only to the extent that the court in which the action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the ASSOCIATION; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

9.2 To the extent that a director, officer, employee or agent of the ASSOCIATION has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

9.3 Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the ASSOCIATION in advance of the final disposition of such action, suit or proceeding as authorized by the BOARD in the specific case upon receipt of an undertaking by or on behalf of the directors, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the ASSOCIATION as authorized herein.

9.4 The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any BYLAW, agreement, vote of members or otherwise, and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

9.5 The ASSOCIATION shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the ASSOCIATION, or is or was serving at the request of the ASSOCIATION as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the ASSOCIATION would have the power to indemnify him against such liability under the provisions of this Article.

## ARTICLE 10. - BYLAWS

The first BYLAWS shall be adopted by the BOARD and may be altered, amended or rescinded by the DECLARANT, the Directors and/or members in the manner provided by the BYLAWS.



## ARTICLE 11. - AMENDMENTS

Amendments to these ARTICLES shall be proposed and adopted in the following manner:

11.1 A majority of the BOARD shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

11.2 Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the BYLAWS for the giving of notice of a meeting of the members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

11.3 At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes of the entire membership of the ASSOCIATION.

11.4 Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

11.5 If all of the directors and all of the members eligible to vote sign a written statement manifesting their intention that an amendment to these ARTICLES be adopted, then the amendment shall thereby be adopted as though the above requirements had been satisfied.

11.6 No amendment shall make any changes in the qualifications for membership nor in the voting rights of members without approval by all of the members and the joinder of all INSTITUTIONAL LENDERS holding mortgages upon the LOTS. No amendment shall be made that is in conflict with the DECLARATION. Prior to the closing of the sale of all LOTS within the SUBJECT PROPERTY, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, the DECLARANT, unless the DECLARANT shall join in the execution of the amendment, including, but not limited to, any right of the DECLARANT to appoint directors pursuant to Article VII.

11.7 No amendment to these ARTICLES shall be made which discriminates against any OWNER(S), or affects less than all of the OWNERS within the SUBJECT PROPERTY, without the written approval of all of the OWNERS so discriminated against or affected.

11.8 Upon the approval of an amendment to these ARTICLES, the articles of amendment shall be executed and delivered to the Department of State as provided by law, and a copy certified by the Department of State shall be recorded in the public records of the county in which the SUBJECT PROPERTY is located.

## ARTICLE 12. - DISSOLUTION

In the event of dissolution or final liquidation of the ASSOCIATION, the assets, both real and personal, of the ASSOCIATION, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the ASSOCIATION. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization, to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the ASSOCIATION. No such disposition of ASSOCIATION properties shall be effective to divest or diminish any right or title of any MEMBER vested in him under the recorded DECLARATION unless made in accordance with the provisions of such DECLARATION.

## ARTICLE 13.

INITIAL REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of the ASSOCIATION shall be at 2825 University Drive, Suite 300, Coral Springs, Florida 33065. The initial registered agent of the ASSOCIATION at that address is Eric A. Simon.

WHEREFORE, the incorporator, and the initial registered agent, have executed these ARTICLES on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. By executing these ARTICLES, the undersigned registered agent accepts the appointment as registered agent and states that the undersigned is familiar with, and accepts, the obligations of that position.

\_\_\_\_\_  
Eric. A. Simon, Incorporator and Registered Agent

STATE OF FLORIDA            )  
  ) SS:  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Eric A. Simon, as Incorporator and as Registered Agent.

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida at Large  
(Notary Seal)

My commission expires:

BYLAWS OF  
WATERS EDGE AT BRIAR BAY ASSOCIATION, INC.

1. GENERAL PROVISIONS.

1.1 Identity. These are the BYLAWS of WATERS EDGE AT BRIAR BAY ASSOCIATION, INC., hereinafter referred to as the "ASSOCIATION," a corporation not-for-profit formed under the laws of the State of Florida. The ASSOCIATION has been organized for the purposes stated in the ARTICLES and shall have all of the powers provided in these BYLAWS, the ARTICLES, the DECLARATION, and any statute or law of the State of Florida, or any other power incident to any of the above powers.

1.2 Principal Office. The principal office of the ASSOCIATION shall be at such place as the BOARD may determine from time to time.

1.3 Fiscal Year. The fiscal year of the ASSOCIATION shall be the calendar year.

1.4 Seal. The seal of the ASSOCIATION shall have inscribed upon it the name of the ASSOCIATION, the year of its incorporation and the words "Corporation Not-for-Profit." The seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or otherwise reproduced upon any instrument or document executed in the name of the ASSOCIATION.

1.5 Inspection of Books and Records. The books and records of the ASSOCIATION shall be open to inspection by all OWNERS or their authorized representatives, and all holders, insurers or guarantors of any first mortgage encumbering a LOT. Such records of the ASSOCIATION shall include current copies of the DECLARATION, ARTICLES and BYLAWS, and any amendments thereto, any contracts entered into by the ASSOCIATION, and the books, records and financial statements of the ASSOCIATION. The ASSOCIATION shall be required to make available to prospective purchasers of LOTS current copies of the DECLARATION, ARTICLES and BYLAWS, and the most recent annual financial statement of the ASSOCIATION. Notwithstanding the foregoing, any inspection of any books or records of the ASSOCIATION will only be permitted upon reasonable notice, during normal business hours or under reasonable circumstances, and must be for a proper purpose which is reasonably related to an interest that the person making the inspection has or may have in the ASSOCIATION.

1.6 Definitions. Unless the context otherwise requires, all terms used in these BYLAWS shall have the same meaning as are attributed to them in the ARTICLES, and the DECLARATION.

2. MEMBERSHIP IN GENERAL.

2.1 Qualification. Pursuant to the ARTICLES, all of the record owners of LOTS shall be members of the ASSOCIATION. Membership for each LOT shall be established upon the recording of the DECLARATION. Prior to the recording of the DECLARATION, the incorporator shall be the sole member of the ASSOCIATION, but its membership shall terminate upon the recording of the DECLARATION, unless it owns any LOT(S).

2.2 Changes in Membership. The transfer of the ownership of any LOT, either voluntarily or by operation of law, shall automatically terminate the membership of the prior owner, and the transferee or new owner shall automatically become a member of the ASSOCIATION. It shall be the responsibility of any such transferor and transferee of a LOT to notify the ASSOCIATION of any change in the ownership of any LOT, and the corresponding change in any membership, by delivering to the ASSOCIATION a copy of the deed or other instrument of conveyance which establishes a transfer of ownership. In the absence of such notification, the ASSOCIATION shall not be obligated to recognize any change in membership or ownership of a LOT for purposes of notice, voting, ASSESSMENTS, or for any other purpose.

2.3 Member Register. The secretary of the ASSOCIATION shall maintain a register in the office of the ASSOCIATION showing the names and addresses of the members of the ASSOCIATION. It shall be the obligation of each member of the ASSOCIATION to advise the secretary of any change of

address of the member, or of the change of ownership of the member's LOT, as set forth above. Any member who mortgages his LOT shall notify the ASSOCIATION of the name and address of his mortgagee. Any member who satisfies the mortgage encumbering his LOT shall also notify the ASSOCIATION thereof, and shall file a copy of the satisfaction of mortgage with the ASSOCIATION. The names and addresses of any such mortgagee shall also be maintained in the member register.

### 3. MEMBERSHIP VOTING.

3.1 Voting Rights. The voting rights of the members and of DECLARANT shall be as provided in the ARTICLES.

3.2 Majority Vote and Quorum Requirements. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum is present shall be binding upon all members and OWNERS for all purposes, except where otherwise provided by law, in the DECLARATION, in the ARTICLES, or in these BYLAWS. Unless otherwise so provided, at any regular or special meeting, the presence in person or by proxy of persons entitled to cast the votes for one-third of the LOTS shall constitute a quorum.

#### 3.3 Determination as to Voting Rights.

3.3.1 In the event any LOT is owned by one person, his right to cast the vote for the LOT shall be established by the record title to his LOT.

3.3.2 In the event any LOT is owned by more than one person or by an entity, the vote for the LOT may be cast at any meeting by any co-owner of the LOT provided, however, that in the event a dispute arises between the co-owners as to how the vote for the LOT shall be cast, or in the event the co-owners are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to cast the vote for the LOT on the matter being voted upon at that meeting, but their membership shall be counted for purposes of determining the existence of a quorum. For purposes of this paragraph, the principals or partners of any entity (other than a corporation) owning a LOT shall be deemed co-owners of the LOT, and the directors and officers of a corporation owning a LOT shall be deemed co-owners of the LOT.

3.3.3 Proxies. Every member entitled to vote at a meeting of the members, or to express consent or dissent without a meeting, may authorize another person or persons to act on the member's behalf by a proxy signed by such member or his attorney-in-fact. Any proxy shall be delivered to the secretary of the meeting at or prior to the time designated in the order of business for delivering proxies. Members may not vote by general proxy, but may vote by limited proxy. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may also be used for votes taken to amend the ARTICLES or BYLAWS or for any matter that requires or permits a vote of the members. Any proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it. Every proxy shall specifically set forth the name of the person voting by proxy, and the name of the person authorized to vote the proxy for him. Every proxy shall contain the date, time, and place of the meeting for which the proxy is given, and if a limited proxy, shall set forth those items which the proxy holder may vote, and the manner in which the vote is to be cast.

### 4. MEMBERSHIP MEETINGS.

4.1 Who May Attend. In the event any LOT is owned by more than one person, all co-owners of the LOT may attend any meeting of the members. In the event any LOT is owned by a corporation, any director or officer of the corporation may attend any meeting of the members. However, the vote for any LOT shall be cast in accordance with the provisions of Paragraph 3 above. INSTITUTIONAL LENDERS have the right to attend all members meetings.

4.2 Place. All meetings of the members shall be held at the principal office of the ASSOCIATION or at such other place and at such time as shall be designated by the BOARD and stated in the notice of meeting.

4.3 Notices. Written notice stating the place, day and hour of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by first-class mail or personal delivery to each member entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting, either personally or by first-class mail, by or at the direction of the president, the secretary or the officer or persons calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears in the records of the ASSOCIATION, with postage thereon prepaid. For the purpose of determining members entitled to notice of, or to vote at, any meeting of the members of the ASSOCIATION, or in order to make a determination of the members for any other purpose, the BOARD shall be entitled to rely upon the member register as same exists ten days prior to the giving of the notice of any meeting, and the BOARD shall not be required to take into account any changes in membership occurring after that date but may, in their sole and absolute discretion, do so. Notwithstanding the foregoing, if a LOT is owned by more than one person or by an entity, only one notice shall be required to be given with respect to the LOT, which may be given to any co-owner as defined in Paragraph 3.3.2 of these BYLAWS. Notice to any member or co-owner shall be sent to the LOT of such member or co-owner, unless the LOT OWNER(S) of the LOT otherwise request.

4.4 Waiver of Notice. Whenever any notice is required to be given to any member under the provisions of the ARTICLES or these BYLAWS, or as otherwise provided by law, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a member at a meeting shall constitute a waiver of notice of such meeting, except when the member objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

4.5 Annual Meeting. The annual meeting for the purpose of electing directors and transacting any other business shall be held once each year at a time and place to be determined by the BOARD and as is contained in the notice of such meeting. However, so long as DECLARANT is entitled to appoint a majority of the directors of the Association, no annual meetings will be required.

4.6 Special Meetings. Special meetings of the members may be called at any time by any director, the president, or at the request, in writing, by not less than 25% of the members, or as otherwise provided by law. Such request shall state the purpose of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of meeting. Notice of any special meeting shall be given by the secretary, or other officer of the ASSOCIATION, to all of the members within thirty (30) days after same is duly called, and the meeting shall be held within forty-five (45) days after same is duly called.

4.7 Adjournments. Any meeting may be adjourned or continued by a majority vote of the members present in person or by proxy and entitled to vote, or if no member entitled to vote is present, then any officer of the ASSOCIATION may adjourn the meeting from time to time. If any meeting is adjourned or continued to another time or place, it shall not be necessary to give any notice of the adjourned meeting, if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted at the original meeting. If the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, notice of the adjourned meeting may be given to members not present at the original meeting, without giving notice to the members which were present at such meeting.

4.8 Organization. At each meeting of the members, the president, the vice president, or any person chosen by a majority of the members present, in that order, shall act as chairman of the meeting. The secretary, or in his absence or inability to act, any person appointed by the chairman of the meeting, shall act as secretary of the meeting.

4.9 Order of Business. The order of business at the annual meetings of the members shall be:

- 4.9.1 Determination of chairman of the meeting;
- 4.9.2 Calling of the roll and certifying of proxies;
- 4.9.3 Proof of notice of meeting or waiver of notice;
- 4.9.4 Reading and disposal of any unapproved minutes;
- 4.9.5 Reports of directors, officers or committees;
- 4.9.6 Nomination and election of inspectors of election;
- 4.9.7 Determination of number of directors;
- 4.9.8 Election of directors;
- 4.9.9 Unfinished business;
- 4.9.10 New business; and
- 4.9.11 Adjournment.

4.10 Minutes. The minutes of all meetings of the members shall be kept in a book available for inspection by the members or their authorized representatives, and the directors, upon reasonable notice, during reasonable times, for a proper purpose. The ASSOCIATION shall retain these minutes for a period of not less than seven years.

4.11 Actions Without a Meeting. Any action required or permitted to be taken at any annual or special meeting of the members of the ASSOCIATION, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Within ten days after obtaining such authorization by written consent, notice shall be given to those members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. If a LOT is owned by more than one person or by a corporation, the consent for such LOT need only be signed by one person who would be entitled to cast the vote for the LOT as a co-owner pursuant to Paragraph 3.3.2 of these BYLAWS.

## 5. DIRECTORS.

### 5.1 Membership.

5.1.1 The affairs of the ASSOCIATION shall be managed by a BOARD of not less than three (3) nor more than nine (9) directors. So long as the DECLARANT is entitled to appoint any director pursuant to the ARTICLES, the number of directors will be determined, and may be changed from time to time, by the DECLARANT by written notice to the BOARD. After the DECLARANT is no longer entitled to appoint any director, the number of directors may be changed at any meeting where the members are to elect any directors (i) by the then existing BOARD, if prior to such meeting of the members the BOARD votes to change the number of directors and such change is indicated in the notice of the meeting sent to the members, or (ii) by the members at the meeting prior to the election of directors. If the number of directors on the BOARD is not changed, then the number of directors shall be the same as the number on the BOARD prior to such meeting (plus any unfilled vacancies created by the death, resignation or removal of a director). In any event there shall always be an odd number of directors.

5.2 Election of Directors by Members. Election of directors to be elected by the members of the ASSOCIATION shall be conducted in the following manner:

5.2.1 Within 60 days after the members other than the DECLARANT are entitled to elect any directors, as provided in the ARTICLES, or within 60 days after the DECLARANT notifies the ASSOCIATION that it waives its right to appoint one or more directors, the ASSOCIATION shall call, and give not less than 30 days nor more than 45 days notice of, a special meeting of the members to elect any directors the members are then entitled to elect, or to replace the appropriate number of directors previously appointed by the DECLARANT. Such special meeting may be called and the notice given by any member if the ASSOCIATION fails to do so. At such special meeting the members shall be required to elect any directors which they are entitled to elect, and if they fail to do so any directors appointed by DECLARANT which would have been replaced by any directors elected by the members may resign without further liability or obligation to the ASSOCIATION. In the event such a special meeting is called and held, at the meeting the members may elect not to hold the next annual meeting of the members if such next annual meeting would be less than 4 months after the date of the special meeting, and upon such election the next annual meeting of the members shall not be held.

5.2.2 Except as provided above, the members shall elect directors at the annual members' meetings.

5.2.3 Prior to any special or annual meeting at which directors are to be elected by the members, the existing BOARD may nominate a committee, which committee shall nominate one person for each director to be elected by the members, on the basis that the number of directors to serve on the BOARD will not be altered by the members at the members meeting. Nominations for additional directorships created at the meeting shall be made from the floor, and other nominations may be made from the floor.

5.2.4 The election of directors by the members shall be by ballot that the member personally casts (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each member voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

5.3 Term of Office. All directors elected by the members shall hold office until the next annual meeting of the members and until their successors are duly elected, or until such director's death, resignation or removal, as hereinafter provided or as otherwise provided by statute or by the ARTICLES.

5.4 Organizational Meeting. The newly elected BOARD shall meet for the purposes of organization, the election of officers and the transaction of other business immediately after their election or within ten (10) days of same at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary.

5.5 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. During the period when DECLARANT appoints a majority of the Directors, no regular meetings of the BOARD will be required.

5.6 Special Meetings. Special meetings of the BOARD may be called by any director, or by the president, at any time.

5.7 Notice of Meetings. Notice of each meeting of the BOARD shall be given by the secretary, or by any other officer or director, which notice shall state the day, place and hour of the meeting. Notice of such meeting shall be delivered to each director either personally or by telephone or telegraph, at least 48 hours before the time at which such meeting is to be held, or by first class mail, postage prepaid, addressed to such director at his residence, or usual place of business, at least three days before the day on which such meeting is to be held. Notice of a meeting of the BOARD need not be given to any director who signs a waiver of notice either before or after the meeting. Notice of any meeting of the BOARD shall not be required to be given to the members or posted unless otherwise required by law. Notice of any meeting in which ASSESSMENTS are to be established shall specifically

contain a statement that ASSESSMENTS shall be considered and a statement of the nature of such ASSESSMENTS. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting, an objection to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the BOARD need be specified in any notice or waiver of notice of such meeting.

5.8 Quorum and Manner of Acting. A majority of the directors determined in the manner provided in these BYLAWS shall constitute a quorum for the transaction of any business at a meeting of the BOARD. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the BOARD, unless the act of a greater number of directors is required by statute, the DECLARATION, the ARTICLES, or by these BYLAWS. A director may join by written concurrence in any action taken at a meeting of the BOARD but such concurrence may not be used for the purposes of creating a quorum.

5.9 Adjourned Meetings. A majority of the directors present at a meeting, whether or not a quorum exists, may adjourn any meeting of the BOARD to another place and time. Notice of any such adjourned meeting shall be given to the directors who are not present at the time of the adjournment, and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors. At any adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

5.10 Presiding Officer. The presiding officer of the BOARD meetings shall be the chairman of the BOARD if such an officer is elected; and if none, the president of the ASSOCIATION shall preside. In the absence of the presiding officer, the directors shall designate one of their members to preside.

5.11 Order of Business. The order of business at a BOARD meeting shall be:

- 5.11.1 Calling of roll;
- 5.11.2 Proof of due notice of meeting;
- 5.11.3 Reading and disposal of any unapproved minutes;
- 5.11.4 Reports of officers and committees;
- 5.11.5 Election of officers;
- 5.11.6 Unfinished business;
- 5.11.7 New business; and
- 5.11.8 Adjournment.

5.12 Minutes of Meetings. The minutes of all meetings of the BOARD shall be kept in a book available for inspection by the members of the ASSOCIATION, or their authorized representatives, and the directors, upon reasonable notice, during reasonable times, for a proper purpose. The ASSOCIATION shall retain these minutes for a period of not less than seven years.

5.13 Committees. The BOARD may, by resolution duly adopted, appoint committees. Any committee shall have and may exercise such powers, duties and functions as may be determined by the BOARD from time to time, which may include any powers which may be exercised by the BOARD and which are not prohibited by law from being exercised by a committee.

5.14 Resignation. Any director may resign at any time by giving written notice of his resignation to another director or officer. Any such resignation shall take effect at the time specified therein or, if the time when such resignation is to become effective is not specified therein, immediately



upon its receipt, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.15 Removal of Directors. Directors may be removed as follows:

5.15.1 Any director other than a director appointed by the DECLARANT may be removed by majority vote of the remaining directors, if such director has been absent for the last three consecutive BOARD meetings, and/or adjournments and continuances of such meetings.

5.15.2 Any director other than a director appointed by the DECLARANT may be removed with or without cause by the vote of a majority of the members of the ASSOCIATION at a special meeting of the members called by not less than ten percent of the members of the ASSOCIATION expressly for that purpose. The vacancy on the BOARD caused by any such removal may be filled by the members at such meeting or, if the members shall fail to fill such vacancy, by the BOARD, as in the case of any other vacancy on the BOARD.

5.16 Vacancies.

5.16.1 Vacancies in the BOARD may be filled by a majority vote of the directors then in office, though less than a quorum, or by a sole remaining director, and a director so chosen shall hold office until the next annual election and until his successor is duly elected, unless sooner displaced. If there are no directors, then a special election of the members shall be called to elect the directors. Notwithstanding anything contained herein to the contrary, the DECLARANT at all times shall have the right to appoint the maximum number of directors permitted by the ARTICLES, and any vacancies on the BOARD may be filled by the DECLARANT to the extent that the number of directors then serving on the BOARD which were appointed by the DECLARANT is less than the number of directors the DECLARANT is then entitled to appoint.

5.16.2 In the event the ASSOCIATION fails to fill vacancies on the BOARD sufficient to constitute a quorum in accordance with these BYLAWS, any LOT OWNER may apply to the Circuit Court of the County in which the SUBJECT PROPERTY is located for the appointment of a receiver to manage the affairs of the ASSOCIATION. At least thirty (30) days prior to applying to the Circuit Court, the LOT OWNER shall mail to the ASSOCIATION a notice describing the intended action giving the ASSOCIATION the opportunity to fill the vacancies. If during such time the ASSOCIATION fails to fill the vacancies, the LOT OWNER may proceed with the petition. If a receiver is appointed, the ASSOCIATION shall be responsible for the salary of the receiver, court costs, and attorneys' fees. The receiver shall have all powers and duties of a duly constituted member of the BOARD, and shall serve until the ASSOCIATION fills vacancies on the BOARD sufficient to constitute a quorum.

5.17 Directors Appointed by the DECLARANT. Notwithstanding anything contained herein to the contrary, the DECLARANT shall have the right to appoint the maximum number of directors in accordance with the privileges granted to the DECLARANT pursuant to the ARTICLES. All directors appointed by the DECLARANT shall serve at the pleasure of the DECLARANT, and the DECLARANT shall have the absolute right, at any time, and in its sole discretion, to remove any director appointed by it, and to replace such director with another person to serve on the BOARD. Replacement of any director appointed by the DECLARANT shall be made by written instrument delivered to any officer or any other director, which instrument shall specify the name of the person designated as successor director. The removal of any director and the designation of his successor by the DECLARANT shall become effective immediately upon delivery of such written instrument by the DECLARANT.

5.18 Compensation. The Directors shall not be entitled to any compensation for serving as Directors unless the members approve such compensation, provided however, the ASSOCIATION may reimburse any Director for expenses incurred on behalf of the ASSOCIATION without approval of the members.

5.19 Powers and Duties. The directors shall have the right to exercise all of the powers and duties of the ASSOCIATION, express or implied, existing under these BYLAWS, the ARTICLES, the DECLARATION, or as otherwise provided by statute or law.

## 6. OFFICERS.

6.1 Members and Qualifications. The officers of the ASSOCIATION shall include a president, a vice president, a treasurer and a secretary, all of whom shall be elected by the directors and may be preemptively removed from office with or without cause by the directors. Any person may hold two or more offices except that the president shall not also be the secretary. The BOARD may, from time to time, elect such other officers and designate their powers and duties as the BOARD shall find to be appropriate to manage the affairs of the ASSOCIATION from time to time. Each officer shall hold office until the meeting of the BOARD following the next annual meeting of the members, or until his successor shall have been duly elected and shall have qualified, or until his death, or until he shall have resigned, or until he shall have been removed, as provided in these BYLAWS.

6.2 Resignations. Any officer may resign at any time by giving written notice of his resignation to any director or officer. Any such resignation shall take effect at the time specified therein, or if there is no time specified therein, immediately upon its receipt; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make such resignation effective.

6.3 Vacancies. A vacancy in any office, whether arising from death, resignation, removal or any other cause may be filled for the unexpired portion of the term of the office which shall be vacant in the manner prescribed in these BYLAWS for the regular election or appointment of such office.

6.4 The President. The president 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 president of an association or corporation including, but not limited to, the power to appoint committees from among the members from time to time, as he may in his discretion deem appropriate to assist in the conduct of the affairs of the ASSOCIATION.

6.5 The Vice President. The vice president shall, in the absence or disability of the president, exercise the powers and perform the duties of the president. He shall also assist the president generally and exercise such other powers and perform such other duties as may be prescribed by the directors.

6.6 The Secretary. The secretary shall prepare and keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors and other notices required by law. He shall have custody of the seal of the ASSOCIATION and affix the same to instruments requiring a seal when duly executed. He shall keep the records of the ASSOCIATION, except those of the treasurer, and shall perform all other duties incident to the office of secretary of an association, and as may be required by the directors or the president.

6.7 The Treasurer. The treasurer shall have custody of all property of the ASSOCIATION, including funds, securities, and evidences of indebtedness. He shall keep books of account for the ASSOCIATION in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the BOARD for examination at reasonable times. He shall submit a Treasurer's Report to the BOARD at reasonable intervals and shall perform all other duties incident to the office of treasurer. He shall collect all ASSESSMENTS and shall report to the BOARD the status of collections as requested.

6.8 Compensation. The officers shall not be entitled to compensation unless the BOARD specifically votes to compensate them. However, neither this provision, nor the provision that directors will not be compensated unless otherwise determined by the members, shall preclude the BOARD from employing a director or an officer as an employee of the ASSOCIATION and compensating such employee, nor shall they preclude the ASSOCIATION from contracting with a director for the management of property subject to the jurisdiction of the ASSOCIATION, or for the provision of services to the ASSOCIATION, and in either such event to pay such director a reasonable fee for such management or provision of services.

## 7. FINANCES AND ASSESSMENTS.

7.1 ASSESSMENT ROLL. The ASSOCIATION shall maintain an ASSESSMENT roll for each LOT, designating the name and current mailing address of the OWNER, the amount of each ASSESSMENT against such OWNER, the dates and amounts in which the ASSESSMENTS come due, the amounts paid upon the account of the OWNER, and the balance due.

7.2 Depositories. The funds of the ASSOCIATION shall be deposited in such banks and depositories as may be determined and approved by appropriate resolutions of the BOARD from time to time. Funds shall be withdrawn only upon checks and demands for money signed by such officers, directors or other persons as may be designated by the BOARD. Fidelity bonds as required by the DECLARATION shall be required of all signatories on any account of the ASSOCIATION.

7.3 Depositing of Payments. All sums collected by the ASSOCIATION from ASSESSMENTS may be deposited in a single fund or divided into more than one fund, as determined by the BOARD.

7.4 Accounting Records and Reports. The ASSOCIATION shall maintain accounting records according to good accounting practices. The records shall be open to inspection by OWNERS and INSTITUTIONAL LENDERS or their authorized representatives, at reasonable times. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) the ASSESSMENT roll of the members referred to above. The BOARD may, and upon the vote of a majority of the members shall, conduct a review of the accounts of the ASSOCIATION by a certified public accountant, and if such a review is made, a copy of the report shall be furnished to each member, or their authorized representative, within fifteen days after same is completed.

7.5 Reserves. The budget of the ASSOCIATION shall provide for a reserve fund for the periodic maintenance, repair and replacement of improvements to the COMMON AREAS and those other portions of the SUBJECT PROPERTY which the ASSOCIATION is obligated to maintain.

## 8. PARLIAMENTARY RULES.

8.1 Roberts' Rules of Order (latest edition) shall govern the conduct of the ASSOCIATION meetings when not in conflict with any DECLARATION, the ARTICLES or these BYLAWS.

## 9. AMENDMENTS.

Except as otherwise provided, these BYLAWS may be amended in the following manner:

9.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

9.2 Initiation. A resolution to amend these BYLAWS may be proposed either by any director, or by or at the direction of 25% percent or more of the members of the ASSOCIATION.

### 9.3 Adoption of Amendments.

9.3.1 A resolution for the adoption of the proposed amendment shall be adopted by not less than a majority of the votes of the entire membership of the ASSOCIATION.

9.3.2 Notwithstanding the foregoing, these BYLAWS may be amended solely by the BOARD, upon the unanimous vote of the directors and without the vote or approval of the members, if the purpose of such amendment is solely to conform these BYLAWS to the provisions of any applicable statute of the State of Florida, including any amendment to any statute hereafter adopted.

9.3.3 Notwithstanding anything contained herein to the contrary, so long as the DECLARANT is entitled to appoint a majority of the directors, the DECLARANT shall have the right to unilaterally amend these BYLAWS without the joinder or approval of the BOARD or any member, and so long as the DECLARANT owns any LOT, no amendment to these BYLAWS shall be effective without the written approval of the DECLARANT.

9.4 No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of members without approval by all of the members and the joinder of all record owners of mortgages upon the LOTS. No amendment shall be made that is in conflict with the DECLARATION or the ARTICLES. Prior to the closing of the sale of all LOTS, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, the DECLARANT, unless the DECLARANT shall join in the execution of the amendment, including, but not limited to, any right of the DECLARANT to appoint directors.

9.5 No amendment to these BYLAWS shall be made which discriminates against any OWNER(S), or affects less than all of the OWNERS without the written approval of all of the OWNERS so discriminated against or affected.

9.6 Execution and Recording. No modification of, or amendment to, the BYLAWS shall be valid until recorded in the public records of the county in which the SUBJECT PROPERTY is located.

## 10. MISCELLANEOUS.

10.1 Tenses and Genders. The use of any gender or of any tense in these BYLAWS shall refer to all genders or to all tenses, wherever the context so requires.

10.2 Partial Invalidity. Should any of the provisions hereof be void or become unenforceable at law or in equity, the remaining provisions shall, nevertheless, be and remain in full force and effect.

10.3 Conflicts. In the event of any conflict, the DECLARATION, the ARTICLES, and these BYLAWS, shall govern, in that order.

10.4 Captions. Captions are inserted herein only as a matter of convenience and for reference, and in no way are intended to or shall define, limit or describe the scope of these BYLAWS or the intent of any provisions hereof.

10.5 Waiver of Objections. The failure of the BOARD or any officers of the ASSOCIATION to comply with any terms and provisions of the DECLARATION, the ARTICLES, or these BYLAWS which relate to time limitations shall not, in and of itself, invalidate the act done or performed. Any such failure shall be waived if it is not objected to by a member of the ASSOCIATION within ten (10) days after the member is notified, or becomes aware, of the failure. Furthermore, if such failure occurs at a general or special meeting, the failure shall be waived as to all members who received notice of the meeting or appeared and failed to object to such failure at the meeting.



11/05/2001 14:53:20 20010485532  
OR BK 13056 PG 0001  
Palm Beach County, Florida

**COVER PAGE TO**

**Master Declaration for Briar Bay dated September 12, 2001**

**Executed by: Golden West Limited Partnership, a Virginia limited partnership, as Declarant, having an office address of 448 Viking Drive, Suite 220, Virginia Beach, FL 23452**

**Together with the joinder and consent of:**

- (a) Sandler West Palm Beach Investment Limited Partnership, a Virginia limited partnership;**
- (b) Briar Bay Community Association, Inc., a Florida not-for-profit corporation and**
- (c) Mellon United National Bank, a national banking association**

**Return to:**  
Samuel D. Navon, Esq.  
Navon, Kopelman, O'Donnell & Lavin, P.A.  
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✓ WC# <sup>54</sup> ~~01~~ CODE 2563  
Folio No: BIN/PHIL  
KUPFER, KUPFER & SKOLNICK, P.A.

MASTER DECLARATION

FOR

BRIAR BAY

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RECORD AND RETURN TO:  
THIS INSTRUMENT PREPARED BY:

Eric A. Simon, Esquire  
2825 University Drive, Suite 300  
Coral Springs, Florida 33065

## MASTER DECLARATION

FOR

BRIAR BAY

THIS MASTER DECLARATION FOR BRIAR BAY is made this 12 day of September, 2001,  
by GOLDEN WEST LIMITED PARTNERSHIP, a Virginia limited partnership ("DECLARANT)."

This MASTER DECLARATION includes the following exhibits:

|             |   |  |
|-------------|---|--|
| Exhibit "A" | - | Legal Description of the SUBJECT PROPERTY          |
| Exhibit "B" | - | Articles of Incorporation of COMMUNITY ASSOCIATION |
| Exhibit "C" | - | Bylaws of COMMUNITY ASSOCIATION                    |
| Exhibit "D" | - | Example for Deficit Funding                        |
| Exhibit "E" | - | Copy of SFWMD Permit                               |

### PREAMBLE:

DECLARANT intends the property described herein to be developed as a residential community. The purpose of this Declaration is to provide various use and maintenance requirements and restrictions in the best interests of the future owners of dwellings within the SUBJECT PROPERTY, to protect and preserve the values of the SUBJECT PROPERTY. This DECLARATION also provides for certain rights and obligations of the COMMUNITY ASSOCIATION, which will own, operate and/or maintain various portions of the SUBJECT PROPERTY and improvements constructed within the SUBJECT PROPERTY, and will have the right to enforce the provisions of this DECLARATION. The expenses of the COMMUNITY ASSOCIATION will be shared by the OWNERS of portions of the SUBJECT PROPERTY.

NOW, THEREFORE, DECLARANT hereby declares that the SUBJECT PROPERTY, as hereinafter defined, shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens and charges set forth herein, all of which are created in the best interests of the owners and residents of the SUBJECT PROPERTY, and which shall run with the SUBJECT PROPERTY and shall be binding upon all persons having and/or acquiring any right, title or interest in the SUBJECT PROPERTY or any portion thereof, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the SUBJECT PROPERTY, or any portion thereof.

1. DEFINITIONS. The words and phrases listed below, as used in this DECLARATION, shall have the following meanings, unless the context otherwise requires:

1.1. APPROVING PARTY means DECLARANT, as long as it owns any portion of the SUBJECT PROPERTY, or until DECLARANT relinquishes its rights as the APPROVING PARTY by written notice to the COMMUNITY ASSOCIATION. DECLARANT reserves the right to assign its rights as the APPROVING PARTY with respect to any PARCEL to any PARCEL DEVELOPER of the PARCEL or to the COMMUNITY ASSOCIATION, in whole or in part. When DECLARANT or its assignee is no longer the APPROVING PARTY with respect to any PARCEL, the COMMUNITY ASSOCIATION shall be the APPROVING PARTY with respect to such PARCEL. Notwithstanding the foregoing, DECLARANT, so long as it owns any portion of the SUBJECT PROPERTY, and thereafter the PARCEL DEVELOPER of any PARCEL or its assignee, and not the COMMUNITY ASSOCIATION, shall be the APPROVING PARTY with respect to the initial construction of any improvements within a PARCEL by the PARCEL DEVELOPER of the PARCEL or by any builder or developer. Notwithstanding anything contained herein to the contrary, the APPROVING PARTY may assign any right to exercise architectural control or approve any other matter which may be approved by the APPROVING PARTY to a committee or committees. Separate committees may be established for each PARCEL, and the committee for any PARCEL may be assigned the right to exercise architectural control or approve any other matter which may be approved by the APPROVING PARTY and which relate to the PARCEL. Such assignment to a PARCEL committee may provide that after the PARCEL committee has approved any matter, such matter must be further approved by the APPROVING PARTY or a committee of the COMMUNITY ASSOCIATION.

1.2. ARTICLES mean the Articles of Incorporation of the COMMUNITY ASSOCIATION, as amended from time to time.

1.3. ASSESSMENT means the amount of money which may be assessed against an OWNER for the payment of the OWNER's share of COMMON EXPENSES, and/or any other funds which an OWNER may be required to pay to the COMMUNITY ASSOCIATION as provided by this DECLARATION, the ARTICLES or the BYLAWS.

1.4. BOARD means the Board of Directors of the COMMUNITY ASSOCIATION.

1.5. BYLAWS mean the Bylaws of the COMMUNITY ASSOCIATION, as amended from time to time.

1.6. COMMON AREAS means any property, whether improved or unimproved, or any easement or interest therein, which is now or hereafter (i) owned by or leased to the COMMUNITY ASSOCIATION, (ii) dedicated to the COMMUNITY ASSOCIATION on any recorded plat, (iii) required by any recorded plat or other recorded document to be maintained by the COMMUNITY ASSOCIATION, (iv) declared to be a COMMON AREA by this DECLARATION, or (ii) intended to be a COMMON AREA by DECLARANT. COMMON AREAS may include but are not limited to parks, open areas, conservation areas, nature preserves, lakes and other waterways, recreational facilities, roads, entranceways, and other similar properties, provided that the foregoing shall not be deemed a representation or warranty that any or all of the foregoing types of COMMON AREAS will be provided.

1.7. COMMON EXPENSES mean all expenses of any kind or nature whatsoever properly incurred by the COMMUNITY ASSOCIATION, including, but not limited to, the following:

1.7.1. Expenses incurred in connection with the ownership, maintenance, repair, improvement or operation of the COMMON AREAS, or any other property to be maintained by the

COMMUNITY ASSOCIATION as provided in this DECLARATION, including, but not limited to, utilities, real and personal taxes, assessments, insurance, operation, maintenance, repairs, improvements, alterations and security.

1.7.2. Expenses of obtaining, repairing or replacing personal property owned by the COMMUNITY ASSOCIATION.

1.7.3. Expenses incurred in connection with the administration and management of the COMMUNITY ASSOCIATION.

1.7.4. Costs incurred in complying with any governmental approval, permit, or requirement relating to the SUBJECT PROPERTY.

1.7.5. The cost of operating and maintaining any gatehouses or electronic gates or entry devices within the SUBJECT PROPERTY.

1.7.6. The cost of providing cable television service and/or home security monitoring services for the SUBJECT PROPERTY and/or the UNITS, if the BOARD elects to provide same as a COMMON EXPENSE.

1.7.7. The cost of maintaining and replacing the entrance features to the SUBJECT PROPERTY and to all of the PARCELS.

1.7.8. Expenses declared to be COMMON EXPENSES by the provisions of this DECLARATION or by the ARTICLES or BYLAWS.

1.8. COMMON SURPLUS means the excess of all receipts of the COMMUNITY ASSOCIATION over the amount of the COMMON EXPENSES.

1.9. COMMUNITY ASSOCIATION means the corporation formed pursuant to the Articles of Incorporation attached hereto as an exhibit.

1.10. DECLARANT means the entity executing this DECLARATION, or any PERSON who may be assigned the rights of DECLARANT pursuant to a written assignment executed by the then present DECLARANT and recorded in the public records of the county in which the SUBJECT PROPERTY is located. In addition, in the event any PERSON obtains title to all of the SUBJECT PROPERTY then owned by DECLARANT as a result of the foreclosure of any mortgage or deed in lieu thereof, such PERSON may elect to become the DECLARANT or to have any of DECLARANT's rights as provided by this DECLARATION, the ARTICLES, or the BYLAWS, by a written election recorded in the public records of the county in which the SUBJECT PROPERTY is located, and regardless of the exercise of such election, such PERSON may appoint as DECLARANT or assign any rights of DECLARANT to any third party who acquires title to all or any portion of the SUBJECT PROPERTY by written appointment recorded in the public records of the county in which the SUBJECT PROPERTY is located. In any event, any subsequent DECLARANT shall not be liable for any actions or defaults of, or obligations incurred by, any prior DECLARANT, except as same may be expressly assumed by the subsequent DECLARANT.

1.11. DECLARATION means this declaration, as it may be amended from time to time.

1.12. EXEMPTION PERIOD means the period beginning with the recording of this DECLARATION and ending when neither DECLARANT nor any PARCEL DEVELOPER owns any portion of the SUBJECT PROPERTY, which contains a UNIT or any PLANNED UNIT, or when DECLARANT

notifies the COMMUNITY ASSOCIATION in writing of such termination, whichever occurs first. Notwithstanding the foregoing, the EXEMPTION PERIOD shall terminate at such time as a majority of the directors of the COMMUNITY ASSOCIATION are elected by OWNERS other than DECLARANT and any PARCEL DEVELOPERS, unless DECLARANT elects to extend the EXEMPTION PERIOD after such time by written notice to the COMMUNITY ASSOCIATION.

1.13. IMPROVEMENT means (i) any building, fence, wall, patio area, road, driveway, walkway, landscaping, antenna, sign, mailbox, pool, tennis court, recreational facility, berm, lake, pond, canal, or other structure or improvement which is constructed, made, installed, placed or developed within or upon, or removed from, any PROPERTY, (ii) any change in, alteration of, addition to, or removal of all or any portion of any such structure or improvement which affects the exterior appearance thereof, other than normal maintenance and repair which does not materially alter or change the exterior appearance, condition and color of same, and (iii) any change in the ground elevation of any PROPERTY.

1.14. INSTITUTIONAL LENDER means the holder of a mortgage encumbering any PROPERTY, which holder in the ordinary course of business makes, purchases, guarantees, or insures mortgage loans, and which is not owned or controlled by the OWNER of the PROPERTY encumbered. An INSTITUTIONAL LENDER may include, but is not limited to, a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension or profit sharing plan, mortgage company, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, or any other similar type of lender generally recognized as an institutional-type lender. For definitional purposes only, an INSTITUTIONAL LENDER shall also mean the holder of any mortgage executed by or in favor of DECLARANT or any PARCEL DEVELOPER, whether or not such holder would otherwise be considered an INSTITUTIONAL LENDER.

1.15. LIMITED PROPERTY means any portion of the SUBJECT PROPERTY which pursuant to this DECLARATION or any amendment or supplement hereto, (i) is only liable for a share of certain specified COMMON EXPENSES, or (ii) is assessed on a different basis than the other SUBJECT PROPERTY. In addition, this DECLARATION or any amendment or supplement hereto may provide that any LIMITED PROPERTY is not subject to one or more of the provisions of this DECLARATION, may provide that the OWNERS of the LIMITED PROPERTY will not be members of the COMMUNITY ASSOCIATION, and may establish special provisions applicable only to such LIMITED PROPERTY.

1.16. LOT means any platted lot within the SUBJECT PROPERTY, or any other parcel of land located within the SUBJECT PROPERTY which has been or is intended to be conveyed to an OWNER and which contains or is intended to contain one UNIT, and shall include any UNIT constructed upon the LOT.

1.17. NPBCID means the Northern Palm Beach County Improvement District, its successors and assigns.

1.18. OWNER means the record owner(s) of the fee title to any PROPERTY and/or UNIT. The term OWNER shall include a UNIT OWNER.

1.19. PARCEL means any group of LOTS or other portion of the SUBJECT PROPERTY which share one or more common roads and/or is developed as a separate residential community in which the OWNERS of the LOTS or property comprising the PARCEL have a common interest separate and distinct from the interest of all of the OWNERS, or which is designated as a PARCEL in this DECLARATION or any amendment or supplement. Each PARCEL may be subject to a separate PARCEL DECLARATION,

and may, but is not required to, be operated by or subject to the jurisdiction of a PARCEL ASSOCIATION.

1.20. PARCEL AREAS means any property, whether improved or unimproved, or any easement or interest therein, now or hereafter owned by the COMMUNITY ASSOCIATION, other than the COMMON AREAS, which are owned and/or maintained by the COMMUNITY ASSOCIATION, and which (i) are located within a PARCEL and primarily benefit the OWNERS of the LOTS and/or UNITS within the PARCEL, or (ii) are restricted for the use and benefit of the OWNERS of only one or more, but less than all, of the PARCELS, in any PARCEL DECLARATION, or in any deed or easement for the PARCEL AREA to the COMMUNITY ASSOCIATION, or pursuant to a recorded document executed by DECLARANT or any applicable PARCEL DEVELOPER, or (iii) are otherwise declared to be PARCEL AREAS pursuant to this DECLARATION or in any amendment or supplement, or in any deed or easement of the property comprising the PARCEL AREA to the COMMUNITY ASSOCIATION, executed or consented to by DECLARANT or the COMMUNITY ASSOCIATION.

1.21. PARCEL ASSESSMENT means an ASSESSMENT which is assessed against the OWNERS within one or more, but less than all of, the PARCELS.

1.22. PARCEL ASSOCIATION means a non-profit corporation, other than the COMMUNITY ASSOCIATION, which is formed to administer a PARCEL DECLARATION, and whose members consist of the OWNERS within the PARCEL affected by the PARCEL DECLARATION. For purposes of this DECLARATION, the PARCEL affected by any PARCEL DECLARATION shall be deemed to be operated by, and subject to the jurisdiction of, the respective PARCEL ASSOCIATION.

1.23. PARCEL DECLARATION means a supplement to this DECLARATION or a separate and distinct declaration of covenants and restrictions that affects one or more PARCELS and which contains provisions specially relating to such PARCELS, which may include provisions regarding PARCEL AREAS, PARCEL ASSESSMENTS and use and maintenance covenants and restrictions applicable to such PARCELS. A PARCEL DECLARATION may, but is not required to, establish a separate and distinct PARCEL ASSOCIATION to administer the PARCEL DECLARATION, or in the alternative a PARCEL DECLARATION executed or consented to by DECLARANT or the COMMUNITY ASSOCIATION may assign various duties and obligations to the COMMUNITY ASSOCIATION.

1.24. PARCEL DEVELOPER means a PERSON that executes a PARCEL DECLARATION, or the PERSON named as the PARCEL DEVELOPER in any PARCEL DECLARATION, or a PERSON which owns or contracts to purchase a PARCEL or all or any of the undeveloped LOTS or property within a PARCEL, or any PERSON who succeeds to all of the interests of the PARCEL DEVELOPER with respect to the applicable PARCEL other than a single LOT, or any PERSON who is assigned the rights of the PARCEL DEVELOPER with respect to the PARCEL pursuant to a written assignment executed by the then present PARCEL DEVELOPER and recorded in the Public Records of the County in which the SUBJECT PROPERTY is LOCATED. In any event, any subsequent PARCEL DEVELOPER shall not be liable for any actions or defaults of, or obligations incurred by, any prior PARCEL DEVELOPER, except as same may be expressly assumed by the subsequent PARCEL DEVELOPER.

1.25. PARCEL EXPENSE means a COMMON EXPENSE which is incurred in connection with the ownership, maintenance, repair, improvement, or operation of any PARCEL AREA or which is incurred exclusively for the benefit of one or more PARCELS pursuant to this DECLARATION or a PARCEL DECLARATION, the cost of which is to be assessed solely against the OWNERS within the PARCEL(S) benefited by the expense.

1.26. PERSON means an individual, corporation, partnership, trust or any other legal entity.

1.27. PLANNED UNIT means a UNIT which is planned to be constructed within any PROPERTY, but which is not yet constructed and/or for which the controlling governmental authority has not yet issued a certificate of occupancy. The number of PLANNED UNITS within any PROPERTY is (i) the total number of UNITS which may be constructed within the PROPERTY determined pursuant to a site plan approved by any controlling governmental authority or a recorded plat which subdivides the PROPERTY into LOTS (prior to the approval of any such site plan or the recording of any such plat, the number of UNITS shall be the number of UNITS estimated by DECLARANT to be constructed within the PROPERTY), (ii) less the number of UNITS actually existing within the PROPERTY. Any PARCEL DEVELOPER may limit the number of PLANNED UNITS within the PARCEL DEVELOPER'S PROPERTY by executing an agreement setting forth the maximum number of UNITS which may be constructed within such PROPERTY, which shall be executed or joined in by the COMMUNITY ASSOCIATION and any mortgagee holding a mortgage encumbering the PROPERTY and shall be recorded in the public records of the county in which the PROPERTY is located, and in that event no more UNITS may be constructed within the PROPERTY without the written consent of the COMMUNITY ASSOCIATION.

1.28. PROPERTY means all or any portion of the SUBJECT PROPERTY. The term PROPERTY shall include all UNITS and IMPROVEMENTS located upon or within the PROPERTY.

1.29. SUBJECT PROPERTY means all of the property which is subject to this DECLARATION from time to time, which as of the execution and recording of this DECLARATION is the property described in Exhibit "A" attached hereto, and includes any property that is hereafter added to this DECLARATION, and excludes any property that is hereafter withdrawn from this DECLARATION, by an amendment.

1.30. UNIT means a residential dwelling contained within the SUBJECT PROPERTY, for which the controlling governmental authority has issued a certificate of occupancy. Where any building contains more than one dwelling, each such dwelling shall be a UNIT. A UNIT may include, but is not limited to, a house, apartment, townhouse, patio home, cluster home, or residential condominium unit. The term UNIT shall include any PROPERTY or interest in PROPERTY owned in conjunction with the UNIT.

1.31. UNIT OWNER means the record holder(s) of the fee title to a UNIT.

2. COMMON AREAS, DUTIES AND OBLIGATIONS OF THE COMMUNITY ASSOCIATION.

2.1. Conveyance of COMMON AREAS to COMMUNITY ASSOCIATION.

2.1.1. By DECLARANT or a PARCEL DEVELOPER. DECLARANT shall have the right to convey title to any property owned by it, or any easement or interest therein, to the COMMUNITY ASSOCIATION as a COMMON AREA, and the COMMUNITY ASSOCIATION shall be required to accept such conveyance. DECLARANT or the PARCEL DEVELOPER of any PARCEL shall have the right to convey title to any property owned by them, or any easement or interest therein, to the COMMUNITY ASSOCIATION as a PARCEL AREA of such PARCEL, and the COMMUNITY ASSOCIATION shall be required to accept such conveyance. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the public records of the county where the SUBJECT PROPERTY is located. Notwithstanding the foregoing, neither DECLARANT nor any PARCEL DEVELOPER shall have the obligation to develop and/or convey any property to the COMMUNITY ASSOCIATION as a COMMON AREA, and if DECLARANT or any PARCEL DEVELOPER desires to convey any property to the COMMUNITY ASSOCIATION, the timing of the conveyance shall be in the sole discretion of DECLARANT or the PARCEL DEVELOPER.



2.1.2. By Any Other PERSON. Any other PERSON may also convey title to any property owned by such PERSON, or any easement or interest therein, to the COMMUNITY ASSOCIATION as a COMMON AREA, but the COMMUNITY ASSOCIATION shall not be required to accept any such conveyance, and no such conveyance shall be effective to impose any obligation for the maintenance, operation or improvement of any such property upon the COMMUNITY ASSOCIATION, unless the BOARD expressly accepts the conveyance by executing the deed or other instrument of conveyance or by recording a written acceptance of such conveyance in the public records of the county in which the SUBJECT PROPERTY is located.

2.2. Easements Over COMMON AREAS. The COMMON AREAS are subject to the following perpetual, non-exclusive easements, all of which shall run with the land and are hereby created.

2.2.1. Easements for Pedestrian and Vehicular Traffic. Easements in favor of the OWNERS and the residents of the SUBJECT PROPERTY, their mortgagees, and their guests and invitees, for pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist upon the COMMON AREAS and be intended for such purpose; and for pedestrian and vehicular traffic and parking over, through, across and upon such portion of the COMMON AREAS as may from time to time be paved and intended for such purposes.

2.2.2. Use and Benefit. An easement in favor of the OWNERS, and their respective guests and invitees, the holders of any mortgage encumbering any PROPERTY from time to time, and any other persons authorized to use the COMMON AREAS or any portion thereof by DECLARANT or the COMMUNITY ASSOCIATION, for all proper and reasonable purposes and uses for which the same are reasonably intended, subject to (i) the terms of this DECLARATION, (ii) the terms of any other easement, restriction, reservation or limitation of record affecting the COMMON AREA or contained in the deed or instrument conveying the COMMON AREA to the COMMUNITY ASSOCIATION, (iii) any rules and regulations adopted by the COMMUNITY ASSOCIATION, and (iv) the right of DECLARANT or of the COMMUNITY ASSOCIATION to grant easements and rights-of-way in connection with the development and maintenance of the SUBJECT PROPERTY.

2.2.3. Service and Utility Easements. Easements in favor of governmental and quasi-governmental authorities, utility companies, cable television companies, ambulance or emergency vehicle companies, mail carrier companies, and all other PERSONS providing services to or for the benefit of the SUBJECT PROPERTY, over and across all roads existing from time to time within the SUBJECT PROPERTY, and over, under, on and across the COMMON AREAS, as may be reasonably required to permit the foregoing, and their agents and employees, to provide their respective authorized services to and for the SUBJECT PROPERTY, and as may be required for the installation, maintenance, repair and providing of utility services, equipment and fixtures in order to adequately serve the SUBJECT PROPERTY, including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, and television antenna and cable television facilities, and electronic security.

2.3. Additional Easements. DECLARANT (so long as it owns any PROPERTY) and the COMMUNITY ASSOCIATION, on their behalf and on behalf of all OWNERS, each shall have the right to (i) grant and declare additional easements over, upon, under and/or across the COMMON AREAS in favor of DECLARANT, the COMMUNITY ASSOCIATION, the OWNERS, or any other person, entity, public or quasi-public authority or utility company, or (ii) modify, relocate, abandon or terminate existing easements within or outside of the SUBJECT PROPERTY in favor of the ASSOCIATION and/or the OWNERS or in favor of any person, entity, public or quasi-public authority, or utility company, as the DECLARANT or the ASSOCIATION may deem desirable for the proper operation and maintenance of the SUBJECT PROPERTY, or any portion thereof, or for the health, safety or welfare of the OWNERS, or to comply with any governmental requirement, or for any other reasonable purpose. So long as such

additional easements, or the modification, relocation or abandonment of existing easements will not unreasonably and adversely interfere with the use of PARCELS as permitted herein, no joinder of any OWNER or any mortgagee of any PARCEL, and no joinder by the COMMUNITY ASSOCIATION if the applicable document is executed by DECLARANT, shall be required or, if same would unreasonably and adversely interfere with the use of any PARCEL, only the joinder of the OWNERS and INSTITUTIONAL LENDERS of PARCELS so affected shall be required.

2.4. Easements over SUBJECT PROPERTY. The COMMUNITY ASSOCIATION, shall have an easement over and upon the SUBJECT PROPERTY as may be reasonably necessary to permit the COMMUNITY ASSOCIATION to perform the various duties and obligations to be performed by it. In addition, DECLARANT, so long as it owns any portion of the SUBJECT PROPERTY, and the COMMUNITY ASSOCIATION, each shall each have an easement over and upon the SUBJECT PROPERTY as may be reasonably necessary to permit them to comply with any governmental permit, approval or requirement.

2.5. Additions, Alterations or Improvements. The COMMUNITY ASSOCIATION shall have the right to make additions, alterations or improvements to the COMMON AREAS, and to purchase any personal property as it deems necessary or desirable from time to time, provided however that the approval of a 2/3 vote of the OWNERS shall be required for any addition, alteration or improvement, or any purchase of personal property, exceeding a sum equal to one month's total ASSESSMENTS for COMMON EXPENSES payable by all of the OWNERS, or if the cost of the foregoing shall in any fiscal year exceed in the aggregate a sum equal to 2 months' ASSESSMENTS for COMMON EXPENSES payable by all of the OWNERS. The foregoing approval shall in no event be required with respect to expenses incurred in connection with the maintenance, repair or replacement of then existing COMMON AREAS, or any existing improvements or personal property associated therewith. The cost and expense of any such additions, alterations or improvements to the COMMON AREAS, or the purchase of any personal property, shall be a COMMON EXPENSE. In addition, so long as DECLARANT owns any portion of the SUBJECT PROPERTY, DECLARANT shall have the right to make any additions, alterations or improvements to the COMMON AREAS as may be desired by DECLARANT in its sole discretion from time to time, at DECLARANT's expense.

2.6. Utilities. The COMMUNITY ASSOCIATION shall pay for all utility services for the COMMON AREAS, or for any other property to be maintained by the COMMUNITY ASSOCIATION, as a COMMON EXPENSE.

2.7. Taxes. The COMMUNITY ASSOCIATION shall pay all real and personal property taxes and assessments for any property owned by the COMMUNITY ASSOCIATION as a COMMON EXPENSE.

2.8. Insurance. The COMMUNITY ASSOCIATION shall purchase insurance as a COMMON EXPENSE, as follows:

2.8.1. Hazard Insurance protecting against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard all-risk endorsement, covering 100% of the current replacement cost of all COMMON AREAS and property owned by the COMMUNITY ASSOCIATION, excluding land foundations, excavations and other items normally excluded from insurance coverage, or such reduced coverage as is approved by the BOARD. The COMMUNITY ASSOCIATION shall not use hazard insurance proceeds for any purpose other than repair, replacement or reconstruction of any damaged or destroyed property, until such repair, replacement or reconstruction is completed, without the approval of the OWNERS.

2.8.2. Comprehensive General Liability Insurance protecting the COMMUNITY ASSOCIATION from claims for bodily injury, death or property damage providing for coverage of at least \$1,000,000 for any single occurrence. Notwithstanding the foregoing, if the BOARD determines that it is impossible or unduly expensive to obtain \$1,000,000 of general liability insurance, then the BOARD may upon a unanimous vote of the directors obtain a lower amount of general liability insurance.

2.8.3. Blanket Fidelity Bonds for anyone who handles or is responsible for funds held or administered by the COMMUNITY ASSOCIATION, covering the maximum funds that will be in the custody or control of the COMMUNITY ASSOCIATION or any managing agent, which coverage shall be at least the sum of three (3) months assessments on all units plus reserve funds.

2.8.4. Such other insurance as may be desired by the COMMUNITY ASSOCIATION, such as flood insurance, errors and omissions insurance, workman's compensation insurance, or any other insurance.

2.8.5. All insurance purchased by the COMMUNITY ASSOCIATION must include a provision requiring at least ten (10) days written notice to the COMMUNITY ASSOCIATION before the insurance can be canceled or the coverage reduced for any reason.

2.8.6. Any deductible or exclusion under the policies shall be a COMMON EXPENSE and shall not exceed \$2,500 or such other sum as is approved by a majority of the BOARD.

2.8.7. Upon request, each INSTITUTIONAL LENDER shall have the right to receive a copy or certificate of the insurance purchased by the COMMUNITY ASSOCIATION, and shall have the right to require at least ten (10) days written notice to the INSTITUTIONAL LENDER before any insurance can be canceled or the coverage reduced for any reason. Each INSTITUTIONAL LENDER shall have the right upon notice to the COMMUNITY ASSOCIATION to review and approve, which approval shall not be unreasonably withheld, the form, content, issuer, coverage and deductibles of all insurance purchased by the COMMUNITY ASSOCIATION, and to require the COMMUNITY ASSOCIATION to purchase insurance complying with the reasonable and customary requirements of the INSTITUTIONAL LENDER. In the event of a conflict between the INSTITUTIONAL LENDERS, the requirements of the INSTITUTIONAL LENDER holding mortgages encumbering UNITS which secure the largest aggregate indebtedness shall control.

2.9. Default. Any PARCEL ASSOCIATION, OWNER or INSTITUTIONAL LENDER may pay for any utilities, taxes or assessments, or insurance premiums which are not paid by the COMMUNITY ASSOCIATION when due, or may secure new insurance upon the lapse of an insurance policy, and shall be owed immediate reimbursement therefor from the COMMUNITY ASSOCIATION, plus interest and any costs of collection, including attorneys' fees.

2.10. Damage or Destruction. In the event any improvement (other than landscaping) within any COMMON AREA is damaged or destroyed due to fire, flood, wind, or other casualty or reason, the COMMUNITY ASSOCIATION shall restore, repair, replace or rebuild (hereinafter collectively referred to as a "repair") the damaged improvement to the condition the improvement was in immediately prior to such damage or destruction, unless otherwise approved by a vote of the OWNERS. If any landscaping within any COMMON AREA or any other property maintained by the COMMUNITY ASSOCIATION is damaged or destroyed, the COMMUNITY ASSOCIATION shall only be obligated to make such repairs or replacements to the landscaping as is determined by the BOARD in its discretion. Any excess cost of repairing any improvement over insurance proceeds payable on account of any damage or

destruction shall be a COMMON EXPENSE, and the COMMUNITY ASSOCIATION shall have the right to make a special ASSESSMENT for any such expense.

2.11. Maintenance of COMMON AREAS and other Property. The COMMUNITY ASSOCIATION shall maintain all COMMON AREAS and property owned by the COMMUNITY ASSOCIATION, and all IMPROVEMENTS thereon, in good condition at all times. If pursuant to any easement the COMMUNITY ASSOCIATION is to maintain any IMPROVEMENT within any property, then the COMMUNITY ASSOCIATION shall maintain such IMPROVEMENT in good condition at all times. The COMMUNITY ASSOCIATION shall have the right to assume the obligation to operate and/or maintain any walls or fences on or near the boundaries of the SUBJECT PROPERTY, and any pavement, landscaping, sprinkler systems, sidewalks, paths, signs, entrance features, or other IMPROVEMENTS, in or within 40 feet of any public or private road right-of-ways within or contiguous to the SUBJECT PROPERTY. In such event, where applicable the COMMUNITY ASSOCIATION shall so notify any OWNER or PARCEL ASSOCIATION otherwise responsible for such operation or maintenance, and thereafter such property shall be operated and/or maintained by the COMMUNITY ASSOCIATION and not by the OWNER or PARCEL ASSOCIATION, until the BOARD determines no longer to assume the obligation to operate and/or maintain such property and so notifies the appropriate OWNER or PARCEL ASSOCIATION in writing. To the extent the COMMUNITY ASSOCIATION assumes the obligation to operate and/or maintain any PROPERTY which is not owned by the COMMUNITY ASSOCIATION, the COMMUNITY ASSOCIATION shall have an easement and right to enter upon such PROPERTY in connection with the operation in or maintenance of same, and no such entry shall be deemed a trespass. Such assumption by the COMMUNITY ASSOCIATION of the obligation to operate and/or maintain any property which is not owned by the COMMUNITY ASSOCIATION may be evidenced by a supplement to this DECLARATION, or by a written document recorded in the public records of the county in which the SUBJECT PROPERTY is located, and may be made in connection with an agreement with any OWNER, PARCEL ASSOCIATION, DECLARANT, or any governmental authority otherwise responsible for such operation or maintenance, and pursuant to any such document the operation and/or maintenance of any property may be made a permanent obligation of the COMMUNITY ASSOCIATION. The COMMUNITY ASSOCIATION may also enter into agreements with any other PERSON, or any governmental authority, to share in the maintenance responsibility of any property if the BOARD, in its sole and absolute discretion, determines this would be in the best interest of the OWNER. Notwithstanding the foregoing, if any UNIT OWNER or any resident of any UNIT, or their guests or invitees, damages any COMMON AREA or any IMPROVEMENT thereon, the UNIT OWNER of such UNIT shall be liable to the COMMUNITY ASSOCIATION for the cost of repair or restoration to the extent otherwise provided by law and to the extent such damage is not covered by the COMMUNITY ASSOCIATION's insurance.

2.12. Surface Water Management System. It is acknowledged the surface water management, drainage and storage system for the SUBJECT PROPERTY is one integrated system, and accordingly shall be deemed a COMMON AREA, and an easement is hereby created over the entire SUBJECT PROPERTY for surface water drainage and storage, and for the installation and maintenance of the surface water management, drainage and storage system for the SUBJECT PROPERTY, provided however that such easement shall be subject to improvements constructed within the SUBJECT PROPERTY as permitted by controlling governmental authorities from time to time. If pursuant to the permitting requirements of any governmental authority the surface water management system for the SUBJECT PROPERTY is required to provide drainage for any other property, such other property shall have an easement for drainage purposes into the surface water management system for the SUBJECT PROPERTY as may be required in connection with the permitting for the SUBJECT PROPERTY. The surface water management, drainage, and storage system of the SUBJECT PROPERTY shall be developed, operated, and maintained in conformance with the requirements of, and any permits or approvals issued by the South Florida Water Management District and any other controlling

governmental authority. Except as hereafter provided, the COMMUNITY ASSOCIATION shall maintain as a COMMON EXPENSE the entire surface water management, drainage, and storage system for the SUBJECT PROPERTY, including but not limited to all lakes and canals, swale areas, retention areas, culverts, pipes, pumps, catch basins, and related appurtenances, and any littoral zones in any lakes or other waterway, regardless of whether or not same are natural or man-made within the SUBJECT PROPERTY or are owned by the COMMUNITY ASSOCIATION, unless such maintenance is to be and is performed by a community development district or special taxing district. Such maintenance shall be performed in conformance with the requirements of any controlling governmental authority, and an easement for such maintenance is hereby created. The COMMUNITY ASSOCIATION will have the right, but not the obligation, to maintain any portion of the surface water management, drainage, and storage system for the SUBJECT PROPERTY which is owned and/or maintained by any controlling governmental authority, or which is outside of the SUBJECT PROPERTY. The COMMUNITY ASSOCIATION will have the right to enter into agreements with any controlling governmental authority or any other property owner or association for the common maintenance of the surface water management, drainage, and storage system serving the SUBJECT PROPERTY and any other property. The SUBJECT PROPERTY shall be required to accept surface water drainage from any other property pursuant to the requirements of any controlling governmental authority and an easement for such drainage is hereby created, and in connection therewith the COMMUNITY ASSOCIATION will have the right, but not the obligation, to maintain any portion of the surface water management system for such other property reasonably required in connection with the maintenance or operation of the surface water management system for the SUBJECT PROPERTY.

ALL PROSPECTIVE PURCHASERS OF PROPERTY WITHIN THE SUBJECT PROPERTY ARE HEREBY PLACED ON NOTICE THAT THE WATER LEVELS IN THE LAKES WITHIN THE SUBJECT PROPERTY MAY DECLINE SIGNIFICANTLY AT CERTAIN TIMES AS A RESULT OF WELLFIELD PUMPAGE.

2.13. Compliance with Permits and Approvals. It is acknowledged that in connection with the development of the SUBJECT PROPERTY various permits and approvals will be issued by various governmental and quasi-governmental authorities. If any permit or approval provides for continuing maintenance, monitoring, or other obligations, relating to the COMMON AREAS or any other portions of the SUBJECT PROPERTY, the COMMUNITY ASSOCIATION shall be responsible for same, and shall also be required to comply with any other governmental requirements relating to the COMMON AREAS. DECLARANT shall have the right to assign to the COMMUNITY ASSOCIATION the obligation to comply with any permit or approval relating to the SUBJECT PROPERTY which provides for or contemplates continuing maintenance, monitoring, or other obligations, and any such assignment shall be binding on the COMMUNITY ASSOCIATION, and the COMMUNITY ASSOCIATION shall be required to accept such assignment and to execute any documents required in connection therewith, but regardless of any such assignment the COMMUNITY ASSOCIATION shall be obligated to comply with any such continuing maintenance, monitoring, or other obligations, unless any such obligations are assigned by DECLARANT to any other PERSON. The COMMUNITY ASSOCIATION shall indemnify and hold DECLARANT harmless from any claims, damages, or losses of any kind or nature whatsoever relating to the COMMUNITY ASSOCIATION's failure to comply with its responsibilities hereunder after DECLARANT no longer appoints a majority of the directors of the COMMUNITY ASSOCIATION. Notwithstanding anything contained herein to the contrary, if any OWNER shall violate any permit or approval, which violation results in the COMMUNITY ASSOCIATION incurring any expense or liability, such OWNER shall be liable for any and all expenses incurred by the COMMUNITY ASSOCIATION in connection therewith.

2.14. Mortgage and Sale of COMMON AREAS. The COMMUNITY ASSOCIATION shall not encumber, sell or transfer any COMMON AREA owned by the COMMUNITY ASSOCIATION without the approval of a 2/3 vote of the OWNERS, excluding DECLARANT, provided, however, that the

COMMUNITY ASSOCIATION may convey or dedicate the fee title to any COMMON AREA, PARCEL AREA, or any easement therein, to any governmental or quasi-governmental authority without the approval of the OWNERS. Notwithstanding the foregoing, if DECLARANT or any PARCEL DEVELOPER changes the development plan for a portion of the SUBJECT PROPERTY such that any portion of the COMMON AREAS previously conveyed to the COMMUNITY ASSOCIATION would be within any PROPERTY which is not intended to be a COMMON AREA, then the COMMUNITY ASSOCIATION shall have the right without the approval of the OWNERS or any other person to convey such portion of the COMMON AREAS to DECLARANT or any applicable PARCEL DEVELOPER; and in connection therewith, DECLARANT or any applicable PARCEL DEVELOPER shall convey to the COMMUNITY ASSOCIATION any property which will be a COMMON AREA pursuant to the new development plan. If ingress or egress to any PROPERTY is through any COMMON AREA, any conveyance or encumbrance of such COMMON AREA shall be subject to an appurtenant easement for ingress and egress in favor of the OWNER(S) of such PROPERTY, unless alternative ingress and egress is provided to the OWNER(S).

2.15. Perimeter Wall, Fence, Berm or Landscaping. DECLARANT and the COMMUNITY ASSOCIATION shall have an easement around the perimeter of the SUBJECT PROPERTY, and adjacent to the collector roads servicing the SUBJECT PROPERTY, for the installation and maintenance of any wall, fence, berm or landscaping. Said easement shall be shown on the subdivision plat for the SUBJECT PROPERTY. In the event said easement is absent from the subdivision plat, the DECLARANT and the COMMUNITY ASSOCIATION hereby reserve adequate area as necessary to install and/or maintain any wall, fence, berm or landscaping. If any wall, fence, berm or landscaping is constructed within such easement, the COMMUNITY ASSOCIATION shall maintain the wall, fence, berm or landscaping located between the wall, fence, berm or landscaping and the aforesaid perimeter of the SUBJECT PROPERTY and the area adjacent to the collector roads servicing the SUBJECT PROPERTY. However, where any wall or fence is located upon a LOT, the OWNER shall maintain the side of the wall or fence facing the OWNER's LOT.

2.16. Gatehouses or Entry Gates. It is acknowledged that one or more gatehouses and/or entry gates may, but will not be required to be, constructed within the SUBJECT PROPERTY, which if provided may be staffed, or which may contain a unstaffed entry system. If provided, all costs associated with any gatehouse or entry gate will be a COMMON EXPENSE, except that any costs associated with any entry gate serving only one or more PARCEL(S) will be a PARCEL EXPENSE of such PARCEL(S). So long as DECLARANT appoints a majority of the Directors of the COMMUNITY ASSOCIATION, if any gatehouse is to be staffed, DECLARANT shall have the right to determine, in its sole discretion, whether, and during what hours the gatehouse will be staffed. DECLARANT, and any builder constructing UNITS within the SUBJECT PROPERTY, their contractors and suppliers, and their respective agents and employees, and any prospective purchasers of new UNITS, shall be given access through any such gatehouse or entry gate, subject only to such controls and restrictions as are approved by DECLARANT. In any event, DECLARANT or the COMMUNITY ASSOCIATION shall not have any liability for any injury, damage, or loss, of any kind or nature whatsoever due to the fact that any gatehouse is not staffed, or due to the failure of any person staffing the gatehouse or any mechanical or electrical entry system to prevent or detect a theft, burglary, or any unauthorized entry into the SUBJECT PROPERTY.

2.17. Special Provisions Regarding Recreational and Social Facilities. It is acknowledged DECLARANT plans to provide various recreational and social facilities as COMMON AREAS for the benefit of all or some of the residents of the SUBJECT PROPERTY, the timing, kind, value and nature of which shall be determined in DECLARANT's sole discretion, and DECLARANT reserves the right to increase or add to such facilities, or to expand the facilities, without the consent of the OWNERS or the COMMUNITY ASSOCIATION. Notwithstanding anything contained herein to the contrary,

DECLARANT and/or the COMMUNITY ASSOCIATION shall have the following rights with respect to such facilities:

2.17.1. DECLARANT shall have the right, without any payment required therefore, to use any facility, or any portion thereof, for office or sales purposes, as may be desired by DECLARANT in its sole discretion, so long as DECLARANT owns any portion of the SUBJECT PROPERTY.

2.17.2. The COMMUNITY ASSOCIATION shall have the right to impose a charge for the use of any of the recreational or social facilities, or any services offered therein, and shall have the right to permit the use of any portion thereof for private, charitable or promotional functions

2.17.3. DECLARANT or the COMMUNITY ASSOCIATION shall have the right to lease or grant concessions or contract with others to provide programs or services within such facilities to the OWNERS and residents of the SUBJECT PROPERTY. The rights of DECLARANT pursuant to this paragraph shall terminate when DECLARANT no longer owns any portion of the SUBJECT PROPERTY.

2.18. Cable Television Service and/or Home Security Monitoring Services. The COMMUNITY ASSOCIATION will have the right to enter into an agreement pursuant to which all of the UNIT OWNERS will be provided cable television service and/or home security monitoring services as a COMMON EXPENSE. The COMMUNITY ASSOCIATION will further have the right to approve one or more security monitoring companies which are authorized to provide such service to the UNITS, and in that event the COMMUNITY ASSOCIATION may refuse entry into the SUBJECT PROPERTY by any representative of any security monitoring companies other than an approved company. If home security monitoring services are provided under contract with the COMMUNITY ASSOCIATION, or if the COMMUNITY ASSOCIATION approves any monitoring company to provide such services to the UNITS, DECLARANT and the COMMUNITY ASSOCIATION will have no liability of any kind or nature due to the failure of the company providing such service to detect or react to fire, unauthorized entry, or other security problem in any UNIT. Any PARCEL may be excluded from any agreement for cable television service and/or home security monitoring services, and in that event the expenses associated therewith will not be assessed to the OWNERS within such excluded PARCELS.

2.19. Entry Roads. The COMMUNITY ASSOCIATION shall have the right to maintain landscaping along any road outside of the SUBJECT PROPERTY which provides access to the SUBJECT PROPERTY, where the COMMUNITY ASSOCIATION determines such maintenance would be in the best interest of the OWNERS.

2.20. Entry Features. The COMMUNITY ASSOCIATION shall maintain all entry features installed for the benefit of the SUBJECT PROPERTY or any PARCEL, whether within or outside of the SUBJECT PROPERTY, as a COMMON EXPENSE.

2.21. PARCEL AREAS. The following provisions shall apply with respect to any PARCEL AREA, notwithstanding other provisions in this DECLARATION to the contrary:

2.21.1. Use. Any PARCEL AREA shall be held by the COMMUNITY ASSOCIATION solely for the use and benefit of the owners and residents of the PARCELS who are intended to be benefited by the PARCEL AREAS, and the respective guests and invitees, and shall be maintained by the COMMUNITY ASSOCIATION.

2.21.2. PARCEL EXPENSES. Any expenses associated with any PARCEL AREAS are PARCEL EXPENSES, and shall only be assessed to the OWNERS of the applicable PARCELS which are entitled to use or which are benefited by the PARCEL AREAS.

2.21.3. Approval of Action Concerning PARCEL AREAS. Where pursuant to this DECLARATION the OWNERS are given the right to approve any action concerning any COMMON AREAS, any such approval rights with respect to any PARCEL AREA shall only be approved by the required vote of the OWNERS of the applicable PARCELS served by the PARCEL AREA, and such action shall not be voted upon by any other OWNERS.

2.21.4. Roads, Driveways, and Parking Areas. It is acknowledged that the COMMON AREAS or the PARCEL AREAS may include roads, driveways, and parking areas. Without limitation, if the streets or roads within any PARCEL are not dedicated or conveyed to a governmental authority, such streets or roads within the PARCEL, and any sidewalks within the PARCEL (regardless of whether same are located within any LOT or within the road right-of-way) shall be deemed PARCEL AREAS, and all costs of maintaining and repairing same, and any cost of maintaining, repairing and operating any street lighting associated therewith, shall be PARCEL EXPENSES of the PARCEL.

2.22. Warranties. Any property conveyed to the COMMUNITY ASSOCIATION by DECLARANT or by any PARCEL DEVELOPER will be conveyed in a "where is, as is" condition, and any such property will be conveyed and/or any improvements to the COMMON AREAS made by DECLARANT or any PARCEL DEVELOPER without any warranty, including but not limited to any warranty of merchantability or of fitness for a particular purpose, or the adequacy of the size or capacity in relation to the utilization or operation thereof. However, DECLARANT or any PARCEL DEVELOPER transferring any COMMON AREA to the COMMUNITY ASSOCIATION or making any improvement to the COMMON AREAS will assign to the COMMUNITY ASSOCIATION any warranties which they receive from contractors, manufacturers or suppliers.

2.23. Community Development District or Special Taxing District.

2.23.1. DECLARANT, so long as DECLARANT owns any portion of the SUBJECT PROPERTY, reserves the right to finance the construction and/or maintenance of certain subdivision improvements, common areas, and infrastructure within or serving the SUBJECT PROPERTY, including but not limited to roads, paving, drainage systems and facilities, sewer and water facilities, entrance facilities and/or features, and recreational facilities, by means of bond or other financing through an existing or newly created governmental or quasi-governmental authority, including but not limited to a community development district in accordance with Chapter 190, Florida Statutes, or a special taxing district. In connection therewith, any or all of the costs of same, and any costs associated therewith, including but not limited to the costs of establishing and operating the applicable district, the costs of obtaining the financing, any administrative expenses, legal fees, principal and interest charges required for the repayment of the bonds or financing, and the like, may be assessed to the OWNERS by means of an ad-valorem or non-ad-valorem assessment that will appear on the real estate tax bill issued by the County where the SUBJECT PROPERTY is located.

2.23.2. THE COMMUNITY DEVELOPMENT DISTRICT OR SPECIAL TAXING DISTRICT, IF CREATED, MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON ALL OR PORTIONS OF THE SUBJECT PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICTS. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW.

2.23.3. Approval Rights to Amendments. No amendment of this DECLARATION which would affect a community development district's or special taxing district's obligations, property



interests, facilities or improvements located within the SUBJECT PROPERTY shall be effective unless agreed to in writing by such community development district or special taxing district.

2.23.4. The COMMUNITY ASSOCIATION may enter into an agreement with any community development district or special taxing district to maintain any property or interest in any property owned by the community development district or special taxing district, on such terms and conditions as the COMMUNITY ASSOCIATION and any community development district or special taxing district may determine.

2.23.5. It is acknowledged that a community development district known as Hamal Community Development District has been formed and will perform and have various of the rights, duties and obligations as set forth above.

3. COMMUNITY ASSOCIATION. In order to provide for the administration of the SUBJECT PROPERTY and this DECLARATION, the COMMUNITY ASSOCIATION has been organized under the Laws of the State of Florida.

3.1. Articles of Incorporation. A copy of the ARTICLES is attached hereto as Exhibit "B". No amendment to the ARTICLES shall be deemed an amendment to this DECLARATION, and this DECLARATION shall not prohibit or restrict amendments to the ARTICLES, except as specifically provided herein.

3.2. BYLAWS. A copy of the BYLAWS is attached hereto as Exhibit "C". No amendment to the BYLAWS shall be deemed an amendment to this DECLARATION, and this DECLARATION shall not prohibit or restrict amendments to the BYLAWS, except as specifically provided herein.

3.3. Powers of the COMMUNITY ASSOCIATION. The COMMUNITY ASSOCIATION shall have all the powers indicated or incidental to those contained in its ARTICLES and BYLAWS or as provided by the laws of the State of Florida. In addition, the COMMUNITY ASSOCIATION shall have the power to enforce this DECLARATION and shall have all powers granted to it by this DECLARATION. By this DECLARATION, the SUBJECT PROPERTY is hereby submitted to the jurisdiction of the COMMUNITY ASSOCIATION.

3.4. Approval or Disapproval of Matters. Whenever the decision, consent or approval of the OWNERS is required upon any matter, whether or not the subject of a COMMUNITY ASSOCIATION meeting, such decision shall be made in accordance with the ARTICLES and BYLAWS, except as otherwise provided herein. Where any matter requires a vote of a specified share of the OWNERS, but does not specifically refer to "all of" the OWNERS, the matter requires only the approval of the specified share of the OWNERS actually voting on the matter, regardless of how many votes are actually cast. Where any matter requires a vote of a specified share of "all the" OWNERS, the matter requires a number of votes equal to at least the specified share of the total number of votes of all the OWNERS.

3.5. Acts of the COMMUNITY ASSOCIATION. Unless the approval or action of the OWNERS and/or a certain specific percentage of the BOARD is specifically required by this DECLARATION, the ARTICLES or BYLAWS, or by applicable law, all approvals or actions required or permitted to be given or taken by the COMMUNITY ASSOCIATION shall be given or taken by the BOARD, without the consent of the OWNERS, and the BOARD may so approve an act through the proper officers of the COMMUNITY ASSOCIATION without a specific resolution. When an approval or action of the COMMUNITY ASSOCIATION is permitted to be given or taken, such action or approval may be conditioned in any manner the COMMUNITY ASSOCIATION deems appropriate, or the COMMUNITY

ASSOCIATION may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal, except as herein specifically provided to the contrary.

3.6. Management and Service Contracts. The COMMUNITY ASSOCIATION shall have the right to contract for management or services on such terms and conditions as the BOARD deems desirable in its sole discretion, provided, however, that any such contract shall not exceed three (3) years and shall be terminable by either party without cause and without payment of a termination or penalty fee on ninety (90) days or less written notice.

3.7. Membership.

3.7.1. OWNERS. Each OWNER shall be a member of the COMMUNITY ASSOCIATION. Notwithstanding the foregoing, no governmental authority or utility company shall be deemed a member unless one or more UNITS actually exist upon the PROPERTY owned by such governmental or quasi-governmental authority or utility company, in which event the governmental authority or utility company will be a member only with respect to the PROPERTY owned in conjunction with such UNIT(S).

3.7.2. DECLARANT and PARCEL DEVELOPERS. DECLARANT and each PARCEL DEVELOPER shall be a member of the COMMUNITY ASSOCIATION so long as DECLARANT or the applicable PARCEL DEVELOPER owns any PROPERTY.

3.8. Voting Rights. The votes of the members shall be established and exercised as provided in the ARTICLES and BYLAWS.

3.9. Current Lists of UNIT OWNERS. Upon request by the COMMUNITY ASSOCIATION, any PARCEL ASSOCIATION shall be required to provide the COMMUNITY ASSOCIATION with the names and addresses of all or any OWNERS which are members of the PARCEL ASSOCIATION.

4. ASSESSMENTS FOR COMMON EXPENSES.

4.1. Responsibility. Each OWNER, from and after the date the OWNER acquires title to any LOT or any other PROPERTY than contains or is intended to contain one or more UNITS, shall be responsible for the payment of ASSESSMENTS for COMMON EXPENSES for such PROPERTY, and where applicable for the payment of PARCEL ASSESSMENTS, to the COMMUNITY ASSOCIATION as hereinafter provided.

4.2. Determination of ASSESSMENTS for COMMON EXPENSES. Not less than 45 days prior to the beginning of each fiscal year, the BOARD shall adopt a budget for such fiscal year, which shall estimate all of the COMMON EXPENSES to be incurred during the fiscal year. In determining the budgets for any fiscal year, the BOARD may take into account COMMON AREAS and UNITS anticipated to be added during the fiscal year. The COMMUNITY ASSOCIATION shall then establish the ASSESSMENT for COMMON EXPENSES pursuant to the budget, and shall then promptly notify all OWNERS, in writing, of the amount, frequency, and due dates of the ASSESSMENTS for COMMON EXPENSES. From time to time during the fiscal year, the BOARD may modify the budget of the COMMUNITY ASSOCIATION for the fiscal year, and pursuant to the revised budget or otherwise the BOARD may, upon written notice to the OWNERS, change the amount, frequency and/or due dates of the ASSESSMENTS for COMMON EXPENSES.

4.3. ASSESSMENT VALUE. For purposes of establishing ASSESSMENTS for COMMON EXPENSES, "ASSESSMENT VALUES" shall be established, as follows:

4.3.1. Each PLANNED UNIT which is planned to contain an attached UNIT (attached to another UNIT by a common wall) shall have an ASSESSMENT VALUE of 0.125.

4.3.2. Each PLANNED UNIT which is planned to be a detached UNIT (not attached to another UNIT by a common wall) shall have an ASSESSMENT VALUE of 0.250.

4.3.3. Once a certificate of occupancy has been issued for a UNIT, the UNIT shall be have an ASSESSMENT VALUE of 1.0 upon the first to occur of (i) the first day of the third full calendar month after the certificate of occupancy is issued, or (ii) the conveyance of the UNIT by the builder of the UNIT, or (iii) the first occupancy of the UNIT.

4.4. Amount of ASSESSMENTS. The amount of each OWNER's ASSESSMENT for COMMON EXPENSES will be determined from time to time by multiplying the total amount to be assessed by a fraction, the numerator of which will be the total ASSESSMENT VALUES assigned to the OWNER's PROPERTY, and the denominator of which will be the total ASSESSMENT VALUES assigned to all of the SUBJECT PROPERTY.

4.5. Special Assessments. If the expenditure of funds is required by the COMMUNITY ASSOCIATION in addition to funds produced by the regular ASSESSMENTS for COMMON EXPENSES, the BOARD may make special ASSESSMENTS for COMMON EXPENSES, which may include ASSESSMENTS to provide funds to pay for an existing or proposed deficit of the COMMUNITY ASSOCIATION, or for any additions, alterations, or improvements to any COMMON AREA, or for any other purpose. Where any such funds are only required for any PARCEL EXPENSES, the special ASSESSMENTS shall only be made against the applicable PARCEL(S) as special PARCEL ASSESSMENTS. Special ASSESSMENTS for COMMON EXPENSES shall be levied in the same manner as hereinbefore provided for regular ASSESSMENTS for COMMON EXPENSES and shall be payable in one lump sum or as otherwise determined by the BOARD in its sole discretion and as stated in the notice of any special ASSESSMENT for COMMON EXPENSES.

4.6. Changes in ASSESSMENTS. In the event any ASSESSMENTS for COMMON EXPENSES are made payable in equal periodic payments, as provided in the notice from the COMMUNITY ASSOCIATION, such periodic payments shall automatically continue to be due and payable in the same amount and frequency as indicated in the notice, unless and/or until: (i) the notice specifically provides that the periodic payments will terminate upon the occurrence of a specified event or the payment of a specified amount, or (ii) the COMMUNITY ASSOCIATION notifies the OWNER in writing of a change in the amount and/or frequency of the periodic payments. In no event shall any ASSESSMENT for COMMON EXPENSES payable by any OWNER be due less than ten (10) days from the date of the notification of such ASSESSMENT for COMMON EXPENSES.

4.7. Payment of ASSESSMENTS for COMMON EXPENSES. Except as hereafter provided, on or before the date each ASSESSMENT for COMMON EXPENSES is due, each OWNER shall be required to and shall pay to the COMMUNITY ASSOCIATION any ASSESSMENTS for COMMON EXPENSES for the UNITS and PLANNED UNITS within the PROPERTY then owned by such OWNER.

4.8. Special Provisions for PARCEL ASSESSMENTS. If the COMMUNITY ASSOCIATION incurs any PARCEL EXPENSES for any PARCEL, the COMMUNITY ASSOCIATION shall adopt a budget for such PARCEL, shall establish a per-UNIT PARCEL ASSESSMENT pursuant to the budget, and shall collect PARCEL ASSESSMENTS from the OWNERS within the PARCEL. All of the provisions of this

DECLARATION relating to the establishment of the budget for COMMON EXPENSES and the establishment and collection of ASSESSMENTS for COMMON EXPENSES shall apply to the budget and PARCEL ASSESSMENTS for the PARCEL, except as follows, and except that for purposes of PARCEL ASSESSMENTS, unless otherwise provided with respect to any PARCEL in any amendment or supplement to this DECLARATION executed or consented to by DECLARANT or the COMMUNITY ASSOCIATION, each UNIT and each PLANNED UNIT within the PARCEL will be assessed as one UNIT.

4.9. ASSESSMENTS on Non-Uniform Basis. Notwithstanding anything contained herein to the contrary, pursuant to any amendment or supplement to this DECLARATION made or approved by DECLARANT so long as DECLARANT owns any portion of the SUBJECT PROPERTY, any portion of the SUBJECT PROPERTY may be (i) only liable for a share of certain specified COMMON EXPENSES, or (ii) assessed on a different basis than the other SUBJECT PROPERTY, and in such event the OWNER of such PROPERTY shall only be liable for ASSESSMENTS for COMMON EXPENSES in accordance with the provisions of such amendment or supplement.

4.10. DECLARANT'S and PARCEL DEVELOPER'S LIABILITY FOR ASSESSMENTS.

4.10.1. Notwithstanding the foregoing, during the EXEMPTION PERIOD, DECLARANT, and any PARCEL DEVELOPER that does not elect to pay ASSESSMENTS for COMMON EXPENSES (the "EXEMPT PARCEL DEVELOPERS"), shall not be liable for ASSESSMENTS for COMMON EXPENSES for any UNITS or PLANNED UNITS within the PROPERTY owned by them.

4.10.2. During the EXEMPTION PERIOD, DECLARANT and the EXEMPT PARCEL DEVELOPERS shall be responsible for all COMMON EXPENSES actually incurred or anticipated to be incurred by the COMMUNITY ASSOCIATION in excess of the ASSESSMENTS for COMMON EXPENSES and any other income received or to be received by the COMMUNITY ASSOCIATION from the OWNERS (the "DEFICIT"), except as hereafter provided.

4.10.3. For purposes of this subparagraph, there shall be assigned to each PARCEL of any EXEMPT PARCEL DEVELOPER "ASSESSMENT UNITS", which shall initially be equal to the number of acres within the PARCEL. Thereafter, as UNITS within the PARCEL are built, the number of ASSESSMENT UNITS within the PARCEL shall be reduced from time to time, based upon a fraction, the numerator of which will be the number of PLANNED UNITS that may be built within the PARCEL or portion thereof owned by the EXEMPT PARCEL DEVELOPER, and the denominator of which will be the total number of PLANNED UNITS that may ultimately be built within the PARCEL. (For example, if a PARCEL contains 20 acres it will initially be assigned 20 ASSESSMENT UNITS. If 100 UNITS may be built within the PARCEL, and the PARCEL OWNER has built 40 UNITS and 60 PLANNED UNITS may be built within the PARCEL, then the PARCEL will be deemed to contain  $20 \times 60/100 = 12$  ASSESSMENT UNITS. At the time ASSESSMENT UNITS are to be determined they shall be rounded up to the highest 1/10 of an ASSESSMENT UNIT. See Exhibit "D" attached hereto for a further example of the foregoing.

4.10.4. DECLARANT and each EXEMPT PARCEL DEVELOPER, so long as they own any UNIT or PLANNED UNIT, shall each be liable for a pro-rata share of the DEFICIT. The amount of the DEFICIT shall be determined quarterly unless otherwise determined by DECLARANT so long as DECLARANT owns any portion of the SUBJECT PROPERTY, and thereafter by a majority vote of the EXEMPT PARCEL DEVELOPERS, and for such purpose each EXEMPT PARCEL DEVELOPER shall have one vote per ASSESSMENT UNIT owned at the time such vote is taken. The share of the DEFICIT payable by DECLARANT and each EXEMPT PARCEL DEVELOPER shall be based upon the ratio that the number of ASSESSMENTS UNITS owned by DECLARANT (including any property that DECLARANT intends to add to the SUBJECT PROPERTY) or the EXEMPT PARCEL DEVELOPER bears to the total

number of ASSESSMENT UNITS owned DECLARANT and by all of the EXEMPT PARCEL DEVELOPERS as of the beginning of each period for which the DEFICIT is determined to be payable. Such share shall be due and payable within 20 days after written demand by the COMMUNITY ASSOCIATION, and if not paid the COMMUNITY ASSOCIATION shall have all rights set forth in Paragraph 8.1 below. Notwithstanding the foregoing, DECLARANT or any EXEMPT PARCEL DEVELOPER may agree in writing with the COMMUNITY ASSOCIATION that all UNITS and PLANNED UNITS owned by DECLARANT or the PARCEL DEVELOPER will have an ASSESSMENT VALUE of 1.0 and will be fully assessed, and in that event thereafter such PARCEL DEVELOPER will not be deemed an EXEMPT PARCEL DEVELOPER and will not be liable for any share of the DEFICIT.

4.10.5. During the EXEMPTION PERIOD, the ASSESSMENTS for COMMON EXPENSES shall be established by DECLARANT so long as it owns any portion of the SUBJECT PROPERTY, and thereafter by majority vote of the EXEMPT PARCEL DEVELOPERS (one vote per ASSESSMENT UNIT owned), as no more than 133% of DECLARANT's or the EXEMPT PARCEL DEVELOPERS' good faith estimate of what ASSESSMENTS would be when the development of the SUBJECT PROPERTY as contemplated by DECLARANT was complete, assuming all COMMON AREAS anticipated to be completed at that point were completed and available for use and that the COMMUNITY ASSOCIATION had assumed all duties and responsibilities anticipated to be delegated to it, and assuming all PLANNED UNITS were completed and assessed as such. The ASSESSMENTS so determined may be changed from time to time by DECLARANT or the EXEMPT PARCEL DEVELOPERS, as applicable, based upon changes in such estimate.

4.10.6. Notwithstanding the foregoing, in the event the COMMUNITY ASSOCIATION incurs any expense not ordinarily anticipated in the day-to-day management and operation of the SUBJECT PROPERTY, including but not limited to expenses incurred in connection with lawsuits against the COMMUNITY ASSOCIATION, or incurred in connection with damage to property, or injury or death to any person, which are not covered by insurance proceeds, the liability of DECLARANT or the EXEMPT PARCEL DEVELOPERS for such COMMON EXPENSES shall not exceed the amount that they would be required to pay if they were liable for ASSESSMENTS for COMMON EXPENSES as any other OWNER, and any excess amounts payable by the COMMUNITY ASSOCIATION shall be assessed to the other OWNERS.

4.10.7. After the EXEMPTION PERIOD, DECLARANT and the EXEMPT PARCEL DEVELOPERS will only be liable for ASSESSMENTS for COMMON EXPENSES on the same basis as any other OWNER, and DECLARANT and the PARCEL DEVELOPERS will not be liable for any other monies to the COMMUNITY ASSOCIATION, including but not limited to any deficits, provided, however, that DECLARANT or the PARCEL DEVELOPERS may, without prejudice to their right to discontinue payments thereafter, voluntarily pay any deficits of the COMMUNITY ASSOCIATION.

4.10.8. In any event, during the period when DECLARANT or the EXEMPT PARCEL DEVELOPERS are not liable for ASSESSMENTS for COMMON EXPENSES, the COMMUNITY ASSOCIATION will not be required to fund the portion of any reserve account reflected in the budget which is attributable to any UNITS or PLANNED UNITS owned by DECLARANT or the EXEMPT PARCEL DEVELOPERS.

4.10.9. The foregoing provisions shall likewise apply with respect to any PARCEL EXPENSES for any PARCEL as to the PARCEL DEVELOPER(S) of the PARCEL. Furthermore, any obligation of a PARCEL DEVELOPER to fund any PARCEL ASSESSMENTS or any deficits in any PARCEL EXPENSES may be established pursuant to any PARCEL DECLARATION, and in that event the PARCEL DECLARATION shall control over any conflict with the provisions of this Paragraph. In addition, DECLARANT shall not be liable for any PARCEL ASSESSMENTS or PARCEL EXPENSES relating to any

PARCEL except to the extent DECLARANT is a PARCEL DEVELOPER of the PARCEL or an OWNER within the PARCEL.

4.11. Exclusion for Expenses Relating to Completed UNITS. Notwithstanding anything contained herein to the contrary, in the event the COMMUNITY ASSOCIATION incurs any COMMON EXPENSE or PARCEL EXPENSE, which by its nature is applicable only to a completed UNIT, such expense shall only be assessed to and payable by the OWNERS of completed UNITS, and shall not be included within any ASSESSMENTS payable by DECLARANT or any PARCEL DEVELOPER or any OWNER of any PLANNED UNITS. Such expenses include, for example, expenses for bulk cable television or home security monitoring service, or expenses relating to the maintenance of landscaping upon any LOT or the maintenance of any exterior walls or roofs of a UNIT, which may be incurred pursuant to this DECLARATION or any PARCEL DECLARATION.

4.12. PARCEL ASSOCIATION. If any PARCEL is subject to the jurisdiction of a separate PARCEL ASSOCIATION, then at the request of the PARCEL ASSOCIATION the COMMUNITY ASSOCIATION may agree to include in the ASSESSMENTS against the OWNERS within the PARCEL any assessments that may be imposed by the PARCEL ASSOCIATION, and remit such funds to the PARCEL ASSOCIATION as same are collected. Furthermore, at the request of the COMMUNITY ASSOCIATION, the PARCEL ASSOCIATION shall collect all ASSESSMENTS assessed by the COMMUNITY ASSOCIATION against the OWNERS within the PARCEL and remit the ASSESSMENTS to the COMMUNITY ASSOCIATION on or before the date when same are due.

4.13. WORKING CAPITAL CONTRIBUTION. In addition to ASSESSMENTS for COMMON EXPENSES, after a certificate of occupancy for a UNIT is issued by the controlling governmental authority, upon the first to occur of the conveyance of the UNIT from the builder or the first occupancy of the UNIT, the OWNER of the UNIT shall pay to the COMMUNITY ASSOCIATION a contribution to a working capital fund of the COMMUNITY ASSOCIATION. The capital contribution shall be equal to the greater of \$100.00, or 2 months ASSESSMENT for COMMON EXPENSES, plus where applicable an amount equal to 2 months PARCEL ASSESSMENTS. The working capital fund shall be used by the COMMUNITY ASSOCIATION for start-up expenses or otherwise as the COMMUNITY ASSOCIATION shall determine from time to time, and specifically may be used for the payment of COMMON EXPENSES, or PARCEL EXPENSES where applicable, and such fund need not be restricted or accumulated.

4.14. Enforcement. If any OWNER fails to pay any ASSESSMENT for COMMON EXPENSES or any PARCEL ASSESSMENT when due, the COMMUNITY ASSOCIATION shall have the rights set forth in Paragraph 8.1.

## 5. ARCHITECTURAL CONTROL FOR IMPROVEMENTS.

5.1. Purpose. The APPROVING PARTY shall have the right to exercise architectural control over all IMPROVEMENTS, in order to assist in making the entire SUBJECT PROPERTY a community of high standards and aesthetic beauty. Such architectural control may include all architectural aspects of any IMPROVEMENT including, but not limited to, size, height, site planning, set-back exterior design, materials, colors, open space, landscaping, waterscaping, and aesthetic criteria.

5.2. OWNER or PARCEL ASSOCIATION to Obtain Approval. No OWNER or PARCEL ASSOCIATION shall make any IMPROVEMENT, and no OWNER or PARCEL ASSOCIATION shall apply for any governmental approval or building or other permit for any IMPROVEMENT, unless the OWNER or PARCEL ASSOCIATION first obtains the written approval of the IMPROVEMENT from the APPROVING PARTY.

5.3. Request for Approval. Any request for approval by the APPROVING PARTY of any IMPROVEMENT shall be in writing and shall be accompanied by plans and specifications or other details as the APPROVING PARTY may deem reasonably necessary in connection with its determination as to whether or not it will approve same. No request will be deemed made until the APPROVING PARTY signs a receipt for the request. The plans and specifications submitted for approval shall show the nature, kind, shape, height, materials, color, and location of all proposed IMPROVEMENTS. If the APPROVING PARTY deems the plans and specifications deficient, the APPROVING PARTY may require such further detail in the plans and specifications as the APPROVING PARTY deems necessary in connection with its approval of same, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, and descriptions or samples of exterior materials and colors, and until receipt of the foregoing, the APPROVING PARTY may postpone review of any plans submitted for approval. The APPROVING PARTY shall have the right to charge a reasonable fee to any OWNER or PARCEL ASSOCIATION requesting architectural approval, including where applicable the fee of any architect or engineer hired by the APPROVING PARTY to review any plans or specifications, provided that the APPROVING PARTY shall not be required to use the services of any architect or engineer in connection with its exercise of architectural approval. The APPROVING PARTY shall not be obligated to review or approve any plans and specifications until such fee is paid. Approval of any request shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable improvement of any PROPERTY, but may be withheld due to aesthetic considerations.

5.4. Approval. The APPROVING PARTY shall notify the OWNER or PARCEL ASSOCIATION of its approval or disapproval, or that the APPROVING PARTY requires additions to the plans and specifications or other materials, by written notice within 30 days after request for such approval is made in writing to the APPROVING PARTY, and all documents, plans and specifications, and other materials required by the APPROVING PARTY in connection with such approval have been submitted to and received by the APPROVING PARTY. In the event the APPROVING PARTY fails to disapprove any request within such 30 day period, the request shall be deemed approved and upon request the APPROVING PARTY shall give written notice of such approval, provided the party requesting such approval pays any fee charged by the APPROVING PARTY in connection with the approval. In consenting to any proposed IMPROVEMENT, the APPROVING PARTY may condition such consent upon changes being made and any such approval shall be deemed a disapproval unless and until the party requesting the approval agrees to the changes. If the APPROVING PARTY approves, or is deemed to have approved, any IMPROVEMENT, the OWNER or PARCEL ASSOCIATION requesting approval may proceed to make the IMPROVEMENT in strict conformance with the plans and specifications approved or deemed to have been approved, subject to any conditions of the APPROVING PARTY's approval, and shall not make any material changes without the approval of the APPROVING PARTY. If the APPROVING PARTY approves any IMPROVEMENT, same shall not obligate the APPROVING PARTY, or any subsequent APPROVING PARTY to approve any similar IMPROVEMENT in the future, and the APPROVING PARTY shall have the right in the future to withhold approval of similar IMPROVEMENTS requested by any other OWNER or PARCEL ASSOCIATION.

5.5. Architectural Guidelines and Criteria. The APPROVING PARTY may adopt and modify from time to time, in its discretion, minimum guidelines, criteria and/or standards which will be used by it in connection with its exercise of architectural control, provided however that same shall not apply to any previously existing or approved IMPROVEMENT. The foregoing may include, but are not limited to, minimum square footage, maximum height, minimum set-back, and minimum landscaping requirements.

5.6. Inspections. Upon the completion of any IMPROVEMENT, the applicable OWNER or PARCEL ASSOCIATION shall give written notice of the completion to the APPROVING PARTY. Within 90 days thereafter, the APPROVING PARTY shall have the right to inspect the IMPROVEMENT and

notify the OWNER or PARCEL ASSOCIATION in writing that the IMPROVEMENT is accepted, or that the IMPROVEMENT is deficient because it was not completed in conformance with the approved plans and specifications or in a manner otherwise acceptable to the APPROVING PARTY, specifying the particulars of such deficiencies. Within 30 days thereafter the OWNER or PARCEL ASSOCIATION shall correct the deficiencies set forth in the notice, and upon completion of the work the APPROVING PARTY shall again be given a notice of the completion, and the provisions of this paragraph shall again become operative. If the APPROVING PARTY fails to notify the OWNER or PARCEL ASSOCIATION of any deficiencies within 90 days after receipt of a notice of completion, the IMPROVEMENT shall be deemed to have been accepted by the APPROVING PARTY.

5.7. Remedy for Violations. In the event this section is violated in that any IMPROVEMENT is made without first obtaining the approval of the APPROVING PARTY, or is not made in strict conformance with any approval given or deemed given by the APPROVING PARTY, the APPROVING PARTY shall specifically have the right to injunctive relief, without the necessity of posting a bond or security therefor, to require the applicable OWNER or PARCEL ASSOCIATION to stop, remove and/or alter any IMPROVEMENT in a manner which complies with the requirements of the APPROVING PARTY, or the APPROVING PARTY may pursue any other remedy available to it. If DECLARANT is the APPROVING PARTY, then in connection with the enforcement of this section, DECLARANT shall have all of the rights of enforcement granted to the COMMUNITY ASSOCIATION pursuant to this DECLARATION, including but not limited to the right to impose fines, and to assess and lien for costs and expenses incurred in enforcing this section, except that any fines shall be paid to the COMMUNITY ASSOCIATION. In connection with the enforcement of this section, the APPROVING PARTY shall have the right to enter onto any PROPERTY and make any inspection necessary to determine that the provisions of this paragraph have been complied with. The failure of the APPROVING PARTY to object to any IMPROVEMENT prior to the completion of the IMPROVEMENT shall not constitute a waiver of the APPROVING PARTY's right to enforce the provisions of this section. Any action to enforce this Section must be commenced within 1 year after notice of the violation by the APPROVING PARTY, or within 3 years after the date of the violation, whichever occurs first. The foregoing shall be in addition to any other remedy set forth herein for violations of this DECLARATION. Notwithstanding anything contained within this DECLARATION to the contrary, the APPROVING PARTY shall have the exclusive authority to enforce the provisions of this Paragraph 5.

5.8. No Liability. Notwithstanding anything contained herein to the contrary, the APPROVING PARTY shall merely have the right, but not the duty, to exercise architectural control, and shall not be liable to any OWNER or PARCEL ASSOCIATION due to the exercise or non-exercise of such control, or the approval or disapproval of any IMPROVEMENT. Furthermore, the approval of any plans or specifications or any IMPROVEMENT shall not be deemed to be a determination or warranty that such plans or specifications or IMPROVEMENT are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the APPROVING PARTY, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and the APPROVING PARTY shall not be liable for any defect or deficiency in such plans or specifications or IMPROVEMENT, or any injury resulting therefrom.

5.9. Compliance with Governmental Requirements. In addition to the foregoing requirements, any IMPROVEMENT made by any OWNER or PARCEL ASSOCIATION must be in compliance with the requirements of all controlling governmental authorities, and the OWNER or PARCEL ASSOCIATION shall be required to obtain an appropriate building permit from the applicable governmental authority when required by controlling governmental requirements. Any consent or approval by the APPROVING PARTY to any IMPROVEMENT may be made conditioned upon the OWNER or PARCEL ASSOCIATION obtaining a building permit for same, or providing the APPROVING PARTY written evidence from the controlling governmental authority that such permit will not be required, and in that event the OWNER



or PARCEL ASSOCIATION shall not proceed with any IMPROVEMENT until such building permit or evidence that a building permit is not required is obtained and submitted to the APPROVING PARTY.

5.10. Construction by Licensed Contractor. If a building permit is required for any IMPROVEMENT made by any OWNER or PARCEL ASSOCIATION, then the IMPROVEMENT must be installed or constructed by a licensed contractor unless otherwise approved by the APPROVING PARTY, and in any event must be constructed in a good and workmanlike manner.

5.11. Effect of PARCEL ASSOCIATION. If a PARCEL ASSOCIATION is also granted the right to exercise architectural or similar control pursuant to a recorded declaration with respect to any PROPERTY, then any OWNER seeking architectural approval from the APPROVING PARTY shall first be required to obtain such approval in writing from the PARCEL ASSOCIATION; however, no approval given by any PARCEL ASSOCIATION shall be binding upon the APPROVING PARTY.

5.12. Exception for DECLARANT. Notwithstanding anything contained herein to the contrary, any IMPROVEMENTS constructed by DECLARANT, including any successor DECLARANT, shall be exempt for the provisions of this Section 5, and shall not require the approval of the APPROVING PARTY or any other person.

## 6. USE RESTRICTIONS AND MAINTENANCE REQUIREMENTS.

6.1. Air Conditioning Units. Only central air conditioning units are permitted without the prior written consent of the APPROVING PARTY.

6.2. Automobiles, Vehicles and Boats. Only automobiles, vans constructed as private passenger vehicles with permanent rear seats and side windows, pick-up trucks of a type customarily used as private passenger vehicles, and other vehicles manufactured and commonly used as private passenger vehicles, may be parked within the SUBJECT PROPERTY overnight without the prior written consent of the APPROVING PARTY, unless kept within an enclosed garage. In particular and without limitation, without the prior written consent of the APPROVING PARTY, no vehicle containing commercial lettering, signs or equipment, and no truck, recreational vehicle, camper, trailer, or vehicle other than a private passenger vehicle as specified above, and no boat, may be parked or stored outside of a UNIT overnight. No overnight parking is permitted on any streets, lawns, or areas other than driveways and garages, without the consent of the APPROVING PARTY. Notwithstanding the foregoing, automobiles owned by governmental law enforcement agencies are expressly permitted. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to, the SUBJECT PROPERTY. All vehicles parked within the SUBJECT PROPERTY must be in good condition and repair, and no vehicle which does not contain a current license plate or which cannot operate on its own power shall be parked within the SUBJECT PROPERTY outside of an enclosed garage for more than 24 hours, and no major repair of any vehicle shall be made on the SUBJECT PROPERTY. All vehicles parked within the SUBJECT PROPERTY must be painted with colors and in a manner which is customary for private passenger vehicles, and which is not offensive or distasteful in the reasonable opinion of the APPROVING PARTY. No motorcycle, motorbike, moped, all-terrain vehicle, or other such vehicle is permitted to be operated within the SUBJECT PROPERTY unless such vehicle is licensed for street use and equipped with appropriate noise-muffling equipment so that its operation does not create an unreasonable annoyance to the residents of the SUBJECT PROPERTY, and if the APPROVING PARTY determines the operation of any such vehicle creates an unreasonable annoyance to the residents of the SUBJECT PROPERTY, then after written demand from the APPROVING PARTY, the vehicle shall not be operated within the SUBJECT PROPERTY.

6.3. Basketball Backboards. Only professionally manufactured basketball backboards are permitted, which must be installed on black poles, with a white or clear backboard, and must be approved by the APPROVING PARTY. No garage or roof mounted basketball backboards are permitted. No portable basketball backboards may be kept outside of a UNIT overnight.

6.4. Beaches/Lake Banks. No OWNER shall create any beach or sandy area contiguous to any lake or canal within the SUBJECT PROPERTY, nor shall any dock or deck which extends into any lake or canal or maintenance easement be permitted, without the approval of the APPROVING PARTY and any controlling governmental authorities. All lake banks shall be seeded or sodded after the development of the property adjacent thereto is completed, unless otherwise approved by the APPROVING PARTY.

6.5. Boat Docks. No boat docks or boat launching facilities shall be permitted without the approval of the APPROVING PARTY and any controlling governmental authorities.

6.6. Business Use. No trade, business, profession, or commercial activity, or any other non-residential use, shall be conducted by a UNIT OWNER or resident of a UNIT upon any portion of the SUBJECT PROPERTY nor within any UNIT, if in connection therewith customers, patients or the like come to the UNIT, or if such non-residential use is otherwise apparent from the exterior of the UNIT. The foregoing shall not preclude (i) home offices complying with the previous sentence, (ii) the rental of UNITS within the SUBJECT PROPERTY; or (iii) activities associated with the construction, development and sale of the SUBJECT PROPERTY or any portion thereof.

6.7. Clothes Lines and Outside Clothes Drying. Outdoor clothes drying is only permitted behind a UNIT, in an area which is screened from view from adjoining roads and from other UNITS within the SUBJECT PROPERTY. Only portable outdoor clothes-drying facilities approved by the APPROVING PARTY are permitted, and same shall be removed when not in use.

6.8. COMMON AREAS and PARCEL AREAS. Nothing shall be stored, constructed, placed within, or removed from any COMMON AREA or any PARCEL AREA by any OWNER other than DECLARANT or a PARCEL DEVELOPER, unless approved by the APPROVING PARTY.

6.9. Damage and Destruction. In the event any IMPROVEMENT is damaged or destroyed, the OWNER of the IMPROVEMENT, or the PARCEL ASSOCIATION responsible for repairing or restoring the damaged IMPROVEMENT, shall repair and restore the damaged IMPROVEMENT as soon as is reasonably practical to the same condition that the IMPROVEMENT was in prior to such damage or destruction, or shall remove the damaged IMPROVEMENT and restore the OWNER'S PROPERTY to a vacant lot condition as soon as is reasonably practical, unless otherwise approved by the APPROVING PARTY.

6.10. Driveways. No asphalt or gravel driveways, walkways or sidewalks are permitted which serve only one LOT, and all driveways, sidewalks and walkways serving only one LOT must be constructed with an upgraded, stabilized hard surface approved by the APPROVING PARTY. All driveways and walkways must be constructed with concrete, stamped concrete or brick pavers.

6.11. Easement Areas.

6.11.1. "Drainage and/or Utility Easements" means such easements on those portions of the SUBJECT PROPERTY so designated on any plat or any recorded easement for the installation and maintenance of utility and/or drainage facilities. Such easements are for the installation, maintenance, construction, and repair of drainage facilities, including, but not limited to, canals, pumps, pipes, inlets,

and outfall structures and all necessary appurtenances thereto and underground utility facilities, including, but not limited to, power, telephone, sewer, water, gas, irrigation, lighting, and television transmission purposes. Within these easements, no Improvement or other material shall be placed or permitted to remain or alteration made which:

6.11.1.1. May damage or interfere with the installation and maintenance of utilities without the prior written consent of the affected utility company and the APPROVING PARTY; provided, however, the installation of a driveway or sod shall not require the consent of the affected utility companies unless the APPROVING PARTY imposes such requirements; or

6.11.1.2. May materially damage the direction of flow or drainage channels in the easements or may materially obstruct or retard the flow of water through drainage channels in the easements without the prior written consent of the APPROVING PARTY and applicable governmental agencies.

The portions of the SUBJECT PROPERTY designated as Drainage and/or Utility Easements and all improvements thereon shall be maintained continuously by the owner of such portion of the SUBJECT PROPERTY, except as otherwise set forth on the plat or recorded easement or any other recorded instrument including this DECLARATION, and except for those improvements for which a public authority or utility company is responsible.

6.11.2. "Water Management and/or Retention Easements" means such easements on those portions of the SUBJECT PROPERTY so designated on any plat or any other recorded instrument for the storage of storm water and/or maintenance of adjacent water bodies. The PROPERTY subject to the Water Management and/or Retention Easements shall be maintained by the OWNER thereof in an ecologically sound condition for water retention, irrigation, drainage, and water management purposes in compliance with all applicable governmental requirements. DECLARANT, any PARCEL ASSOCIATION, and the OWNERS shall have the right to use the Water Management and/or Retention Easements to drain surface water from their PROPERTY, COMMON AREAS, and PARCEL AREAS. No IMPROVEMENT shall be placed within a Water Management and/or Retention Easement other than sod unless approved in writing by the APPROVING PARTY. No OWNER shall do anything which shall adversely affect the surface water management system of the SUBJECT PROPERTY without the prior written consent of the APPROVING PARTY and all applicable governmental agencies.

6.12. Encroachments. If any portion of the COMMON AREAS encroaches upon any LOT; if any UNIT or other improvement encroaches upon any LOT or upon any portion of the COMMON AREAS; or if any encroachment shall hereafter occur as a result of (i) construction or reconstruction of any improvements; (ii) settling or shifting of any improvements; (iii) any addition, alteration or repair to the COMMON AREAS made by or with the consent of the COMMUNITY ASSOCIATION, (iv) any repair or restoration of any improvements (or any portion thereof) or any UNIT after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any UNIT or the COMMON AREAS; or (v) any non-purposeful or non-negligent act of an OWNER except as may be authorized by the BOARD, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

6.13. Exterior Changes, Alterations and Improvements. No OWNER or PARCEL ASSOCIATION shall make any IMPROVEMENT, without the prior written consent of the APPROVING PARTY, as required by Paragraph 5 of this DECLARATION.

6.14. Fences and Walls. Fences and walls shall not be permitted in the front of any UNIT. No fence or wall shall be installed without the consent of the APPROVING PARTY as to the location,

height, type, and materials of the fence or wall. In approving any fence or wall, the APPROVING PARTY may give due consideration to such matters as easements, drainage, berms, or other physical characteristics of the applicable LOT or PROPERTY, and the effect of the fence or wall on the surrounding community. All fences and walls must be maintained in good condition at all times.

6.15. Firearms. The use or discharge of firearms, including but not limited to BB guns and pellet guns, is prohibited.

6.16. Garages. No garage shall be permanently enclosed, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage area, without the prior written consent of the APPROVING PARTY. All garage doors shall remain closed when not in use. If any garage is enclosed, the garage door shall not be removed and the enclosure shall be performed in a manner such that from the outside of the UNIT it appears the UNIT still contains a garage.

6.17. Garbage and Trash. Garbage, trash, refuse or rubbish shall be regularly picked up, shall not be permitted to unreasonably accumulate, and shall not be placed or dumped on any portion of the SUBJECT PROPERTY, including any COMMON AREA, not intended for such use, or on any property contiguous to the SUBJECT PROPERTY. Garbage, trash, refuse or rubbish that is required to be placed along any road or in any particular area in order to be collected may be so placed after 5:00 p.m. on the day before the scheduled day of collection, and any trash facilities must be removed on the collection day. Except when so placed for collection, all containers, dumpsters or garbage facilities shall be kept inside a UNIT or other area intended for such use which shall be fenced-in area and screened from view in a manner approved by the APPROVING PARTY and kept in a clean and sanitary condition. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. No noxious or offensive odors shall be permitted.

6.18. Garbage Containers, Oil and Gas Tanks, Air Conditioners. All garbage and refuse containers, air conditioning units, oil tanks, bottled gas tanks, and all permanently affixed swimming pool equipment and housing shall be underground or placed in walled-in or landscaped areas, and shall be appropriately landscaped, as approved by the APPROVING PARTY so that they will be substantially concealed or hidden from any eye-level view from any street or adjacent property.

6.19. Hazardous Waste. No hazardous or toxic waste shall be disposed of within the SUBJECT PROPERTY, and there shall be no unlawful contamination of the soil or underground water supplies within the SUBJECT PROPERTY, and no any environmental law, rule, regulation, or ordinance shall be violated.

6.20. Lakes and Canals. No swimming or motor boating will be allowed in any lake or canal. No OWNER shall deposit or dump any garbage or refuse in any lake or canal within or contiguous to the SUBJECT PROPERTY. No OWNER shall install any improvement upon a LOT within 20 feet of any lake or canal without the prior written consent of the APPROVING PARTY, including but not limited to landscaping (other than grass), fences, walls, or any other improvements.

6.21. Landscaping. All PROPERTY containing a UNIT, or owned in conjunction with the ownership of a UNIT, or owned and/or operated by a PARCEL ASSOCIATION, shall be tastefully landscaped in accordance with any criteria established by the APPROVING PARTY, to the waterline of any abutting lake or canal and to the pavement edge of any abutting road or parking area. Lawns shall be primarily grass, and shall not be paved or covered with gravel, artificial turf or other covering unless permitted by the APPROVING PARTY. All diseased or dead sod, plants, shrubs or flowers shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be removed. All

landscaping shall be regularly maintained in first-class condition and appearance, including mowing, trimming, fertilization, irrigation, and weed, insect and disease control. Underground sprinkler systems shall be installed, maintained and used to irrigate all landscaping on any LOT, or any PROPERTY owned by any PARCEL ASSOCIATION, or any other landscaping which the OWNER of the LOT or any PARCEL ASSOCIATION is required to maintain pursuant to this paragraph. All underground sprinkler systems serving any LOT or any PROPERTY containing a UNIT shall be connected to the system supplying water to the Unit, unless prohibited by the applicable governmental authority or utility company or otherwise approved by the APPROVING PARTY. Any underground sprinkler system which utilizes water supplied by a well shall utilize a rust inhibitor system approved by the APPROVING PARTY, so that rust deposits will not accumulate on any building, wall or paved area. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any PROPERTY without the consent of the APPROVING PARTY.

6.22. Leases. All leases of a UNIT must be in writing and specifically be subject to this DECLARATION, the ARTICLES and the BYLAWS, and copies delivered to the COMMUNITY ASSOCIATION prior to occupancy by the tenant(s). No lease shall be for a period of less than 3 months, and no UNIT OWNER may lease his UNIT more than 2 times in any consecutive 12 month period, without the consent of the APPROVING PARTY. Notwithstanding the foregoing, a UNIT OWNER may from time to time permit guests to occupy his UNIT, without consideration, provided the COMMUNITY ASSOCIATION is given prior written notice of such occupancy. Such guest occupancy shall not exceed 4 times in any consecutive 12 month period, without the consent of the APPROVING PARTY.

6.23. Mailboxes. No mailboxes are permitted without the consent of the APPROVING PARTY, except for mailboxes which are identical to mailboxes originally provided for the UNITS.

6.24. Maintenance. All UNITS and other IMPROVEMENTS existing within the SUBJECT PROPERTY at all times be maintained in first class condition and good working order, in a clean, neat and attractive manner, and in accordance with all applicable governmental requirements. Exterior maintenance, including painting, shall be periodically performed as reasonably necessary. Any OWNER intending to paint his UNIT or the other IMPROVEMENTS on this LOT shall obtain the consent of the APPROVING PARTY as to the color of the paint that will be used, which in any event shall be harmonious with other improvements within the SUBJECT PROPERTY. No unsightly peeling of paint or discoloration of same, mildew, rust deposits, dirt, or deterioration shall be permitted to accumulate on any UNIT or other IMPROVEMENT. All roads, streets, parking areas, sidewalks, driveways, and other paved or hard-surfaced areas intended for use by vehicular or pedestrian traffic shall be cleaned and kept free of debris; and damaged and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary.

6.25. Nuisances. No nuisances shall be permitted within the SUBJECT PROPERTY, and no use or practice which is an unreasonable source of annoyance to the residents within the SUBJECT PROPERTY or which shall interfere with the peaceful possession and proper use of the SUBJECT PROPERTY by its residents shall be permitted. No unreasonably offensive or unlawful action shall be permitted, and all laws, zoning ordinances and regulations of all controlling governmental authorities shall be complied with at all times.

6.26. Occupancy. No UNIT shall be permanently occupied by more than two (2) persons for each bedroom in the UNIT. In addition, temporary guests are permitted so long as they do not create an unreasonable source of noise or annoyance to the other residents of the SUBJECT PROPERTY.

6.27. Outside Antennas and Flag Poles. No outside antennas or signal-receiving or sending dishes or devices are permitted which are visible from the exterior of a UNIT without the prior written consent of the APPROVING PARTY, except for digital satellite dishes not exceeding 18" in diameter which are located in the rear of the home on the LOT and not visible from adjoining streets or LOTS. No flag poles are permitted without the consent of the APPROVING PARTY.

6.28. Outside Storage of Personal Property. The personal property of any resident of the SUBJECT PROPERTY shall be kept inside the resident's UNIT or a fenced or a walled-in yard, except for tasteful patio furniture and accessories, Bar-B-Q grills, playground equipment approved by the APPROVING PARTY, and other personal property commonly kept outside, which must be kept in the rear of the LOT and must be neat appearing and in good condition.

6.29. Pets. No animals, livestock or poultry of any kind shall be permitted within the SUBJECT PROPERTY except for common household domestic pets. As regards cats and dogs, only 2 such pets are permitted in any UNIT except with the written consent of the APPROVING PARTY, which may be granted or withheld in the APPROVING PARTY's discretion. No pit bull terriers are permitted without the consent of the APPROVING PARTY, which may be withheld in its sole discretion. In any event, only dogs and cats will be permitted outside of the permanently enclosed air conditioned living space of a UNIT, and no pet other than a cat or dog shall be permitted outside of such portion of a UNIT, including but not limited to any screened in porch or patio, without the consent of the APPROVING PARTY. No dog shall be kept outside of a UNIT, or in any screened-in porch or patio, unless someone is present in the UNIT. Any pet must be carried or kept on a leash when outside of a UNIT or fenced-in area. Any pet must not be an unreasonable nuisance or annoyance to the other residents of the SUBJECT PROPERTY. Any resident shall pick up and remove any solid animal waste deposited by his pet on the SUBJECT PROPERTY. No commercial breeding of pets is permitted within the SUBJECT PROPERTY. The APPROVING PARTY may require any pet to be immediately and permanently removed from the SUBJECT PROPERTY due to a violation of this Paragraph.

6.30. Portable Buildings. No portable, storage, temporary or accessory buildings or structures, or tents, shall be erected, constructed or located upon any PROPERTY for storage or otherwise, without the prior written consent of the APPROVING PARTY.

6.31. Signs. No sign shall be placed upon any PROPERTY, and no sign shall be placed in or upon any UNIT which is visible from the exterior of the UNIT, without the prior written consent of the APPROVING PARTY. Notwithstanding the foregoing, a portable and tasteful "open house" advertising sign is permitted upon any LOT for a period not exceed 8 hours in any day, and 24 hours in any consecutive 7-day period, which shall not be larger than 2-1/2 square feet in size, during such periods when the OWNER or a licensed real estate broker or sales person is holding a bona fide "open house" to lease or sell the UNIT on the LOT. In the event any sign is installed within the SUBJECT PROPERTY or on the exterior of any UNIT which violates this Paragraph, the APPROVING PARTY shall have the right to remove such sign without notice to the OWNER or PARCEL ASSOCIATION, and any such removal shall not be deemed a trespass and the APPROVING PARTY shall not be liable for the removal or for any damage or loss to the sign.

6.32. Solar Collectors. Solar collectors are permitted, provided that the APPROVING PARTY shall have the right to approve the specific location where solar collectors may be installed on a roof with an orientation to the south or within 45 degrees east or west of due south, provided that such determination does not impair the effective operation of the solar collectors.

6.33. Subdivision and Easements. No LOT shall be further subdivided if same would result in the creation of more LOTS than before such resubdivision, and no easement shall be granted by any

OWNER, without the prior written consent of the APPROVING PARTY. Notwithstanding the foregoing, any LOT or portions of one or more LOT(s) may be conveyed to the OWNER(S) of contiguous LOT(s) in order to increase the size of the contiguous LOT(S), so long as any remaining portion of the divided LOT not so conveyed is independently useful for the construction of a UNIT that complies with the requirements of this DECLARATION. If all of any LOT is divided between the contiguous LOTS in order to increase the size of the contiguous LOTS, then the OWNERS of the divided LOT shall be required to divide among themselves the vote and ASSESSMENT responsibility of the divided LOT pursuant to an instrument recorded in the Public Records of the County where the SUBJECT PROPERTY is located and approved by the COMMUNITY ASSOCIATION.

6.34. Surface Water Management. No OWNER or any other PERSON shall do anything to adversely affect the surface water management and drainage of the SUBJECT PROPERTY without the prior written approval of the APPROVING PARTY and any controlling governmental authority, including but not limited to the excavation or filling in of any lake or canal, or the changing of the elevation of any portion of the SUBJECT PROPERTY, provided the foregoing shall not be deemed to prohibit or restrict the initial construction of improvements upon the SUBJECT PROPERTY by DECLARANT or by the developer of any portion of the SUBJECT PROPERTY in accordance with permits issued by controlling governmental authorities. In particular, no OWNER other than DECLARANT shall install any landscaping or place any fill on the OWNER's LOT which would adversely affect the drainage of any contiguous LOT.

6.35. Swimming Pools. No above-ground swimming pools, spas, or the like, shall be installed without the consent of the APPROVING PARTY.

6.36. Tree Removal. No trees shall be removed without the consent of the APPROVING PARTY.

6.37. Utility Lines and Services. All utility lines and services shall be maintained in good working condition.

6.38. Wells. No wells may be installed within the SUBJECT PROPERTY without the prior written consent of the APPROVING PARTY and the utility company supplying potable water to the SUBJECT PROPERTY.

6.39. Window Treatments. Window treatments shall consist of drapery, blinds, shutters, decorative panels, or other tasteful window covering, of the type customarily found in single family homes, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding 30 days after an OWNER or tenant first moves into a UNIT or when permanent window treatments are being cleaned or repaired.

6.40. Rules and Regulations. The COMMUNITY ASSOCIATION may adopt reasonable rules and regulations relating to the use and maintenance of the SUBJECT PROPERTY. Copies of such rules and regulations and amendments shall be furnished by the COMMUNITY ASSOCIATION to any OWNER or upon request.

6.41. Additional Restrictions. Nothing contained herein shall prohibit the OWNER of any PROPERTY from imposing restrictions upon such PROPERTY in addition to, or more restrictive than, the restrictions contained herein.

6.42. Exemption or Waiver. DECLARANT, so long as it owns any portion of the SUBJECT PROPERTY, shall have the right to exempt any PROPERTY from any or all of the restrictions contained

in this DECLARATION in DECLARANT's sole discretion, by a written amendment or supplement to this DECLARATION. Any such exemption may not be modified or terminated, directly or indirectly, without the consent of the OWNER of the PROPERTY so exempted. In addition, the APPROVING PARTY shall have the right to waive the application of one or more of these restrictions, or to permit a deviation from these restrictions, as to any PROPERTY or UNIT where, in the discretion of the APPROVING PARTY, circumstances exist which justify such waiver or deviation. Any exemption or waiver may be subject to such conditions and restrictions as DECLARANT or the APPROVING PARTY may deem necessary, and the OWNER shall be required to comply with any such conditions or restrictions in connection with any waiver or deviation. In the event of any such exemption or waiver, or in the event any party fails to enforce any violation of these restrictions, such actions or inactions shall not be deemed to prohibit or restrict the right of the APPROVING PARTY to enforce these restrictions or from insisting upon strict compliance with respect to all other PROPERTY and UNITS, nor shall any such actions be deemed a waiver of any of the restrictions contained herein as same may be applied in the future. Furthermore, any waiver given by the APPROVING PARTY as to any matter shall not be deemed binding upon the APPROVING PARTY in the future, and shall not require the APPROVING PARTY to grant similar waivers in the future as to any other LOT or PROPERTY, or OWNER.

6.43. Responsibility for Maintenance and Compliance.

6.43.1. OWNERS. The OWNER of any PROPERTY shall be responsible for complying with all of the provisions of this Section with respect to such PROPERTY.

6.43.2. PARCEL ASSOCIATION. Each PARCEL ASSOCIATION shall be responsible for complying with all provisions of this Section with respect to all of the PROPERTY which is subject to the jurisdiction of the PARCEL ASSOCIATION, notwithstanding the fact that the OWNER of any portion of the PROPERTY may also be responsible for such compliance with respect to the PROPERTY owned by such OWNER.

6.43.3. Enforcement. In the event any OWNER or PARCEL ASSOCIATION fails to comply with any provision of this Section, the COMMUNITY ASSOCIATION shall have all rights of enforcement set forth in Paragraph 7, including, but not limited to, the right to perform any maintenance which any OWNER or PARCEL ASSOCIATION has failed to perform, and to assess the applicable OWNER or PARCEL ASSOCIATION for all costs and expenses incurred by the COMMUNITY ASSOCIATION in connection therewith.

6.43.4. Limitations. No OWNER or PARCEL ASSOCIATION shall maintain, repair and/or improve any PROPERTY for which the COMMUNITY ASSOCIATION has the responsibility and duty for maintenance without the prior written consent of the COMMUNITY ASSOCIATION.

6.44. Exceptions. The foregoing use and maintenance restrictions shall not apply to DECLARANT, or to any portion of the SUBJECT PROPERTY while owned by DECLARANT, and shall not be applied in a manner which would prohibit or restrict the development of any portion of the SUBJECT PROPERTY and the construction of any UNITS and other IMPROVEMENTS thereon, or any activity associated with the sale or leasing of any UNITS within the SUBJECT PROPERTY, by DECLARANT or by any PARCEL DEVELOPER, or any activity associated with the construction, sale or leasing of any UNITS within any other property owned by DECLARANT or any PARCEL DEVELOPER or any affiliate of DECLARANT or any PARCEL DEVELOPER. In addition, DECLARANT shall have the right to exempt any other builder or developer from any of the foregoing use and maintenance restrictions. Specifically, and without limitation, DECLARANT and any PARCEL DEVELOPER shall have the right to, and any other builder or developer who is exempted from the foregoing restrictions by DECLARANT shall have the right to: (i) construct any UNITS or IMPROVEMENTS within the SUBJECT



PROPERTY, and make any additions, alterations, improvements, or changes thereto, (ii) maintain sales, leasing, general office and construction operations on any LOT, for use in connection with the SUBJECT PROPERTY or any other property; (iii) place, erect or construct portable, temporary or accessory buildings or structures upon any portion of the SUBJECT PROPERTY for sales, leasing, general office, construction, storage or other purposes; (iv) temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in connection with the development or construction activities; and (v) post, display, inscribe or affix to the exterior of a UNIT or upon any portion of the SUBJECT PROPERTY, signs and other materials used in developing, constructing, selling, leasing, or promoting any portion of the SUBJECT PROPERTY or any other property.

## 7. ZERO LOT LINE RESTRICTIONS.

### 7.1. Definitions.

7.1.1. BURDENED LOT means a LOT or COMMON AREA upon which a MAINTENANCE EASEMENT exists.

7.1.2. ZERO LOT LINE means the common lot boundary between a ZERO LOT and a BURDENED LOT.

7.1.3. MAINTENANCE EASEMENT means a non-exclusive appurtenant easement for construction, repair, maintenance and drainage purposes, over and upon any portion of a LOT or COMMON AREA contiguous to a ZERO LOT which is within 4 feet of the ZERO LOT LINE, which is for the benefit of the OWNER of the ZERO LOT.

7.1.4. ZERO LOT means a LOT containing a ZERO WALL, or which will contain a ZERO WALL when a UNIT is constructed upon the LOT.

7.1.5. ZERO WALL means any wall of a UNIT, or other wall extending from the UNIT running parallel to the ZERO LOT LINE, which is located on or within 4 feet of any lot line of the LOT.

7.2. MAINTENANCE EASEMENT. There is hereby reserved upon each BURDENED LOT or COMMON AREA adjacent to any ZERO LOT a MAINTENANCE EASEMENT for the benefit of the OWNER of the ZERO LOT. No permanent structures may be constructed or permitted to remain within the MAINTENANCE EASEMENT which would materially and adversely affect the ability of the OWNER of the ZERO LOT to construct, repair or maintain the UNIT on the ZERO LOT or any ZERO WALL without the written consent of the OWNER of the ZERO LOT and the APPROVING PARTY. If any fence or wall is constructed between a ZERO WALL and the UNIT on the BURDENED LOT which denies access to the MAINTENANCE EASEMENT by the OWNER of the ZERO LOT, then a gate or door approved by the APPROVING PARTY must be constructed to provide such access. The OWNER of the ZERO LOT shall have the right to enter upon the MAINTENANCE EASEMENT upon 24 hours written notice to the OWNER of the BURDENED LOT during the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, to construct, repair or maintain the UNIT on the ZERO LOT, including a ZERO WALL, or any fence along the ZERO LOT LINE, or at any time in the event of an emergency or to prevent imminent damage, and shall also have the right to enter such other portions of the BURDENED LOT as may be reasonably necessary in connection therewith, and the OWNER of the BURDENED LOT shall provide such access to the OWNER of the ZERO LOT. In connection with such construction, repair and maintenance, the OWNER of the ZERO LOT shall use reasonable efforts to minimize damage to any landscaping or improvements within the BURDENED LOT, and shall not be liable for any damage to the landscaping or improvements within the BURDENED LOT unless such damage is caused by the gross negligence or wilful acts of the OWNER of the ZERO LOT, or such OWNER's contractors. Upon the

completion of such construction, repair or maintenance, the OWNER of the ZERO LOT shall remove all materials and equipment and clean up and restore the BURDENED LOT in a reasonable manner. Notwithstanding the foregoing, the OWNER of the ZERO LOT shall not be required to repair or restore any improvements constructed or installed in violation of the provisions of this DECLARATION.

7.3. BURDENED LOT OWNERS' Obligations. The OWNER of any BURDENED LOT shall not attach any fence, wall or other improvements to the ZERO WALL, except such as are attached in connection with the original construction of the UNIT on the ZERO LOT or the BURDENED LOT, and shall not paint or otherwise alter the ZERO WALL, without the prior written consent of the OWNER of the ZERO LOT. The ZERO WALL shall not be used as a playing surface for any sport or game. No landscaping within a MAINTENANCE EASEMENT shall interfere with the flow of surface water drainage within the MAINTENANCE EASEMENT. The OWNER of the BURDENED LOT shall not cause the elevation of the soil adjacent to the ZERO WALL to be less than 2 inches above the slab of the UNIT on the ZERO LOT. No excavations may be made within the MAINTENANCE EASEMENT for any purpose without the written consent of the OWNER of the ZERO LOT. The OWNER of the BURDENED LOT shall not do anything which causes damage to the UNIT or the ZERO WALL on the ZERO LOT, and if the OWNER of the BURDENED LOT does anything which causes such damage, including but not limited to the discoloration of the paint on the ZERO WALL due to the irrigation of the landscaping on the BURDENED LOT, then the OWNER of the BURDENED LOT will be liable for such damage to the OWNER of the ZERO LOT.

7.4. Encroachments and Overhangs. There is hereby reserved an easement for encroachments and overhangs for the original construction of the UNIT, and in particular any ZERO WALL, constructed upon the ZERO LOT, into the BURDENED LOT. Nothing herein shall be deemed to grant any OWNER the right to modify the original construction of the UNIT upon the ZERO LOT to encroach further into the BURDENED LOT.

## 8. COLLECTION OF ASSESSMENTS, DEFAULT AND ENFORCEMENT.

### 8.1. Monetary Defaults and Collection of ASSESSMENTS.

8.1.1. Late Fees and Interest. If any OWNER is in default in the payment of any ASSESSMENT for more than ten (10) days after same is due, or if any OWNER or PARCEL ASSOCIATION is in default in the payment of any other moneys owed to the COMMUNITY ASSOCIATION for a period of more than ten (10) days after written demand by the COMMUNITY ASSOCIATION, or if any check for any ASSESSMENT or any other monies owed to the COMMUNITY ASSOCIATION is dishonored, the COMMUNITY ASSOCIATION shall have the right to charge the applicable OWNER or PARCEL ASSOCIATION a late or bad check fee of ten percent (10%) of the amount due, or \$25.00, whichever is greater, plus interest at the highest rate permitted by law on the amount owed to the COMMUNITY ASSOCIATION from and after said ten (10) day period.

8.1.2. Acceleration of ASSESSMENTS. In addition, if any OWNER is in default in the payment of any ASSESSMENT or any other moneys owed to the COMMUNITY ASSOCIATION, for more than ten (10) days after written demand by the COMMUNITY ASSOCIATION, the COMMUNITY ASSOCIATION shall have the right to accelerate and require such defaulting OWNER to pay to the COMMUNITY ASSOCIATION ASSESSMENTS for COMMON EXPENSES for the next twelve (12) month period, based upon the then existing amount and frequency of ASSESSMENTS for COMMON EXPENSES. In the event of such acceleration, the defaulting OWNER shall continue to be liable for any increases in the regular ASSESSMENTS for COMMON EXPENSES, for all special ASSESSMENTS for COMMON EXPENSES, and/or all other ASSESSMENTS and moneys payable to the COMMUNITY ASSOCIATION.

8.1.3. Collection. In the event any OWNER or PARCEL ASSOCIATION fails to pay any ASSESSMENT or other moneys due to the COMMUNITY ASSOCIATION within ten (10) days after written demand, the COMMUNITY ASSOCIATION may take any action deemed necessary in order to collect such ASSESSMENTS or moneys including, but not limited to, retaining the services of a collection agency or attorney to collect such ASSESSMENTS or moneys, initiating legal proceedings for the collection of such ASSESSMENTS or moneys, recording a claim of lien as hereinafter provided, and foreclosing same in the same fashion as mortgage liens are foreclosed, or any other appropriate action, and the OWNER or PARCEL ASSOCIATION shall be liable to the COMMUNITY ASSOCIATION for all costs and expenses incurred by the COMMUNITY ASSOCIATION incident to the collection of any ASSESSMENT or other moneys owed to it, and the enforcement and/or foreclosure of any lien for same, including reasonable attorneys' fees whether or not incurred in legal proceedings, and all sums paid by the COMMUNITY ASSOCIATION for taxes and on account of any mortgage lien and encumbrance in order to preserve and protect the COMMUNITY ASSOCIATION's lien. The COMMUNITY ASSOCIATION shall have the right to bid in the foreclosure sale of any lien foreclosed by it for the payment of any ASSESSMENTS or monies owed to it, and if the COMMUNITY ASSOCIATION becomes the OWNER of any PROPERTY by reason of such foreclosure, it shall offer such PROPERTY for sale within a reasonable time and shall deduct from the proceeds of such sale all ASSESSMENTS or moneys due it. All payments received by the COMMUNITY ASSOCIATION on account of any ASSESSMENTS or moneys owed to it by any OWNER or PARCEL ASSOCIATION shall be first applied to payments and expenses incurred by the COMMUNITY ASSOCIATION, then to interest, then to any unpaid ASSESSMENTS or moneys owed to the COMMUNITY ASSOCIATION in the inverse order that the same were due.

8.1.4. Lien for ASSESSMENT and Moneys Owed to COMMUNITY ASSOCIATION. The COMMUNITY ASSOCIATION shall have a lien on all PROPERTY owned by any OWNER, for any unpaid ASSESSMENTS (including any ASSESSMENTS which are accelerated pursuant to this DECLARATION) or other moneys owed to the COMMUNITY ASSOCIATION by such OWNER, and for interest, reasonable attorneys' fees incurred by the COMMUNITY ASSOCIATION incident to the collection of the ASSESSMENTS and other moneys, or enforcement of the lien, and for all sums advanced and paid by the COMMUNITY ASSOCIATION for taxes and on account of superior mortgages, liens or encumbrances in order to protect and preserve the COMMUNITY ASSOCIATION's lien. To protect its lien against the holder of a first mortgage, the COMMUNITY ASSOCIATION may record a claim of lien in the public records of the County in which the SUBJECT PROPERTY is located, stating the description of the PROPERTY, the name of the OWNER which owns the PROPERTY, the amount and due dates of any unpaid ASSESSMENTS then due to the COMMUNITY ASSOCIATION, and any other monies then owed to the COMMUNITY ASSOCIATION by the OWNER of the PROPERTY. The claim of lien shall relate back to the date of the recording of this DECLARATION, and shall be in effect until all sums secured by it, and all monies owed by the applicable OWNER to the COMMUNITY ASSOCIATION from and after the recording of the claim of lien, have been fully paid, except that any claim of lien for ASSESSMENTS or DEFICITS owed by any PARCEL DEVELOPER shall not affect any LOT that contains a completed residence and which was conveyed by the PARCEL DEVELOPER in a bona fide transaction prior to the recording of the claim of lien. The claim of lien must be signed and acknowledged by an officer or agent of the COMMUNITY ASSOCIATION. Upon payment in full of all monies owed to the COMMUNITY ASSOCIATION, the PERSON making the payment is entitled to a satisfaction of the lien.

8.1.5. Transfer of PROPERTY after ASSESSMENT. The COMMUNITY ASSOCIATION's lien shall not be affected by the sale or transfer of any PROPERTY, and in the event of any such sale or transfer, both the new OWNER and the prior OWNER shall be jointly and severally liable for all ASSESSMENTS, interest, and other costs and expenses owed to the COMMUNITY ASSOCIATION which are attributable to any PROPERTY purchased by or transferred to such new OWNER.

8.1.6. Subordination of the Lien to Mortgages. The lien of the COMMUNITY ASSOCIATION for ASSESSMENTS or other moneys shall be subordinate and inferior to the lien of any first mortgage recorded prior to the actual date of the recording of a Claim of Lien (without taking into account the relation back to the date of recording of this DECLARATION) by the COMMUNITY ASSOCIATION. The sale or transfer of any PROPERTY by the foreclosure of a first mortgage or by deed in lieu thereof, shall extinguish the lien of the COMMUNITY ASSOCIATION as to any ASSESSMENT, interest, expenses or other moneys owed to the COMMUNITY ASSOCIATION which became due prior to such sale or transfer, unless a Claim of Lien for same was recorded prior to the recording of the mortgage, and neither the mortgagee, nor any purchaser at a foreclosure sale, nor their grantees or successors, shall be responsible for said payments, but they shall be liable for any ASSESSMENTS due after such sale or transfer. If the COMMUNITY ASSOCIATION's lien or its rights to any lien for any such ASSESSMENTS, interest, expenses or other moneys owed to the COMMUNITY ASSOCIATION by any OWNER is extinguished as aforesaid, such sums shall thereafter be COMMON EXPENSES, collectible from all OWNERS including such acquirer, and its successors and assigns.

8.1.7. No Set-Offs. No OWNER shall have the right to set-off or reduce any ASSESSMENTS for COMMON EXPENSES by any claims that such OWNER may have or may claim to have against the COMMUNITY ASSOCIATION or against DECLARANT or any PARCEL DEVELOPER.

8.1.8. Exception for DECLARANT. Notwithstanding the foregoing, DECLARANT shall not be liable for any interest or late fees for any ASSESSMENTS or other funds owed to the COMMUNITY ASSOCIATION, and the COMMUNITY ASSOCIATION shall not have a lien against any property for any ASSESSMENTS or other monies owed to the COMMUNITY ASSOCIATION by DECLARANT.

8.1.9. Suspension of Voting Rights. The COMMUNITY ASSOCIATION may suspend the voting rights of any OWNER other than DECLARANT or any PARCEL DEVELOPER for the nonpayment of regular ASSESSMENTS for COMMON EXPENSES that are delinquent for more than 90 days.

8.2. Non-Monetary Defaults. In the event of a violation by any OWNER or any tenant of an OWNER, or any person residing with them, or their guests or invitees, or by any PARCEL ASSOCIATION (other than the nonpayment of any ASSESSMENT or other moneys) of any of the provisions of this DECLARATION, or of the ARTICLES or BYLAWS, the COMMUNITY ASSOCIATION shall notify the OWNER (and where applicable any tenant of the OWNER) or PARCEL ASSOCIATION of the violation, by written notice. If (i) such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or (ii) the violation is not capable of being cured within such seven (7) day period and the OWNER or tenant, or PARCEL ASSOCIATION, fails to commence and diligently proceed to completely cure as soon as practicable such violation within seven (7) days after written notice by the COMMUNITY ASSOCIATION, then the COMMUNITY ASSOCIATION may, at its option:

8.2.1. Fine the OWNER or tenant, or PARCEL ASSOCIATION, as provided below and/or suspend, for a reasonable period of time, the rights of the OWNER and anyone residing in the OWNER'S UNIT, and their guests, and invitees, to use the COMMON AREAS (but such suspension shall not impair the right of an OWNER or tenant to have vehicular and pedestrian access to and from the OWNER'S UNIT); and/or

8.2.2. Commence an action to enforce the performance on the part of the OWNER or PARCEL ASSOCIATION, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

8.2.3. Commence an action to recover damages; and/or

8.2.4. Take any and all action reasonably necessary to correct such failure, which action may include, but is not limited to, removing any building or improvement for which architectural approval has not been obtained, or performing any maintenance required to be performed by this DECLARATION; and/or

8.2.5. Record a "notice of violation" in the public records of the county in which the SUBJECT PROPERTY is located, which shall describe the legal description of the applicable PROPERTY owned by the OWNER, the OWNER's name, and the nature of the violation, and shall be signed by an officer or agent of the COMMUNITY ASSOCIATION. If recorded, such notice of violation shall be released when the violation is cured and the applicable OWNER pays any costs or expenses due to the COMMUNITY ASSOCIATION in connection with the violation and the recording of the notice of violation.

All expenses incurred by the COMMUNITY ASSOCIATION in connection with the enforcement of this DECLARATION action against any OWNER or PARCEL ASSOCIATION, including reasonable attorneys' fees whether or not incurred in legal proceedings, shall be assessed against the applicable OWNER or PARCEL ASSOCIATION, and shall be due upon written demand by the COMMUNITY ASSOCIATION. The COMMUNITY ASSOCIATION shall have a lien for any such ASSESSMENT and any interest, costs or expenses associated therewith, including attorneys' fees incurred in connection with such ASSESSMENT, and may take such action to collect such ASSESSMENT or foreclose said lien as in the case and in the manner of any other ASSESSMENT as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of the County in which the SUBJECT PROPERTY is located.

8.2.6. If 10% or more of the OWNERS within any PARCEL, or any committee thereof, desire to retain a lawyer or commence legal proceedings to enforce this DECLARATION against any other OWNER within the PARCEL other than DECLARANT or any PARCEL DEVELOPER, and if the COMMUNITY ASSOCIATION does not agree to do so as a COMMON EXPENSE, then upon the approval of a majority of the OWNERS within the PARCEL appearing at a special meeting called for such purpose, the COMMUNITY ASSOCIATION shall enforce this DECLARATION against such OWNER as a PARCEL EXPENSE.

### 8.3. Fines and Suspensions.

8.3.1. The amount of any fine shall not exceed any amount as is permitted by law. Notwithstanding the foregoing, if any violation of this DECLARATION or the Rules and Regulations is of a continuing nature, and if the PARCEL ASSOCIATION, OWNER or tenant fails to cure any continuing violation within 30 days after written notice of such violation, or if such violation is not capable of being cured within such 30 day period, if the PARCEL ASSOCIATION, OWNER or tenant fails to commence action reasonably necessary to cure the violation within such 30 day period or shall thereafter fail to diligently proceed to cure the violation as soon as is reasonably practical, in addition to the initial fine a daily fine may be imposed until the violation is cured in an amount not to exceed \$10.00 per day, to the extent not prohibited by law.

8.3.2. Prior to imposing any suspension or fine, the PARCEL ASSOCIATION, OWNER or tenant shall be given written notice of the fact that the COMMUNITY ASSOCIATION is considering the imposition of the suspension or fine, including (i) a statement of the provisions of the DECLARATION, BYLAWS or Rules and Regulations which have allegedly been violated, (ii) the proposed length of the suspension or amount of the fine, and (iii) the right of the PARCEL ASSOCIATION, OWNER or tenant to request a hearing by written request to the COMMUNITY ASSOCIATION within 14 days after the COMMUNITY ASSOCIATION's notice. If the PARCEL ASSOCIATION, OWNER or tenant desires a hearing, they must so notify the COMMUNITY ASSOCIATION in writing within 14 days after the COMMUNITY ASSOCIATION's notice, and in that event a hearing shall be held in accordance with applicable law upon not less than 14 days written notice to the PARCEL ASSOCIATION, OWNER or tenant. At the hearing, the PARCEL ASSOCIATION, OWNER or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and the suspension or fine previously imposed may be approved, disapproved or modified. If the PARCEL ASSOCIATION, OWNER or tenant fails to timely request a hearing, or fails to attend the hearing, the proposed fine or suspension set forth in the COMMUNITY ASSOCIATION's notice shall be deemed imposed.

8.3.3. Any fine imposed shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after the decision at the hearing. Any fine levied against an OWNER shall be deemed an ASSESSMENT, and if not paid when due all of the provisions of this DECLARATION relating to the late payment of ASSESSMENTS shall be applicable.

8.3.4. The BOARD may, and to the extent required by law shall, delegate the right to impose suspension or fines, set the amount thereof, and/or conduct hearings pursuant to this paragraph, to a Committee of the COMMUNITY ASSOCIATION.

8.3.5. Notwithstanding the foregoing, the COMMUNITY ASSOCIATION shall not have the right to impose any fine against DECLARANT, or any PARCEL DEVELOPER, or any other builder or developer of any portion of the SUBJECT PROPERTY.

8.4. Negligence. An OWNER shall be liable and may be assessed by the COMMUNITY ASSOCIATION for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the COMMUNITY ASSOCIATION. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a LOT or UNIT, or the COMMON AREAS.

8.5. Responsibility of an OWNER for Occupants, Tenants, Guests, and Invitees. To the extent otherwise provided by law, each OWNER shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his UNIT, and for all guests and invitees of the OWNER or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the COMMON AREAS or any personal property owned by the COMMUNITY ASSOCIATION, or any liability to the COMMUNITY ASSOCIATION, the OWNER shall be assessed for same as in the case of any other ASSESSMENT, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the COMMUNITY ASSOCIATION. Furthermore, any violation of any of the provisions of this DECLARATION, of the ARTICLES, or the BYLAWS, by any resident of any UNIT, or any guest or invitee of an OWNER or any resident of a UNIT, shall also be deemed a violation by the OWNER, and shall subject the OWNER to the same liability as if such violation was that of the OWNER.

8.6. Right of COMMUNITY ASSOCIATION to Evict Tenants, Occupants, Guests and Invitees. With respect to any tenant or any person present in any UNIT or any portion of the SUBJECT PROPERTY, other than an OWNER and the members of his immediate family permanently residing with him in the UNIT, if such person shall materially violate any provision of this DECLARATION, the ARTICLES, or the BYLAWS, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the SUBJECT PROPERTY, or shall willfully damage or destroy any COMMON AREAS or personal property of the COMMUNITY ASSOCIATION, then upon written notice by the COMMUNITY ASSOCIATION such person shall be required to immediately leave the SUBJECT PROPERTY and if such person does not do so, the COMMUNITY ASSOCIATION is authorized to commence an action to evict such tenant or compel the person to leave the SUBJECT PROPERTY and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable OWNER, and the COMMUNITY ASSOCIATION may collect such ASSESSMENT and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the COMMUNITY ASSOCIATION.

8.7. No Waiver. The failure of the COMMUNITY ASSOCIATION to enforce any right, provision, covenant or condition which may be granted by this DECLARATION, the ARTICLES, or the BYLAWS, shall not constitute a waiver of the right of the COMMUNITY ASSOCIATION to enforce such right, provision, covenant or condition in the future.

8.8. Rights Cumulative. All rights, remedies and privileges granted to the COMMUNITY ASSOCIATION pursuant to any terms, provisions, covenants or conditions of this DECLARATION, the ARTICLES or the BYLAWS, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the COMMUNITY ASSOCIATION thus exercising the same from executing such additional remedies, rights or privileges as may be granted or as it might have by law.

8.9. Enforcement Against other Persons. In addition to the foregoing, this DECLARATION may be enforced by DECLARANT, or the COMMUNITY ASSOCIATION, by any procedure at law or in equity against any PERSON violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this DECLARATION shall be borne by the PERSON against whom enforcement is sought, provided such proceeding results in a finding that such PERSON was in violation of this DECLARATION. In addition to the foregoing, any PARCEL ASSOCIATION or OWNER shall have the right to bring an action to enforce this DECLARATION against any PERSON violating or attempting to violate any provision herein, to restrain such violation or to require compliance with the provisions contained herein, but no PARCEL ASSOCIATION or OWNER shall be entitled to recover damages or to enforce any lien created herein as a result of a violation or failure to comply with the provisions contained herein by any PERSON, and the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees.

8.10. Certificate as to Unpaid ASSESSMENTS or Default. Within 15 days after written request by any OWNER or INSTITUTIONAL LENDER holding or making a mortgage encumbering any PROPERTY, the COMMUNITY ASSOCIATION shall provide such OWNER or INSTITUTIONAL LENDER with a written certificate as to whether or not the OWNER, and any applicable PARCEL ASSOCIATION having jurisdiction over the OWNER's PROPERTY, is in default with respect to the payment of ASSESSMENTS or with respect to compliance with the terms and provisions of this DECLARATION. Any person who relies on such certificate in purchasing or making a mortgage encumbering any PROPERTY shall be protected thereby.

8.11. Enforcement of Obligations of COMMUNITY ASSOCIATION. DECLARANT, regardless of whether or not it is a member of the COMMUNITY ASSOCIATION, and any controlling governmental authority, shall have the right to enforce the obligations of the COMMUNITY ASSOCIATION to properly maintain and operate any property as required by this DECLARATION, and in the event the COMMUNITY ASSOCIATION defaults with respect to any of its obligations to operate or maintain any property, and does not commence and diligently proceed to cure such default as soon as is reasonably practical and in any event within 10 days after demand by DECLARANT or any controlling governmental authority, DECLARANT or such controlling governmental authority shall have the right to perform such maintenance and in that event all reasonable costs and expenses incurred by DECLARANT or such governmental authority, plus interest at the highest rate permitted by law, shall be paid by the COMMUNITY ASSOCIATION, plus any costs, expenses, and attorney's fees incurred in connection with the enforcement of the COMMUNITY ASSOCIATION's duties and obligations hereunder or the collection of any such sums. DECLARANT or the controlling governmental authority shall have the right to collect such sums from the OWNERS and in connection therewith shall have all enforcement rights granted to the COMMUNITY ASSOCIATION in connection with the collection of said moneys, including but not limited to all lien rights provided by this DECLARATION. In addition, the duties and obligations of the COMMUNITY ASSOCIATION may be enforced by any UNIT OWNER through appropriate legal proceedings.

9. DEDICATIONS. DECLARANT, each PARCEL DEVELOPER, and the COMMUNITY ASSOCIATION (with the consent of DECLARANT so long as DECLARANT owns any portion of the SUBJECT PROPERTY) shall have the right to dedicate, grant or convey any portion of the SUBJECT PROPERTY owned by them, or any interest or easement therein, to any governmental or quasi-governmental agency or private, public utility company, community development district, or to any PARCEL ASSOCIATION or any other non-profit corporation. In addition DECLARANT, so long as it owns any portion of the SUBJECT PROPERTY, shall have the right to direct the COMMUNITY ASSOCIATION to likewise dedicate, grant or convey any COMMON AREA, or any interest or easement in any COMMON AREA, whereupon the COMMUNITY ASSOCIATION shall execute such documents as will be necessary to effectuate such dedication. Any PROPERTY which is conveyed to any governmental or quasi-governmental agency or private or public utility company shall not be subject to the covenants and restrictions contained within this DECLARATION, unless the instrument so conveying such PROPERTY specifically provides that same is subject to this DECLARATION.

10. TERM OF DECLARATION. All of the foregoing covenants, conditions, reservations and restrictions shall run with the land and continue and remain in full force and effect at all times as against all OWNERS, their successors, heirs or assigns, regardless of how the OWNERS acquire title, for a period of fifty (50) years from the date of this DECLARATION, unless within such time, 100% of all the OWNERS vote to terminate this DECLARATION (as it may have been amended from time to time). After such fifty (50) year period, unless sooner terminated as provided above, these covenants, conditions, reservations and restrictions shall be automatically extended for successive periods of ten (10) years each, until 2/3 of all the OWNERS vote to terminate this DECLARATION (as it may have been amended from time to time). Any termination of this DECLARATION shall be effective on the date an instrument of termination is recorded in the public records of the county in which the SUBJECT PROPERTY is located, which shall be executed by the president of the COMMUNITY ASSOCIATION and by all of the directors, who shall certify that the requisite number of OWNERS voted to terminate this DECLARATION as required herein, provided, however, that any such instrument, in order to be effective, must be approved in writing and signed by DECLARANT so long as DECLARANT owns any PROPERTY, or holds any mortgage encumbering any PROPERTY other than a UNIT. Notwithstanding anything contained herein to the contrary, this DECLARATION may not be terminated unless the instrument of termination is joined in by the South Florida Water Management District, or any successor controlling governmental authorities. The COMMUNITY ASSOCIATION shall also have the right to file



a notice extending the provisions of this DECLARATION in accordance with the marketable record title provisions of the Florida Statutes.

11. AMENDMENT.

11.1. Approval of Amendments. This DECLARATION may be amended as follows:

11.1.1. By either (i) the unanimous vote of the directors of the COMMUNITY ASSOCIATION, and by the vote of the OWNERS entitled to cast 2/3 of the votes present in person or by proxy at a meeting called to approve the amendment, without any quorum requirement; or (ii) the vote of OWNERS entitled to cast 2/3 of the votes of all the OWNERS.

11.1.2. Notwithstanding the foregoing, if any provision of this DECLARATION requires more than a 2/3 vote of all the OWNERS to approve any action, such provision may not be amended to require a lesser vote, or deleted, without the number of votes required to approve such action.

11.1.3. In addition, so long as DECLARANT owns any PROPERTY, this DECLARATION may be amended from time to time, by DECLARANT and without the consent of the COMMUNITY ASSOCIATION, or any OWNER or any other person or entity whatsoever except as set forth herein, and no amendment may be made by the OWNERS without the written joinder of DECLARANT. Such right of DECLARANT to amend this DECLARATION shall specifically include, without limitation, (i) the right to add any property owned by DECLARANT to, or delete any property from, the SUBJECT PROPERTY, provided that any such amendment shall require the joinder of the owners of such property or any portion thereof if the owners are different than DECLARANT, and (ii) the right to make any amendment required by any INSTITUTIONAL LENDER so that such lender will make, insure or guarantee mortgage loans encumbering the UNITS, or required by any governmental authority. No amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, DECLARANT, unless DECLARANT joins in the execution of the amendment.

11.1.4. After DECLARANT no longer owns any PROPERTY, this DECLARATION may be amended upon the unanimous consent of the PARCEL DEVELOPERS and without the consent of the COMMUNITY ASSOCIATION, or any other OWNERS, if such amendment is made to conform to the requirements of any INSTITUTIONAL LENDER so that such lender will make, insure or guarantee mortgage loans encumbering the UNITS, or is required by any governmental authority. Furthermore after DECLARANT no longer owns any PROPERTY, no amendment may be made by the OWNERS without the written joinder of any PARCEL DEVELOPER owning more than 20 LOTS.

11.2. Recording. In order to be effective, any amendment to this DECLARATION must first be recorded in the public records of the county in which the SUBJECT PROPERTY is located, and in the case of an amendment made by the OWNERS, such amendment shall contain a certification by the President and Secretary of the COMMUNITY ASSOCIATION that the amendment was duly adopted.

11.3. Discrimination. No amendment shall discriminate against any OWNER, or class or group of OWNERS, unless the OWNERS so affected approve the amendment. No amendment shall change the number of votes of any OWNER or increase any OWNER's proportionate share of the COMMON EXPENSES, unless the OWNERS of the PROPERTY affected by such amendment join in the execution of the amendment. No amendment may prejudice or impair the priorities of INSTITUTIONAL LENDERS granted hereunder unless all INSTITUTIONAL LENDERS join in the execution of the amendment. No amendment shall make any changes which would in any way affect any of the rights, privileges,

powers or options herein provided in favor of, or reserved to, DECLARANT, unless DECLARANT joins in the execution of the amendment.

11.4. Approval of South Florida Water Management District. Notwithstanding anything contained herein to the contrary, any amendment to this DECLARATION 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.

## 12. RIGHTS OF INSTITUTIONAL LENDERS.

12.1. Notice of Action. Upon written notice to the COMMUNITY ASSOCIATION by any INSTITUTIONAL LENDER holding, insuring or guaranteeing a mortgage encumbering any PROPERTY or UNIT, identifying the name and address of the INSTITUTIONAL LENDER and the PROPERTY or UNIT encumbered by such mortgage, any such INSTITUTIONAL LENDER will be entitled to timely written notice of:

12.1.1. Any condemnation or casualty loss that affects either a material portion of the SUBJECT PROPERTY or the PROPERTY or UNIT securing its mortgage.

12.1.2. Any 60-day default in the payment of ASSESSMENTS or charges owed to the COMMUNITY ASSOCIATION or in the performance of any obligation hereunder by the OWNER of the PROPERTY or UNIT on which it holds the mortgage.

12.1.3. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the COMMUNITY ASSOCIATION.

12.1.4. Any proposed action that requires the consent of a specified percentage of mortgage holders.

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

12.3. Payment of Taxes and Insurance. Any INSTITUTIONAL LENDER may pay any taxes or assessments owed to any governmental authority by the COMMUNITY ASSOCIATION which are in default, or any overdue insurance premiums for insurance required to be purchased by the COMMUNITY ASSOCIATION pursuant to this DECLARATION, or may secure new insurance upon the lapse of a policy, and shall be owed immediate reimbursement therefor from the COMMUNITY ASSOCIATION plus interest at the highest rate permitted by law and any costs of collection, including attorneys' fees.

13. NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT AND PUBLIC IMPROVEMENTS. THE FOLLOWING DISCLOSURES ARE REQUIRED BY THE NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT

13.1. Northern Palm Beach County Improvement District. Northern Palm Beach County Improvement District ("NPBCID") is an independent special district of the State of Florida and is, will be, or may be implementing, constructing and/or maintaining certain public infrastructure improvements for the benefit of those parcels of real properties located within the SUBJECT PROPERTY, which lie within NPBCID's Unit of Development No. 5 ("Unit No. 5").

13.2. NPBCID Non-Ad VALOREM Assessments. In order for NPBCID to carry out the implementation, construction and/or maintenance of the Unit No. 5 public infrastructure improvements, if applicable, NPBCID will be assessing and levying maintenance non-ad valorem assessment on an annual basis and all individuals or entities owning or purchasing PROPERTY will be obligated and responsible for paying such Unit No. 5 non-ad valorem assessments as have or may be assessed and levied annually by NPBCID upon such an OWNER'S PROPERTY. NPBCID's non-ad valorem assessments, if applicable, will appear as a separate line item on each OWNER'S annual Unified Real Property Tax Bill which is issued and collected by the Tax Collector of Palm Beach County, Florida.

13.3. Maintenance of NPBCID Improvements. The NPBCID Unit No. 5 public infrastructure improvements and/or facilities for which NPBCID retains ownership, if applicable, will be maintained by NPBCID unless the COMMUNITY ASSOCIATION contracts with NPBCID to maintain all or part of such improvements or facilities.

13.4. Surface Water Management System and NPBCID Facilities. The SUBJECT PROPERTY is subject to a South Florida Water Management District ("SFWMD") approved conceptual surface water management plan and related SFWMD Permits (which may be modified from time to time), a current copy of the SFWMD permits are attached hereto as EXHIBIT "E".

If and to the extent applicable, in order to implement aspects of the surface water management system, certain parcels of real property within the SUBJECT PROPERTY may be dedicated or conveyed, in fee or by easement, to NPBCID for stormwater retention, drainage and buffers. If and to the extent applicable, the primary components of the Unit No. 5 surface water management system will be maintained by NPBCID unless the COMMUNITY ASSOCIATION contracts with NPBCID to maintain some or all of same. If and to the extent applicable, the secondary components of the Unit No. 5 surface water management system within each PARCEL shall be maintained by any PARCEL ASSOCIATION, but if a PARCEL ASSOCIATION does not properly maintain its secondary components of the surface water management system, then the COMMUNITY ASSOCIATION shall correct the maintenance problem and will directly assess the OWNERS within the PARCEL.

In the event the COMMUNITY ASSOCIATION contracts with NPBCID to do the maintenance of any portion of the primary components of the Unit No. 5 surface water management system, then the COMMUNITY ASSOCIATION: (a) shall apply for and obtain such permits and licenses as may be required by the South Florida Water Management District, (b) at the COMMUNITY ASSOCIATION'S

expense, provide DECLARANT, SFWMD and NPBCID with any and all plans and specifications, surveys, descriptive maps, and other documentation required for the maintenance of the Unit No. 5 surface water management system components as contemplated by this Section and shall give and grant to DECLARANT, Palm Beach County, SFWMD and NPBCID, any and all easements or property rights required to effect the Unit No. 5 surface water management system, shall cause all physical earth moving, landscaping, sloping, grading and other work required to be done on the SUBJECT PROPERTY in connection with the maintenance of the surface water management system to be done at the cost and expense of the COMMUNITY ASSOCIATION unless such obligation is assumed by any PARCEL ASSOCIATION. If apportionment of such work between the COMMUNITY ASSOCIATION and the PARCEL ASSOCIATION is required but cannot be agreed to by the parties involved, such apportionment shall be determined by arbitration as defined in the Florida Arbitration Code (Florida Statute 1993, Chapter 682) and this portion of this sub-Section shall be deemed an arbitration agreement as defined in Florida Statute 682.02. The COMMUNITY ASSOCIATION shall have no authority to reconfigure or modify any portion or aspect of the primary or secondary Unit No. 5 surface water management system titled in or dedicated to NPBCID until a written permit and consent is issued by NPBCID.

13.5. No Easements over NPBCID land. No easement upon, over, under or across any water body, drainage system or tract of land dedicated to, owned by, or subject to an easement in favor of NPBCID shall be granted, rather the party desiring such uses or rights shall be required to apply for and obtain a permit from NPBCID for same.

13.6. NPBCID land not subject to ASSESSMENTS. Notwithstanding anything to the contrary contained in this DECLARATION, NPBCID and all of NPBCID's interest in real property or facilities within the SUBJECT PROPERTY shall be exempt from all of the provisions of this DECLARATION, and all annual assessments, special assessments, extraordinary special assessments and fines that may be levied by the COMMUNITY ASSOCIATION or any PARCEL ASSOCIATION. The COMMUNITY ASSOCIATION and PARCEL ASSOCIATIONS are prohibited from filing or attempting to execute upon any claim of lien as to the property or facility interests owned by NPBCID within the SUBJECT PROPERTY, and any such lien or recording of same in the public records shall be deemed null and void ab initio.

13.7. NPBCID Lakes, ponds, canals, retention areas and water bodies. No swimming, operation of any boats or other recreations uses shall be permitted in or on any of the lakes, ponds, retention areas, canals or other water bodies which are dedicated or deeded to NPBCID or over which NPBCID has an easement, unless a permit has been obtained from NPBCID. No removal of water, discharge of any materials, removal or interference with aquatic vegetation or alteration of banks or shoreline of any lake, pond, canal, or retention are dedicated or deeded to NPBCID or to which NPBCID has an easement is allowed, unless a permit authorizing same has been obtained from NPBCID. Further, all residents and OWNERS need to be aware that lake and canal water levels within the SUBJECT PROPERTY are subject to fluctuation based on, among other things, the amount of rainfall occurring over time and any well water withdrawals.

13.8. NPBCID Approval Rights to Amendments. No amendment of this DECLARATION which would affect NPBCID's obligations, property interests, facilities or improvements located within the SUBJECT PROPERTY shall be effective unless agreed to in writing by NPBCID.

13.9. NPBCID Phone Number and Address. As of the date of the recording of this DECLARATION, the phone number and address for NPBCID is: (561) 624-7830; 357 Hiatt Drive, Palm Beach Gardens, Florida 33418-7106

14. SPECIAL PROVISIONS REGARDING SECTIONS 3A AND 3B. The following provisions of this paragraph shall apply with respect to the PARCELS designated as SECTION 3A and SECTION 3B of the Plat of Renaissance (the "RENAISSANCE PLAT"), as recorded in the Public Records of Palm Beach County, Florida, which PARCELS are within the SUBJECT PROPERTY, and shall control over any conflicting provision of this DECLARATION, or the ARTICLES or BYLAWS: County, Florida.

14.1. The OWNERS and residents of any portion of SECTION 3A and SECTION 3B shall not have the right to use TRACT "R-3" or TRACT "R-4" of the RENAISSANCE PLAT, or any improvements located thereon, and shall not have the right to use any roads within TRACT "R" of the RENAISSANCE PLAT.

14.2. In determining the ASSESSMENTS payable by the OWNERS of SECTION 3A and SECTION 3B, any expenses relating to TRACT "R-3", TRACT "R-4", or TRACT "R" of the RENAISSANCE PLAT, or any IMPROVEMENTS located therein, shall be excluded. Furthermore, the OWNERS of SECTIONS 3A and 3B shall not have the right to vote on matters relating to TRACT "R-3", TRACT "R-4", AND TRACT "R".

15. SPECIAL PROVISIONS REGARDING SECTION 9. Notwithstanding anything contained herein or in the ARTICLES or BYLAWS to the contrary, it is acknowledged that the property described in Exhibit "A" as SECTION 9 has been made a part of the SUBJECT PROPERTY solely due to the fact that said property is part of the South Florida Water Management Permit for the SUBJECT PROPERTY. SECTION 9 shall only be subject to the provisions of this DECLARATION specifically relating to the surface water management, drainage and storage system for the SUBJECT PROPERTY, and the South Florida Water Management District. In particular SECTION 9 shall not be subject to ASSESSMENTS, and the OWNER'S of SECTION 9 shall not be members of the COMMUNITY ASSOCIATION.

16. MISCELLANEOUS.

16.1. DECLARANT Easement for Utilities. DECLARANT reserves and shall have a perpetual non-exclusive easement over, upon and under all platted road right-of ways, all platted utility easements, and all paved roads (whether or not platted), within the SUBJECT PROPERTY and any COMMON AREAS, for the purpose of installing, maintaining, and providing cable television, security, computer, telephone, electric, and any other communication or utility services for the UNITS within the SUBJECT PROPERTY. DECLARANT further reserves the right to provide any or all of the foregoing services to the UNITS within the SUBJECT PROPERTY, and may enter into contracts with the COMMUNITY ASSOCIATION to provide such services, provided the charges for any such services provided by DECLARANT or any assignee of DECLARANT shall be comparable to the rates charged by other companies on an individual basis.

16.2. Damage or Destruction. In the event any existing UNITS are damaged or destroyed, such damaged or destroyed UNITS shall continue to be deemed UNITS for purposes of assessments, voting and use rights, unless and until all the PROPERTY owned in conjunction with the UNITS is developed with a different number of UNITS than existed prior to such damage or destruction, and the COMMUNITY ASSOCIATION is so notified in writing. Thereafter, the number of UNITS assigned to such PROPERTY will be changed to equal the number of UNITS then existing within such PROPERTY. Notwithstanding the foregoing, in the event any PROPERTY is submitted to the condominium form of ownership, such PROPERTY shall be deemed to contain the number of UNITS provided in the respective declaration of condominium, as amended from time to time, unless and until the declaration of condominium is amended to provide for a different number of UNITS within the condominium, and a copy of the amended declaration of condominium is delivered to the COMMUNITY ASSOCIATION.

16.3. Conflict With ARTICLES or BYLAWS. In the event of any conflict between the ARTICLES and the BYLAWS and this DECLARATION, this DECLARATION, the ARTICLES, and the BYLAWS, in that order, shall control.

16.4. PARCEL ASSOCIATION. Nothing contained herein shall be deemed to restrict or limit the right of DECLARANT, any PARCEL DEVELOPER, or any other OWNER of all or any portion of the SUBJECT PROPERTY to declare additional restrictions with respect to such PROPERTY, or to create any PARCEL ASSOCIATION to enforce such additional restrictions and assess the OWNERS subject to such additional restrictions for any purpose.

16.5. Authority of COMMUNITY ASSOCIATION and Delegation. Nothing contained in this DECLARATION shall be deemed to prohibit the BOARD from delegating to any one of its members, or to any officer, or to any committee or any other person, any power or right granted to the BOARD by this DECLARATION including, but not limited to, the right to exercise architectural control and to approve any deviation from any use restriction, and the BOARD is expressly authorized to so delegate any power or right granted by this DECLARATION.

16.6. Severability. The invalidation in whole or in part of any of these covenants, conditions, reservations and restrictions, or any section, subsection, sentence, clause, phrase, word or other provision of this DECLARATION shall not affect the validity of the remaining portions which shall remain in full force and effect.

16.7. Validity. In the event any court shall hereafter determine that any provisions as originally drafted herein violate the rule against perpetuities, the period specified in this DECLARATION shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law.

16.8. Assignment of DECLARANT's Rights. Any or all of the rights, privileges, or options provided to or reserved by DECLARANT in this DECLARATION, the ARTICLES, or the BYLAWS, may be assigned by DECLARANT, in whole or in part, as to all or any portion of the SUBJECT PROPERTY, to any person or entity pursuant to an assignment recorded in the public records of the county in which the SUBJECT PROPERTY is located. Any partial assignee of any of the rights of DECLARANT shall not be deemed the DECLARANT, and shall have no other rights, privileges or options other than as are specifically assigned. No assignee of DECLARANT shall have any liability for any acts of DECLARANT or any prior DECLARANT unless such assignee is assigned and agrees to assume such liability.

16.9. Performance of COMMUNITY ASSOCIATION's Duties by DECLARANT. DECLARANT shall have the right from time to time, at its sole discretion, to perform at DECLARANT's expense the duties and obligations required hereunder to be performed by the COMMUNITY ASSOCIATION, and in connection therewith to reduce the budget of the COMMUNITY ASSOCIATION and the ASSESSMENTS for COMMON EXPENSES payable by the OWNERS, provided however that any such performance on the part of DECLARANT may be discontinued by DECLARANT at any time, and any such performance shall not be deemed to constitute a continuing obligation on the part of DECLARANT.

16.10. Property Owned by DECLARANT. For purposes of this DECLARATION, any property owned and any mortgage held by any subsidiary of DECLARANT, or the parent corporation of DECLARANT, or any subsidiary of such parent, shall be deemed owned or held by DECLARANT.

16.11. Exempt Property. Notwithstanding anything to the contrary contained in this DECLARATION, any portion of the SUBJECT PROPERTY which is owned by any governmental or quasi-governmental authority, utility company, community development district or special taxing district, and

which does not contain a UNIT, shall be exempt from all of the provisions of this DECLARATION, and all annual assessments, special assessments, extraordinary special assessments and fines that may be levied by the COMMUNITY ASSOCIATION or any PARCEL ASSOCIATION. The COMMUNITY ASSOCIATION and PARCEL ASSOCIATIONS are prohibited from filing or attempting to execute upon any claim of lien as to the property or facility interests owned by the community development district or special taxing district, as applicable, within the SUBJECT PROPERTY, and any such lien or recording of same in the public records shall be deemed null and void ab initio.

16.12. Inapplicability of Condominium Act. It is acknowledged that the COMMUNITY ASSOCIATION is not intended to be a condominium association, and is not intended to and shall not be governed by the provisions of Florida Statutes, Chapter 718.

16.13. Actions Against DECLARANT. In the event the COMMUNITY ASSOCIATION or any OWNER desires to make any claim against DECLARANT, whether for money damages or otherwise, the COMMUNITY ASSOCIATION or the OWNER, as the case may be, shall give DECLARANT written notice of such claim, which notice shall state the nature of the claim, the amount of the claim, and shall request DECLARANT to elect to arbitrate such claim pursuant to such paragraph. DECLARANT shall have the right to require such claim to be submitted to binding arbitration in accordance with the rules of the American Arbitration Association then obtaining by written notice delivered to the COMMUNITY ASSOCIATION or the OWNER, as applicable, within 30 days after receipt of the foregoing notice, and if DECLARANT so elects, then such claim must be submitted to binding arbitration by the COMMUNITY ASSOCIATION or the OWNER. The result of such arbitration shall be specifically enforceable under the laws of the State of Florida. Any award or decision rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with the applicable laws of the State of Florida. In any event, the COMMUNITY ASSOCIATION shall not commence any arbitration or legal proceedings on its behalf or on behalf of the OWNERS against DECLARANT, or spend any funds in connection with any such proceedings, without a 75% vote of all the OWNERS. In connection with the foregoing, no PARCEL ASSOCIATION shall consent to the foregoing actions unless such consent is approved by 75% of the votes of all the members of the PARCEL ASSOCIATION obtained at a special meeting of the PARCEL ASSOCIATION called expressly for the purpose of approving such action. In no event may reserve funds be used to pay any attorney's fees of the COMMUNITY ASSOCIATION without the consent of 90% of the OWNERS.

16.14. Sale and Development Easement. As long as DECLARANT or any PARCEL DEVELOPER owns any PROPERTY, DECLARANT or such PARCEL DEVELOPER reserves and shall have an easement over, upon, across and under the SUBJECT PROPERTY as may be reasonably required in connection with the development, construction, sale, leasing, and promotion of the SUBJECT PROPERTY, or any portion thereof, or any other property, by DECLARANT or any PARCEL DEVELOPER.

IN WITNESS WHEREOF, DECLARANT has executed this DECLARATION this 13<sup>th</sup> day of September, 2001.

WITNESSES:

Hona Matteson

(1) Witness Signature  
Hona Matteson  
Type/Print Witness Name

(2) Jean A. Norton  
Witness Signature  
Jean A. Norton  
Type/Print Witness Name

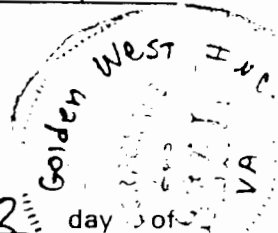
Commonwealth  
~~STATE~~ OF Virginia )  
CITY ) ss:  
~~COUNTY~~ OF Virginia Beach)

GOLDEN WEST LIMITED PARTNERSHIP, a Virginia limited partnership

By: Golden West, Inc., a Virginia corporation, General Partner

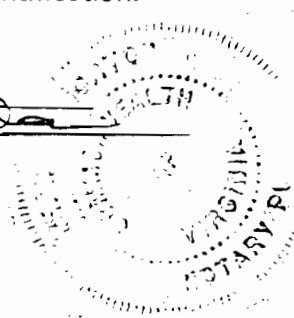
By: [Signature]

Nathan D. Benson, Vice President  
(Type/Print Name and Title)



The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of September, 2001, by Nathan D. Benson, as Vice President of Golden West, Inc., a Virginia corporation, as General Partner of GOLDEN WEST LIMITED PARTNERSHIP, a Virginia limited partnership, on behalf of the partnership. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

Jean A. Norton  
NOTARY PUBLIC



My Commission Expires:

My Commission Expires November 30, 2004



JOINDER

The undersigned, being the owner of Section 9, as described in Exhibit "A" of the MASTER DECLARATION FOR BRIAR BAY to which this joinder is attached, hereby joins in and consents to the declaration for the purpose of submitting said Section 9 to the declaration.

WITNESSES:

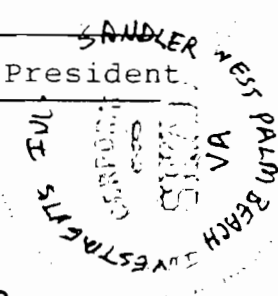
(1) *Lena Mathison*  
 Witness Signature  
Lena Mathison  
 Type/Print Witness Name

(2) *Jana A. Norton*  
 Witness Signature  
Jana A. Norton  
 Type/Print Witness Name

Sandler West Palm Beach Investment Limited Partnership, a Virginia Limited Partnership

By: Sandler West Palm Beach Investment, Inc., a Virginia corporation

By: *[Signature]*  
 Nathan D. Benson, Vice President  
 (Type/Print Name and Title)



Commonwealth  
~~STATE~~ OF Virginia )  
 City ) ss:  
~~COUNTY~~ OF Virginia Beach

The foregoing instrument was acknowledged before me this 12 day of September, 2001, by Nathan D. Benson, as Vice President of Sandler West Palm Beach Investment, Inc., a Virginia corporation, as General Partner of Sandler West Palm Beach Investment Limited Partnership, a Virginia limited partnership, on behalf of the partnership. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

*Jana A. Norton*  
 NOTARY PUBLIC

My Commission Expires:

My Commission Expires November 30, 2004

JOINER OF COMMUNITY ASSOCIATION

The COMMUNITY ASSOCIATION hereby agrees to and joins in this DECLARATION, hereby accepts all of the benefits and duties, responsibilities, obligations and burdens imposed upon it by the provisions of this DECLARATION and the exhibits attached hereto.

WITNESSES:

Jean A. Norton  
Print Name: Jean A. Norton  
Iona Matteson  
Print Name: Iona Matteson

BRIAR BAY COMMUNITY ASSOCIATION, INC.,  
a Florida corporation not-for-profit

By: [Signature]  
Alan S. Resh, President  
(Type/Print Name and Title)

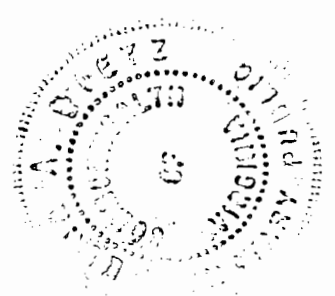


Commonwealth of Virginia )  
~~STATE OF FLORIDA~~ )  
CITY ) ss:  
COUNTY OF Virginia Beach

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of September, 2001, by Alan S. Resh, as President of BRIAR BAY COMMUNITY ASSOCIATION, INC., a Florida corporation not-for-profit, on behalf of the corporation. He/she is personally known to me or has produced n/a as identification.

[Signature]  
NOTARY PUBLIC  
State of ~~Florida~~ at Large  
Florida Virginia

My Commission Expires: 8/3/02



JOINDER OF MORTGAGEE

The undersigned, being the holder of one or more mortgages encumbering the property subject to the Master Declaration for Briar Bay, to which this Consent is attached, hereby consents to the Master Declaration and agrees the mortgage of the undersigned is subject to the Master Declaration.

WITNESSES:

*Pedro J. Gomez*

Print Name: PEDRO J. GOMEZ

*Alicia von Schirach*

Print Name: Alicia von Schirach

Mellon United National Bank, a national banking association

By: *James M. Dockerty*  
JAMES M. DOCKERTY, E.V.P.  
(Type/Print Name and Title)

STATE OF FLORIDA )

) ss:

COUNTY OF DADE )

The foregoing instrument was acknowledged before me this 11 day of September, 2001, by JAMES M. DOCKERTY, as EVP of Mellon United National Bank, a national banking association. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

*Alicia von Schirach*

NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:

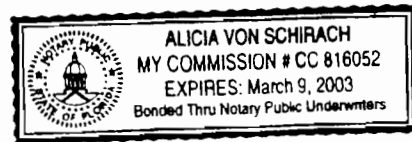


EXHIBIT "A" TO MASTER DECLARATION

FOR

BRIAR BAY

LEGAL DESCRIPTION OF SUBJECT PROPERTY

All of the Plat of "THE RENAISSANCE", according to the Plat thereof recorded in Plat Book 90, at Page 162, of the Public Records of Palm Beach County, Florida, LESS AND EXCEPT the Civic Tract, Tract "E", and any Tract dedicated on said plat to the Hamal Community Development District.

TOGETHER WITH THE FOLLOWING PROPERTY REFERRED TO IN THE MASTER DECLARATION AS "SECTION 9"

All of the MULTI-FAMILY PLAT, according to the Plat thereof recorded in Plat Book 88, at Page 9, of the Public Records of Palm Beach County, Florida.

10/02/2002 11:21:42 20020517319  
OR BK 14216 PG 0903  
Palm Beach County, Florida

Prepared by & return to:  
Joel D. Kopelman, Esq.  
Navon, Kopelman & Lavin, P.A.  
2699 Stirling Road, Suite B-100  
Fort Lauderdale, Florida 33312

FIRST AMENDMENT TO ARTICLES OF INCORPORATION

The undersigned, Golden West Limited Partnership, a Virginia limited partnership ("Declarant"), as the Declarant under the Master Declaration for Briar Bay recorded in Official Records Book 13056, Page 1 of the Public Records of Palm Beach County, Florida ("Declaration") does hereby put all persons on notice of the First Amendment to Articles of Incorporation of Briar Bay Community Association, Inc., a Florida corporation not for profit ("Association"), a certified copy of which is attached hereto and made a part hereof as Exhibit "A". This instrument is being recorded in the Public Records of Palm Beach County, Florida in compliance with Section 9.6 of Article 9 of the Articles of Incorporation ("Articles") of the Association, which Articles are attached as Exhibit "B" to the Declaration.

IN WITNESS WHEREOF, the Declarant has here and to set its hand and seal as of the 23<sup>rd</sup> day of September, 2002.

Signed, sealed and delivered  
in the presence of:

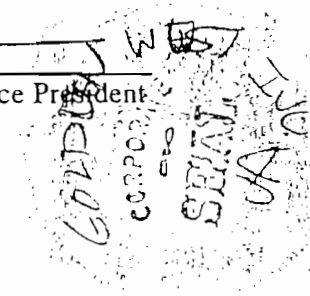
[Signature]  
Signature of Witness  
Forrest Rollins  
Print Name of Witness

[Signature]  
Signature of Witness  
DEBRA A. DIETZ  
Print Name of Witness

GOLDEN WEST LIMITED PARTNERSHIP,  
a Virginia limited partnership

By: GOLDEN WEST, INC., a Virginia  
Corporation, as a general partner

By: [Signature]  
Nathan D. Benson, Vice President

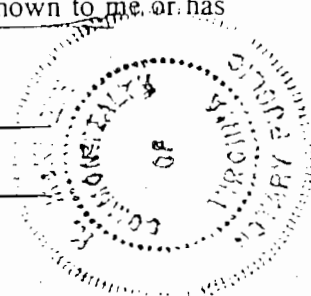


COMMONWEALTH OF VIRGINIA

CITY OF VIRGINIA BEACH

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of September, 2002, by Nathan D. Benson, as Vice President of Golden West, Inc., a Virginia corporation, as general partner of Golden West, Inc., a Virginia corporation, as general partner of Golden West Limited Partnership, a Virginia limited partnership, on behalf of the limited partnership. He is personally known to me or has produces N/A as identification.

[Signature]  
Notary Public  
K. MCKENZIE  
Printed Name of Notary Public



My commission expires:  
My Commission Expires September 30, 2006



# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Amendment, filed on September 9, 2002, to Articles of Incorporation for BRIAR BAY COMMUNITY ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is N01000003276.

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Twentieth day of September, 2002



CR2EO22 (7-02)

*Jim Smith*

Jim Smith  
Secretary of State





FILED

02 SEP -9 PM 4: 06

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FIRST AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
BRIAR BAY COMMUNITY ASSOCIATION, INC.

(Document Number N01000003276)

In compliance with the Articles of Incorporation of Briar Bay Community Association, Inc., a Florida corporation not for profit, the "Declarant", Golden West Limited Partnership, a Virginia limited partnership, pursuant to Article 9.5 of the Articles of Incorporation hereby amends the Articles of Incorporation of BRIAR BAY COMMUNITY ASSOCIATION, INC. (hereinafter referred to as the "Association") as follows.

1. Section 5.1 which as a result of a computer error was inadvertently not included in the Articles of Incorporation when filed is hereby added to Article 5 - Directors as follows:

5.1 The affairs of the COMMUNITY ASSOCIATION shall be managed by a BOARD consisting of not less than three (3) directors, and which shall always be an odd number. The number of directors shall be determined in accordance with the BYLAWS. In the absence of such determination, there shall be three (3) directors so long as DECLARANT has the right to appoint any director, and thereafter the number of directors shall be equal to the number of PARCELS (plus one if there are an even number of PARCELS).

This Amendment is made and adopted as of September 9, 2002 by Golden West Limited Partnership, a Virginia limited partnership, in accordance with the Articles of Incorporation of Briar Bay Community Association, Inc.

ASSOCIATION:

BRIAR BAY COMMUNITY ASSOCIATION  
INC., a Florida corporation not-for-profit

By: \_\_\_\_\_

Alan Resh, President

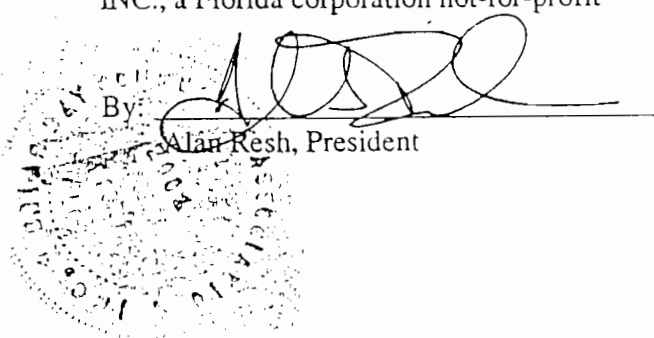
DECLARANT

GOLDEN WEST LIMITED PARTNERSHIP,  
a Virginia limited partnership

By: GOLDEN WEST, INC., a Virginia  
corporation, its general partner

By: \_\_\_\_\_

Nathan D. Benson, Vice President





# State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of BRIAR BAY COMMUNITY ASSOCIATION, INC., a Florida corporation, filed on May 9, 2001, as shown by the records of this office.

The document number of this corporation is N01000003276.

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Tenth day of May, 2001



CR2EO22 (1-99)

EXHIBIT "B"

*Katherine Harris*

Katherine Harris  
Secretary of State

01 MAY -9 AM 9:28

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION  
OF  
BRIAR BAY COMMUNITY ASSOCIATION, INC.

---

PREAMBLE:

GOLDEN WEST LIMITED PARTNERSHIP, a Virginia limited partnership, hereinafter referred to as "DECLARANT", owns certain property in Palm Beach County, Florida. DECLARANT intends to record a Master Declaration for Briar Bay (the "DECLARATION") which will affect the property. This Association is being formed to administer the DECLARATION and to perform, among other things, the duties and exercise the powers pursuant to the DECLARATION, as and when the DECLARATION is recorded in the Public Records of Palm Beach County, Florida, with these Articles attached as an Exhibit. All of the definitions contained in the DECLARATION shall apply to these Articles, and to the Bylaws of the COMMUNITY ASSOCIATION. Until such time as the DECLARATION is so recorded, the incorporator shall be the member of the COMMUNITY ASSOCIATION.

ARTICLE 1 - NAME AND ADDRESS:

The name of the corporation is: BRIAR BAY COMMUNITY ASSOCIATION, INC. (hereinafter referred to as the "COMMUNITY ASSOCIATION"). The initial address of the principal office of the COMMUNITY ASSOCIATION and the initial mailing address of the COMMUNITY ASSOCIATION is 448 Viking Drive, Suite 225, Virginia Beach, Va 23452.

ARTICLE 2 - PURPOSE

The purposes for which the COMMUNITY ASSOCIATION is organized are as follows:

- 2.1 To operate as a corporation not-for-profit pursuant to Chapter 617 of the Florida Statutes.
- 2.2 To administer, enforce and carry out the terms and provisions of the DECLARATION, as same may be amended from time to time.
- 2.3 To administer, enforce and carry out the terms and provisions of any other declaration of covenants and restrictions, or similar document, submitting property to the jurisdiction of, or assigning responsibilities, rights or duties to the COMMUNITY ASSOCIATION, and accepted by the BOARD.
- 2.4 To promote the health, safety, welfare, comfort, and social and economic welfare of the members and residents of the SUBJECT PROPERTY, as authorized by the DECLARATION, by these ARTICLES, and by the BYLAWS.

ARTICLE 3 - POWERS

The COMMUNITY ASSOCIATION shall have the following powers:

- 3.1 All of the common law and statutory powers of a corporation not-for-profit under the laws of Florida which are not in conflict with the terms of these ARTICLES.

3.2 All of the powers, express or implied, granted to the COMMUNITY ASSOCIATION by the DECLARATION or which are reasonably necessary in order for the COMMUNITY ASSOCIATION to administer, enforce, carry out and perform all of the acts, functions, rights and duties provided in, or contemplated by, the DECLARATION.

3.3 To make, establish and enforce rules and regulations governing the use and maintenance of the SUBJECT PROPERTY.

3.4 To make and collect ASSESSMENTS and PARCEL ASSESSMENTS against the members to defray the costs, expenses, reserves and losses incurred or to be incurred by the COMMUNITY ASSOCIATION and to use the proceeds thereof in the exercise of the COMMUNITY ASSOCIATION's powers and duties.

3.5 To own, purchase, sell, mortgage, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.

3.6 To purchase insurance for the protection of the COMMUNITY ASSOCIATION, its officers, directors, the members, and such other parties as the COMMUNITY ASSOCIATION may determine to be in the best interests of the COMMUNITY ASSOCIATION.

3.7 To operate, maintain, repair, and improve all COMMON AREAS and PARCEL AREAS, and such other portions of the SUBJECT PROPERTY as may be determined by the BOARD from time to time.

3.8 To exercise architectural control over all buildings, structures and improvements to be placed or constructed upon any portion of the SUBJECT PROPERTY pursuant to the DECLARATION.

3.9 To provide, purchase, acquire, replace, improve, maintain and/or repair such buildings, structures, street lights and other structures, landscaping, paving and equipment, both real and personal, related to the health, safety and social welfare of the members and residents of the SUBJECT PROPERTY as the BOARD in its discretion determines necessary or appropriate.

3.10 To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the COMMUNITY ASSOCIATION and/or to contract with others for the performance of such obligations, services and/or duties.

3.11 To operate and maintain the surface water management, drainage, and storage system for the SUBJECT PROPERTY as permitted by any controlling governmental authority, including all lakes, retention areas, culverts, and related appurtenances.

3.12 To sue and be sued.

#### ARTICLE 4 - MEMBERS

##### 4.1 MEMBERS.

4.1.1 OWNERS. Each OWNER shall be a member of the COMMUNITY ASSOCIATION, except as otherwise provided in the DECLARATION. Such memberships shall be initially established upon the recording of these ARTICLES and the DECLARATION among the public records of the county in which the SUBJECT PROPERTY is located.

4.1.2 Notwithstanding the foregoing, no governmental authority or utility company shall be deemed a member unless one or more UNITS actually exist upon the PROPERTY owned by such governmental authority or utility company, in which event the governmental authority or utility company will be a member only with respect to the PROPERTY owned in conjunction with such UNIT(s).

4.1.3 DECLARANT AND PARCEL DEVELOPERS. DECLARANT and each PARCEL DEVELOPER shall be a member of the COMMUNITY ASSOCIATION so long as they own any PROPERTY.

4.2 Transfer of Membership. In the case of an OWNER, transfer of membership in the COMMUNITY ASSOCIATION shall be established by the recording in the Public Records of the county in which the SUBJECT PROPERTY is located, of a deed or other instrument establishing a transfer of record title to any PROPERTY for which membership has already been established as hereinabove provided, the OWNER designated by such instrument of conveyance thereby becoming a member, and the prior OWNER's membership thereby being terminated. In the event of death of an OWNER, his membership shall be automatically transferred to his heirs or successors in interest. Notwithstanding the foregoing, the COMMUNITY ASSOCIATION shall not be obligated to recognize such a transfer of membership until such time as the COMMUNITY ASSOCIATION receives a true copy of the deed or other instrument establishing the transfer of ownership of the PROPERTY, and it shall be the responsibility and obligation of the former and new OWNER of the PROPERTY to provide such true copy of said instrument to the COMMUNITY ASSOCIATION.

4.3 The share of an OWNER in the funds and assets of the COMMUNITY ASSOCIATION cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the PROPERTY associated with the membership of the OWNER, nor may a membership be separately assigned, hypothecated or transferred in any manner except as an appurtenance to such PROPERTY.

4.4 Voting Rights. The total number of OWNERS' votes shall be equal to the total number of UNITS and PLANNED UNITS within the SUBJECT PROPERTY from time to time. On all matters upon which the membership shall be entitled to vote, there shall be one (1) vote for each UNIT and PLANNED UNIT.

4.4.1 Each OWNER shall have the number of votes equal to the number of UNITS and PLANNED UNITS within the PROPERTY associated with the membership of such OWNER at the time of such vote.

4.4.2 Notwithstanding the foregoing, DECLARANT shall have three votes for each UNIT and each PLANNED UNIT contained with the PROPERTY owned by DECLARANT.

4.5 The BYLAWS shall provide for an annual meeting of the members of the COMMUNITY ASSOCIATION and may make provision for special meetings of the members.

## 5.2 Election of Directors.

5.2.1 DECLARANT shall have the right to appoint all of the directors of the COMMUNITY ASSOCIATION so long as DECLARANT owns any LOT or any PROPERTY which is planned to contain a UNIT or any property that may be added to the SUBJECT PROPERTY, or until DECLARANT waives its right to appoint the directors by written notice to the COMMUNITY ASSOCIATION.

5.2.2 At such time as DECLARANT no longer has the right to appoint the directors, the PARCEL DEVELOPERS shall have the right to appoint all of the directors. If there are two or more PARCEL DEVELOPERS, unless otherwise agreed between them each such PARCEL DEVELOPER shall have the right to appoint one director, and if there are only two or an even number of PARCEL DEVELOPERS, the PARCEL DEVELOPER with the largest number of LOTS shall have the right to appoint one additional director. Any PARCEL DEVELOPER may waive its right to appoint a director by written notice to the COMMUNITY ASSOCIATION.

5.2.3 At such time as DECLARANT and the PARCEL DEVELOPERS no longer have the right to appoint the directors, the directors shall be elected by the members. Notwithstanding anything contained herein to the contrary, members other than DECLARANT shall at all times have the right to elect any or all of the directors as may be provided by applicable law. Furthermore, DECLARANT and the PARCEL DEVELOPERS shall have the right to vote as members for the election of directors, subject to applicable law.

5.3 All of the duties and powers of the COMMUNITY ASSOCIATION existing under Chapter 617 of the Florida Statutes, the DECLARATION, these ARTICLES and the BYLAWS shall be exercised exclusively by the BOARD, its agents, contractors or employees, subject to approval by the members only when specifically required.

5.4 Directors may be removed and vacancies on the BOARD shall be filled in the manner provided by the BYLAWS, however, any director appointed by DECLARANT or a PARCEL DEVELOPER may only be removed by DECLARANT or the PARCEL DEVELOPER so long as DECLARANT or the PARCEL DEVELOPER has the right to appoint the director, and any vacancy on the BOARD shall be appointed by DECLARANT or a PARCEL DEVELOPER if, at the time such vacancy is to be filled, the number of remaining directors appointed by DECLARANT or the PARCEL DEVELOPER is less than the maximum number of directors which may, at that time, be appointed by DECLARANT or the PARCEL DEVELOPER as set forth above.

## ARTICLE 6 - OFFICERS

The officers of the COMMUNITY ASSOCIATION shall be a President, Vice President, Secretary, Treasurer and such other officers as the BOARD may from time to time by resolution create. The officers shall serve at the pleasure of the BOARD, and the BYLAWS may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers. The names of the officers who shall serve until their successors are designated by the BOARD are as follows:

## ARTICLE 7 - INDEMNIFICATION

7.1 The COMMUNITY ASSOCIATION shall indemnify any PERSON who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer, or agent of the COMMUNITY ASSOCIATION, or a member of any

committee thereof, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the COMMUNITY ASSOCIATION; and, with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect to any claim, issue or matter as to which such PERSON shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the COMMUNITY ASSOCIATION unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such PERSON is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the PERSON did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the COMMUNITY ASSOCIATION; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

7.2 To the extent that a director, officer, employee or agent of the COMMUNITY ASSOCIATION, or a member of any committee thereof, has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

7.3 Any indemnification under Paragraph 1 above (unless ordered by a court) shall be made by the COMMUNITY ASSOCIATION only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, agent, or committee member is proper under the circumstances because he has met the applicable standard of conduct set forth in Paragraph 1 above. Such determination shall be made (a) by the BOARD by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in written opinion, or (c) by a majority vote of the members.

7.4 Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the COMMUNITY ASSOCIATION in advance of the final disposition of such action, suit or proceeding as authorized by the BOARD in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the COMMUNITY ASSOCIATION as authorized in this Article.

7.5 The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of members or otherwise; and as to action taken in an official capacity while holding office, shall continue as to a PERSON who has ceased to be a director, officer, employee, agent, or committee member and shall inure to the benefit of the heirs, executors and administrators of such a PERSON.

7.6 The COMMUNITY ASSOCIATION shall have the power to purchase and maintain insurance on behalf of any PERSON who is or was a director, officer, employee or agent of the COMMUNITY ASSOCIATION, or a member of any committee thereof, or is or was serving at the request of the COMMUNITY ASSOCIATION as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and



incurred by him in any such capacity, as arising out of his status as such, whether or not the COMMUNITY ASSOCIATION would have the power to indemnify him against such liability under the provisions of this Article.

#### ARTICLE 8 - BYLAWS

The first BYLAWS shall be adopted by the BOARD, and may be altered, amended or rescinded in the manner provided by the BYLAWS.

#### ARTICLE 9 - AMENDMENTS

Amendments to these ARTICLES shall be proposed and adopted in the following manner:

9.1 A majority of the BOARD shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

9.2 Written notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the BYLAWS for the giving of notice of a meeting of the members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

9.3 At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes of the entire membership of the COMMUNITY ASSOCIATION.

9.4 Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

9.5 In addition to the above, so long as DECLARANT appoints a majority of the directors of the COMMUNITY ASSOCIATION, DECLARANT shall be entitled to unilaterally amend these ARTICLES and the BYLAWS. Furthermore, no amendment shall make any changes which would in any way affect any of the rights, privileges, power or options herein provided in favor of, or reserved to, DECLARANT, unless DECLARANT joins in the execution of the amendment.

9.6 Upon the approval of an amendment to these ARTICLES, Articles of Amendment shall be executed and delivered to the Department of State as provided by law, and a copy certified by the Department of State shall be recorded in the public records of the county in which the SUBJECT PROPERTY is located.

#### ARTICLE 10 - TERM

The COMMUNITY ASSOCIATION shall have perpetual existence.

#### ARTICLE 11 - INCORPORATOR

The name and street address of the incorporator is: Eric A. Simon, 2825 University Drive, Suite 300, Coral Springs, Florida 33065.

ARTICLE 12 - INITIAL REGISTERED OFFICE ADDRESS  
AND NAME OF INITIAL REGISTERED AGENT

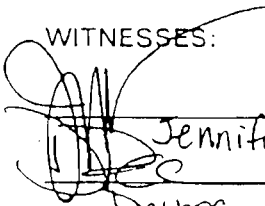
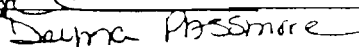
The initial registered office of the COMMUNITY ASSOCIATION shall be at 2825 University Drive, Suite 300, Coral Springs, Florida 33065. The initial registered agent of the COMMUNITY ASSOCIATION at that address is Eric A. Simon.


ARTICLE 13 - DISSOLUTION

The COMMUNITY ASSOCIATION may be dissolved as provided by law, provided that any such dissolution shall require the affirmative vote of 80% of all of the members. In the event of dissolution or final liquidation of the COMMUNITY ASSOCIATION, the assets, both real and personal of the COMMUNITY ASSOCIATION, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the COMMUNITY ASSOCIATION. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization, to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the COMMUNITY ASSOCIATION. No such disposition of COMMUNITY ASSOCIATION properties shall be effective to divest or diminish any right or title of any OWNER vested under the DECLARATION unless made in accordance with the provisions of such DECLARATION.

IN WITNESS WHEREOF, the incorporator and the initial registered agent have executed these ARTICLES. By executing these ARTICLES, the undersigned registered agent accepts the appointment as registered agent and states that the undersigned is familiar with, and accepts, the obligations of that position.

WITNESSES:

  
\_\_\_\_\_  
Jennifer M. Toyota  
  
\_\_\_\_\_  
Danna Passmore

  
\_\_\_\_\_  
Eric A. Simon, as Incorporator  
Registered Agent

01 MAY -9 AM 9:29  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

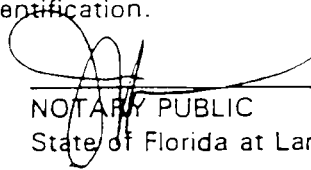
FILED


STATE OF FLORIDA

SS:

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9th day of May, 2001, by Eric A. Simon, as Incorporator and as Registered Agent. He/she is personally known to me or has produced N/A as identification.

  
\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida at Large

 Jennifer Marcus-Toyota  
Commission # CC 849185  
Expires July 17, 2003  
Bonded Thru  
Atlantic Bonding Co., Inc.

BYLAWS  
OF  
BRIAR BAY COMMUNITY ASSOCIATION, INC.,  
a Florida corporation not-for-profit

---

1. GENERAL.

1.1. Identity. These are the BYLAWS OF BRIAR BAY COMMUNITY ASSOCIATION, INC., hereinafter referred to as the "COMMUNITY ASSOCIATION," a corporation not-for-profit formed under the laws of the State of Florida. The COMMUNITY ASSOCIATION has been organized for the purposes stated in the Articles of Incorporation, and shall have all of the powers provided in these BYLAWS, the Articles of Incorporation, the Master Declaration for Briar Bay (hereinafter referred to as the "DECLARATION"), and any other statute or law of the State of Florida, or any other power incident to any of the above powers.

1.2. Principal Office. The principal office of the COMMUNITY ASSOCIATION shall be at such place as the BOARD may determine from time to time.

1.3. Fiscal Year. The fiscal year of the COMMUNITY ASSOCIATION shall be the calendar year.

1.4. Seal. The seal of the COMMUNITY ASSOCIATION shall have inscribed upon it the name of the COMMUNITY ASSOCIATION, the year of its incorporation and the words "Corporation Not-for-Profit." Said seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or otherwise reproduced upon any instrument or document executed in the name of the COMMUNITY ASSOCIATION.

1.5. Inspection of Books and Records. The records of the COMMUNITY ASSOCIATION shall be open to inspection by the members, and all holders, insurers, or guarantors of any first mortgage encumbering any PROPERTY, upon request, during normal business hours or under other reasonable circumstances. Such records of the COMMUNITY ASSOCIATION shall include current copies of the DECLARATION, ARTICLES, BYLAWS, any Rules and Regulations of the COMMUNITY ASSOCIATION, and any amendments thereto, any contracts entered into by the COMMUNITY ASSOCIATION, and the books, records and financial statements of the COMMUNITY ASSOCIATION. The COMMUNITY ASSOCIATION shall be required to make available to prospective purchasers of any PROPERTY or UNIT current copies of the DECLARATION, ARTICLES and BYLAWS, and the most recent annual financial statement of the COMMUNITY ASSOCIATION.

1.6. Definitions. Unless the context otherwise requires, all terms used in these BYLAWS shall have the same meaning as are attributed to them in the DECLARATION and the ARTICLES.

2. MEMBERSHIP IN GENERAL.

2.1. Qualification. 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.

2.2. Changes in Members. Change of membership in the COMMUNITY ASSOCIATION shall be as provided in the ARTICLES.

2.3. Member Register. The secretary of the COMMUNITY ASSOCIATION shall maintain a register in the office of the COMMUNITY ASSOCIATION showing the names and addresses of the

members. Upon request from the COMMUNITY ASSOCIATION, each PARCEL ASSOCIATION shall supply the COMMUNITY ASSOCIATION with a current list of the names and addresses of the OWNERS of UNITS or PROPERTY subject to the jurisdiction of the PARCEL ASSOCIATION. Each member shall at all times advise the secretary of any change of address of the member, of any change of ownership of the member's UNIT(S) or PROPERTY, and of any change in the UNITS and PLANNED UNITS within the member's PROPERTY. The COMMUNITY ASSOCIATION shall not be responsible for reflecting any changes, until notified of such changes in writing. Any mortgagee of any PROPERTY may register by notifying the COMMUNITY ASSOCIATION in writing of its mortgage. In the event the COMMUNITY ASSOCIATION files a claim of lien which affects any PROPERTY encumbered by the mortgage of a registered mortgagee, a copy of the claim of lien shall be mailed to the registered mortgagee.

### 3. MEMBERSHIP VOTING.

3.1. Voting Rights. Voting shall be as provided in the DECLARATION and the ARTICLES.

3.2. Majority Vote and Quorum Requirements. The acts approved by a majority of the votes cast in person or by proxy at a meeting of the members at which a quorum is present shall be binding upon all members for all purposes, except where otherwise provided by law, in the DECLARATION, the ARTICLES or in these BYLAWS. Unless otherwise so provided or required by law, at any regular or special meeting, the presence in person or by proxy of persons entitled to cast 25% of the votes of the entire membership at the time of such vote shall constitute a quorum, except that if any matter to be voted upon at any meeting of the members cannot be voted upon due to a lack of a quorum at such meeting, then at the next adjourned meeting where the matter is to be considered the quorum requirement for such matter shall be reduced to 10% of the votes of the membership, provided the notice of the adjourned meeting states the quorum requirement will be reduced.

3.3. Determination as to Voting Rights. If the PROPERTY associated with the membership of any member is owned by more than one PERSON, or by a corporation, partnership, trust, or other entity, the votes of the member may be cast at any meeting by any co-member, as hereafter defined, but if when the vote is to be cast, a dispute arises between the co-members as to how the vote will be cast, they shall lose the right to cast the votes of the member on the matter being voted upon, but their votes shall continue to be counted for purposes of determining the existence of a quorum. For purposes of this Paragraph, the partners, trustees, or other principals of any entity other than a corporation shall be deemed co-members, and the directors and officers of a corporation shall be deemed co-members.

3.4. Proxies. Every member entitled to vote at a meeting of the members, or to express consent or dissent without a meeting, may authorize another person to act on the member's behalf by a proxy. To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. Any such proxy shall be delivered to the Secretary of the COMMUNITY ASSOCIATION, or the person acting as secretary at the meeting, at or prior to the time designated in the order of business for so delivering such proxies. A proxy is effective only for the specific meeting for which originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given. Every proxy shall be revocable at any time at the pleasure of the person who executes it. If the proxy form so provides, any proxy holder may appoint, in writing, a substitute to act in his place.

#### 4. MEMBERSHIP MEETINGS.

4.1. Who May Attend. Any member or co-member, as described in Paragraph 3.3, may attend any meeting of the members. However, the votes of any member shall be cast in accordance with the provisions of Paragraph 3 above. Any PERSON not expressly authorized to attend a meeting of the members, as set forth above, may be excluded from any meeting of the members by the presiding officer of the meeting. INSTITUTIONAL LENDERS have the right to attend all meetings of the members.

4.2. Place. All meetings of the members shall be held at the principal office of the COMMUNITY ASSOCIATION or at such other place and at such time as shall be designated by the BOARD and stated in the notice of meeting.

4.3. Notices. Written notice stating the place, day and hour of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member not less than 10 nor more than 60 days before the date of the meeting, either personally or by first class mail, by or at the direction of the President, the Secretary or the officer or persons calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at the member's address as it appears on the records of the COMMUNITY ASSOCIATION, unless such member shall have filed a written request with the Secretary of the COMMUNITY ASSOCIATION stating that notices to him be mailed to some other address. For the purpose of determining members entitled to notice of, or to vote at, any meeting of the members, or in order to make a determination of the members for any other purpose, the BOARD shall be entitled to rely upon the member register as same exists ten days prior to the giving of the notice of any meeting, and the BOARD shall not be required to take into account any changes in membership occurring after that date but may, in their sole and absolute discretion, do so. Notwithstanding the foregoing, only one notice shall be required to be given with respect to any membership, which may be sent to any one co-member as defined in Paragraph 3.3 of these BYLAWS. Notwithstanding anything contained herein to the contrary, as to completed UNITS, any notice to a member owning a completed UNIT may be sent to the mailing address of the UNIT without naming the member, unless the member notifies the COMMUNITY ASSOCIATION that notices to the member are to be sent to another address.

4.4. Waiver of Notice. Whenever any notice is required to be given to any member under the provisions of the ARTICLES or these BYLAWS, or as otherwise provided by law, a waiver thereof in writing signed by the PERSON or PERSONS entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a member at a meeting shall constitute a waiver of notice of such meeting, except when the member objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

4.5. Annual Meeting. The annual meeting for the purpose of electing directors and transacting any other business shall be held in the first calendar quarter of each year as shall be selected by the BOARD and as is contained in the notice of such meeting. If the BOARD fails to call such meeting by the end of the first calendar quarter of any year, then within thirty (30) days after the written request of any member, or any Officer or director of the COMMUNITY ASSOCIATION, the Secretary shall call an annual meeting. During the period when DECLARANT appoints a majority of the directors, no annual meetings will be required.

4.6. Special Meetings. Special meetings of the members may be requested at any time by written notice to the Secretary by any director, the President, or by written petition signed by at least 25 member(s), or as otherwise provided by law. Such request shall state the purpose of the proposed

meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of meeting. Notice of any special meeting shall be given by the Secretary, or other officer of the COMMUNITY ASSOCIATION, to all of the members within thirty (30) days after same is duly requested, and the meeting shall be held within forty-five (45) days after same is duly requested.

4.7. Adjournments. Any meeting may be adjourned or continued by a majority of the votes present at the meeting in person or by proxy, regardless of a quorum, or if no member entitled to vote is present at a meeting, then any officer of the COMMUNITY ASSOCIATION, may adjourn the meeting from time to time. If any meeting is adjourned or continued to another time or place, it shall not be necessary to give any notice of the adjourned meeting, if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted at the original meeting. If the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, notice of the adjourned meeting may be given to members not present at the original meeting, without giving notice to the members which were present at such meeting.

4.8. Organization. At each meeting of the members, the President, the Vice President, or any person chosen by a majority of the members present, in that order, shall act as chairman of the meeting. The Secretary, or in his absence or inability to act, any person appointed by the chairman of the meeting shall act as Secretary of the meeting.

4.9. Order of Business. The order of business at the annual meetings of the members shall be:

- 4.9.1. Determination of chairman of the meeting;
- 4.9.2. Calling of the roll and certifying of proxies;
- 4.9.3. Proof of notice of meeting or waiver of notice;
- 4.9.4. Reading and disposal of any unapproved minutes;
- 4.9.5. Election of inspectors of election;
- 4.9.6. Election of directors;
- 4.9.7. Reports of directors, officers or committees;
- 4.9.8. Unfinished business;
- 4.9.9. New business; and
- 4.9.10. Adjournment

4.10. Minutes. The minutes of all meetings of the members shall be kept in a book available for inspection by the members or their authorized representatives, and the members of the BOARD, at any reasonable time. The COMMUNITY ASSOCIATION shall retain these minutes for a period of not less than seven (7) years.

4.11. Actions Without a Meeting. Any action required or permitted to be taken at any annual or special meeting of the members may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the members having

not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent, notice shall be given to those members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. The consent for any member need only be signed by one co-member as defined in Paragraph 3.3 of these BYLAWS.

## 5. BOARD.

5.1. Number of Directors. The affairs of the COMMUNITY ASSOCIATION shall be managed by a BOARD comprised of not less than three directors. Directors do not have to be members of the COMMUNITY ASSOCIATION. So long as DECLARANT is entitled to appoint directors pursuant to the ARTICLES or in accordance with applicable law, the number of directors will be determined, and may be changed from time to time, by DECLARANT by written notice to the BOARD. Thereafter, so long as the PARCEL DEVELOPERS are entitled to appoint directors pursuant to the ARTICLES or in accordance with applicable law, the number of directors will be equal to the number of PARCEL DEVELOPERS, plus one if there are an even number of PARCEL DEVELOPERS, but in any event not less than three. Thereafter, the number of directors shall be determined by the members and may be changed at any meeting where the members are to elect any directors.

5.2. Election of Directors by Members. Election of directors to be elected by the members other than DECLARANT shall be conducted in the following manner:

5.2.1. At any time when members other than DECLARANT or the PARCEL DEVELOPERS are to first elect any directors, a special meeting of the members may be called to elect such directors. In the absence of such a meeting, the directors appointed by DECLARANT or the PARCEL DEVELOPERS may continue to serve until the next annual meeting of the members. In the event such a special meeting is called and held, and directors are elected by the members, at such special meeting the members may elect to not hold the next annual meeting of the members if such next annual meeting is less than six (6) months after the date of the special meeting. Upon such election, the next annual meeting shall not be held.

5.2.2. Except as provided above, the members shall elect directors at the annual members' meetings, unless a special meeting of the members is called in order to fill a vacancy on the BOARD.

5.2.3. Nominating Committee. Prior to any special or annual meeting at which directors are to be elected by the members, the existing BOARD may nominate a committee, which committee shall nominate one person for each director to be elected by the members. Nominations for additional directorships created at the meeting shall be made from the floor, and other nominations may be made from the floor.

5.2.4. All directors elected by the members other than DECLARANT and the PARCEL DEVELOPERS shall be elected "at large". The election of any such director(s) shall be by ballot that the members cast, in person or by proxy, and by a plurality of the votes cast. There will be no quorum requirements at a meeting to elect such directors.

5.2.5. NOTWITHSTANDING THE FOREGOING, THE ELECTION OF DIRECTORS BY THE MEMBERS SHALL BE DONE IN CONFORMANCE WITH ANY APPLICABLE MANDATORY STATUTORY REQUIREMENTS HEREAFTER ADOPTED, AS SAME MAY BE AMENDED FROM TIME TO TIME, AND SAME SHALL CONTROL OVER ANY CONFLICTING PROVISIONS OF THESE BYLAWS.



Form # 0145  
rev 08/93

SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
 ENVIRONMENTAL RESOURCE PERMIT NO. 50-04120-P  
 DATE ISSUED: DECEMBER 10, 1998

PERMITTEE: GOLDEN WEST LIMITED PARTNERSHIP  
 (GOLDEN WEST (BURGESS/MONTCLAIR))  
 448 VIKING DRIVE, SUITE 200,  
 VIRGINIA BEACH, VA 23452

PROJECT DESCRIPTION: AUTHORIZATION FOR CONCEPTUAL APPROVAL OF A SURFACE WATER MANAGEMENT SYSTEM SERVING 373.5 ACRES OF RESIDENTIAL DEVELOPMENT TO BE KNOWN AS GOLDEN WEST. THE AUTHORIZATION WILL ALSO INCLUDE CONSTRUCTION AND OPERATION APPROVAL FOR CLEARING, SPECIFIC ONLY TO THE UPLAND PORTIONS OF THE SITE. (NO CONSTRUCTION IS AUTHORIZED BY THIS PERMIT.)

PROJECT LOCATION: PALM BEACH COUNTY, SECTION 15 TWP 43S RGE 42E

PERMIT DURATION: Conceptual Approval is valid for two years from the date issued. See attached Rule 40E-4.321, Florida Administrative Code.

This Permit is issued pursuant to Application No. 960703-16, dated August 11, 1998. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of activities authorized by this Permit. This Permit is issued under the provisions of Chapter 373, Part IV Florida Statutes (P.S.), and the Operating Agreement Concerning Regulation Under Part IV, Chapter 373 P.S., between South Florida Water Management District and the Department of Environmental Protection. Issuance of this Permit constitutes certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341, unless this Permit is issued pursuant to the net improvement provisions of Subsections 373.414(1)(b), P.S., or as otherwise stated herein.

This Permit may be transferred pursuant to the appropriate provisions of Chapter 373, P.S. and Sections 40B-1.6107(1) and (2), and 40B-4.351(1), (2), and (4), Florida Administrative Code (F.A.C.). This Permit may be revoked, suspended, or modified at any time pursuant to the appropriate provisions of Chapter 373, P.S. and Sections 40B-4.351(1), (2), and (4), P.A.C.

This Permit shall be subject to the General Conditions set forth in Rule 40B-4.381, P.A.C., unless waived or modified by the Governing Board. The Application, and the Environmental Resource Permit Staff Review Summary of the Application, including all conditions, and all plans and specifications incorporated by reference, are a part of this Permit. All activities authorized by this Permit shall be implemented as set forth in the plans, specifications, and performance criteria as set forth and incorporated in the Environmental Resource Permit Staff Review Summary. Within 30 days after completion of construction of the permitted activity, the Permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual, pursuant to the appropriate provisions of Chapter 373, P.S. and Sections 40B-4.361 and 40B-4.381, P.A.C.

In the event the property is sold or otherwise conveyed, the Permittee will remain liable for compliance with this Permit until transfer is approved by the District pursuant to Rule 40B-1.6107, P.A.C.

SPECIAL AND GENERAL CONDITIONS ARE AS FOLLOWS:  
 SEE PAGES 2-6 OF 10 (31 SPECIAL CONDITIONS).  
 SEE PAGES 7-10 OF 10 (19 GENERAL CONDITIONS).

FILED WITH THE CLERK OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD

ON 12-30-98 1143  
 \_\_\_\_\_  
 DEPUTY CLERK

By \_\_\_\_\_  
 ASSISTANT SECRETARY



Responsibility for

PERMIT NO: 50-04120-P  
PAGE 2 OF 10

SPECIAL CONDITIONS

A = ...  
C = ...

1. MINIMUM BUILDING FLOOR ELEVATION: 21 FEET NGVD.
2. MINIMUM ROAD CROWN ELEVATION: 19 FEET NGVD.
3. THE PERMITTEE SHALL BE RESPONSIBLE FOR THE CORRECTION OF ANY EROSION, SHOALING OR WATER QUALITY PROBLEMS THAT RESULT FROM THE CONSTRUCTION OR OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM.
4. MEASURES SHALL BE TAKEN DURING CONSTRUCTION TO INSURE THAT SEDIMENTATION AND/OR TURBIDITY PROBLEMS ARE NOT CREATED IN THE RECEIVING WATER.
5. THE DISTRICT RESERVES THE RIGHT TO REQUIRE THAT ADDITIONAL WATER QUALITY TREATMENT METHODS BE INCORPORATED INTO THE DRAINAGE SYSTEM IF SUCH MEASURES ARE SHOWN TO BE NECESSARY.
5. LAKE SIDE SLOPES SHALL BE NO STEEPER THAN 4:1 (HORIZONTAL:VERTICAL) TO A DEPTH OF TWO FEET BELOW THE CONTROL ELEVATION. SIDE SLOPES SHALL BE NURTURED OR PLANTED FROM 2 FEET BELOW TO 1 FOOT ABOVE CONTROL ELEVATION TO INSURE VEGETATIVE GROWTH.
7. FACILITIES OTHER THAN THOSE STATED HEREIN SHALL NOT BE CONSTRUCTED WITHOUT AN APPROVED MODIFICATION OF THIS PERMIT.
- OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM SHALL BE THE RESPONSIBILITY OF THE BURGESS PROPERTY MASTER ASSOCIATION, INC.. THE PERMITTEE SHALL SUBMIT A COPY OF THE RECORDED DEED RESTRICTIONS (OR DECLARATION OF CONDOMINIUM, IF APPLICABLE), A COPY OF THE FILED ARTICLES OF INCORPORATION, AND A COPY OF THE CERTIFICATE OF INCORPORATION FOR THE HOMEOWNERS ASSOCIATION CONCURRENT WITH THE ENGINEERING CERTIFICATION OF CONSTRUCTION COMPLETION.
9. PRIOR TO FEBRUARY 08, 1999, THE PERMITTEE SHALL PROVIDE THE DISTRICT WITH SATISFACTORY EVIDENCE OF A DISCLOSURE STATEMENT WHICH INFORMS PROSPECTIVE PURCHASERS THAT THE WATER LEVELS IN THE PROJECT'S LAKE MAY DECLINE SIGNIFICANTLY AT CERTAIN TIMES AS A RESULT OF THE WELLFIELD PUMPAGE.
10. ANY FUTURE CHANGES IN LAND USE OR TREATMENT OF WETLANDS AND/OR UPLAND BUFFER/COMPENSATION AREAS MAY REQUIRE A SURFACE WATER MANAGEMENT PERMIT MODIFICATION AND ADDITIONAL ENVIRONMENTAL REVIEW BY DISTRICT STAFF. PRIOR TO THE PERMITTEE INSTITUTING ANY FUTURE CHANGES NOT AUTHORIZED BY THIS PERMIT, THE PERMITTEE SHALL NOTIFY THE SFWMD OF SUCH INTENTIONS FOR A DETERMINATION OF ANY NECESSARY PERMIT MODIFICATIONS.
11. ENDANGERED SPECIES, THREATENED SPECIES, OR SPECIES OF SPECIAL CONCERN HAVE BEEN OBSERVED ONSITE AND/OR THE PROJECT CONTAINS SUITABLE HABITAT FOR THESE SPECIES. IT SHALL BE THE PERMITTEE'S RESPONSIBILITY TO COORDINATE WITH THE FLORIDA GAME AND FRESH WATER FISH COMMISSION AND/OR U.S. FISH AND WILDLIFE

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A

SERVICE FOR APPROPRIATE GUIDANCE, RECOMMENDATIONS, AND/OR NECESSARY PERMITS TO AVOID IMPACTS TO LISTED SPECIES.

12. SILT FENCES, HAY BALES OR OTHER SUCH SEDIMENT CONTROL MEASURES SHALL BE UTILIZED DURING CONSTRUCTION. THE PERMITTEE SHALL NOTIFY THE SFWMD'S COMPLIANCE STAFF UPON COMPLETION OF FENCING. FENCING OR OTHER SELECTED SEDIMENT CONTROL MEASURES SHALL BE INSTALLED AT THE BASE OF THE PERIMETER BERM (WETLAND SIDE) TO BE CONSTRUCTED AROUND THE DEVELOPMENT SITE. THE BERM AND ASSOCIATED FENCING SHALL BE CONSTRUCTED PRIOR TO ANY EXCAVATION, FILLING OR GRADING OF THE DEVELOPMENT SITE. THIS BERM SHALL BE STABILIZED AND VEGETATED UPON COMPLETION OF CONSTRUCTION AND PRIOR TO REMOVAL OF FENCING OR OTHER SEDIMENT CONTROL BARRIERS. A DETAILED SEDIMENT AND EROSION CONTROL PLAN SHALL BE SUBMITTED WITH THE CONSTRUCTION PERMIT APPLICATION.
13. ALL EXCAVATION ASSOCIATED WITH THE CONSTRUCTION OF THE SURFACE WATER MANAGEMENT SYSTEM SHALL BE MAINTAINED A MINIMUM OF 300 FEET FROM THE EDGE OF OFFSITE WETLANDS OR WETLANDS CONTAINED IN THE PRESERVE/MITIGATION AREA.
14. UPON SUBMITTAL OF AN APPLICATION FOR CONSTRUCTION APPROVAL, GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE SHALL SUBMIT A WETLAND BUFFER PLANTING PLAN. THIS PLAN SHALL INCLUDE, AT A MINIMUM, THE TYPE AND DENSITY OF VEGETATION TO BE PLANTED IN THE BUFFER AND A SCHEDULE FOR PLANTING AND ASSOCIATED MAINTENANCE.
15. UPON SUBMITTAL OF AN APPLICATION FOR CONSTRUCTION APPROVAL, GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE SHALL SUBMIT PLANS DEPICTING REGRADING FOR THE FDOT BORROW PIT ROAD NORTH OF THE PRESERVE/MITIGATION AREA AND THE EXISTING ROAD IN THE SOUTHEAST CORNER OF THE PRESERVE/MITIGATION AREA. THE FORMER ROAD SHALL BE FILLED AND STABILIZED TO AN ELEVATION OF 17 FEET NGVD TO PREVENT THE OUTFLOW OF SURFACE WATER FROM SECTION 10. THE LATTER ROAD SHALL BE REGRADED TO NATURAL, SURROUNDING ELEVATIONS TO FACILITATE SHEETFLOW TO THE EAST. ALL WORK ASSOCIATED WITH REGRADING ACTIVITIES IN BOTH LOCATIONS SHALL BE COMPLETED PRIOR TO THE PLANTING OF THE MITIGATION AREA.
16. THIS PERMIT DOES NOT CONVEY CONCEPTUAL APPROVAL FOR THE ALIGNMENT OR CONSTRUCTION OF JOG ROAD BEYOND THE DESIGN LIMITS SHOWN IN EXHIBIT 2.
17. A LETTER OF CREDIT IN THE AMOUNT OF ONE MILLION ONE HUNDRED AND NINETY THREE THOUSAND FIVE HUNDRED DOLLARS (\$1,193,500.00) SHALL BE OBTAINED BY GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE PRIOR TO ANY CONSTRUCTION IN WETLAND AREAS. THIS LETTER OF CREDIT SHALL CONFORM WITH THE DRAFT FORM ATTACHED TO THIS PERMIT AS EXHIBIT E4. THE ORIGINAL LETTER OF CREDIT SHALL BE PROVIDED TO SFWMD COMPLIANCE STAFF PRIOR TO THE START OF CONSTRUCTION.
18. THE CITY OF WEST PALM BEACH SHALL SUBMIT TO THE SFWMD COMPLIANCE STAFF COPIES OF ALL PERMIT APPLICATIONS SUBMITTED TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR ACTIVITIES RELATED TO THE DISCHARGE OR MANAGEMENT OF RE-USE WATER THAT COULD POTENTIALLY IMPACT THE PERMITTED MITIGATION AREA.
19. A MITIGATION PROGRAM SHALL BE IMPLEMENTED IN ACCORDANCE WITH EXHIBITS E1 AND E2. GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE SHALL RESTORE/PRESERVE 33.9 ACRES OF WFTLANDS, ENHANCE/PRESERVE 31.7 ACRES OF

WETLANDS, AND ENHANCE/PRESERVE 89.4 ACRES OF UPLANDS CONTAINED WITHIN A 155 ACRE PRESERVE/MITIGATION AREA SHOWN ON EXHIBIT E1. THE RESTRICTIVE COVENANTS AND LEGAL DESCRIPTION INCLUDED ON EXHIBIT E3 SHALL BE RECORDED BY THE CITY OF WEST PALM BEACH AGAINST THE EXISTING DEED FOR THIS PROPERTY. A COPY OF THE RECORDED DOCUMENT SHALL BE SUBMITTED TO THE SFWMD'S COMPLIANCE STAFF PRIOR TO THE START OF CONSTRUCTION.

20. ALL HYDROLOGIC ENHANCEMENT ACTIVITIES ASSOCIATED WITH THE PRESERVE/MITIGATION AREA, INCLUDING PLACEMENT OF IMPERMEABLE BARRIERS, DITCH BACKFILLING, BERM CONSTRUCTION ON THE EAST SIDE OF THE PRESERVE/MITIGATION AREA, THE EXCAVATION OF THE SIX (6) WETLAND FLOW-WAYS SHOWN IN THE MITIGATION PLAN, AND ROAD REMOVAL/RE-GRADING SHALL BE COMPLETED PRIOR TO OR SIMULTANEOUS WITH PLANTING. SOIL PROFILES SHALL BE SUBMITTED AS PART OF THE CONSTRUCTION PERMIT APPLICATION TO DETERMINE THE APPROPRIATE DEPTH OF THE IMPERMEABLE LINER. IF AN ADEQUATE CONFINING LAYER IS NOT IDENTIFIED IN THE SOIL PROFILES, THE IMPERMEABLE LAYER SHALL EXTEND TO THE DEPTH OF THE TURNPIKE DITCH.
21. A MITIGATION MONITORING AND MAINTENANCE PROGRAM SHALL BE IMPLEMENTED IN ACCORDANCE WITH EXHIBIT E5. THE MONITORING PROGRAM CONDUCTED BY GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE SHALL EXTEND FOR A PERIOD OF FIVE (5) YEARS WITH SEMI-ANNUAL MONITORING EVENTS AND ANNUAL REPORTS SUBMITTED TO SFWMD COMPLIANCE STAFF. AT THE END OF THE SECOND YEAR OF MONITORING, ALL RESTORATION AND ENHANCEMENT AREAS, INCLUDING FLOW-WAYS, SHALL ACHIEVE AN 80 PERCENT COVERAGE OF DESIRABLE OBLIGATE AND FACULTATIVE WETLAND SPECIES (WETLAND AREAS) AND DESIRABLE UPLAND AND TRANSITIONAL SPECIES (UPLAND AREAS). AT NO TIME SHALL THERE BE MORE THAN 20 PERCENT MORTALITY OF EXISTING UPLAND TREE SPECIES IN UPLAND AREAS. UPLAND AREAS SHALL, AT ALL TIMES, CONTAIN MORE THAN 50 PERCENT COVERAGE OF UPLAND AND FACULTATIVE VEGETATION. THREE (3) MONITORING TRANSECTS SHALL BE ESTABLISHED IN THE SAME GENERAL LOCATION INDICATED ON EXHIBIT E6. AT LEAST EIGHT (8) SEPARATE REPRESENTATIVE WETLANDS SHALL BE INCLUDED IN THESE TRANSECTS. IF THE REQUIRED COVERAGE IS NOT OBTAINED AFTER TWO (2) YEARS, ADDITIONAL PLANTING SHALL BE CONDUCTED TO ACHIEVE REQUIRED COVERAGE LEVELS. THE LANDOWNERS, GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE, SHALL BE RESPONSIBLE FOR ALL MAINTENANCE AND MONITORING FOR THE INITIAL FIVE (5) YEAR MONITORING PERIOD. THE CITY OF WEST PALM BEACH SHALL BE RESPONSIBLE FOR PERPETUAL MAINTENANCE (AFTER FIVE (5) YEARS), AS WELL AS LONG-TERM WATER LEVEL MONITORING.
22. A MAINTENANCE PROGRAM SHALL BE IMPLEMENTED FOR THE PRESERVE/MITIGATION AND BUFFER AREAS IN ACCORDANCE WITH EXHIBIT E5. MAINTENANCE SHALL BE CONDUCTED BY GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE ON A SEMI-ANNUAL BASIS FOR THE FIRST FIVE (5) YEARS, UNLESS EXOTIC AND/OR NUISANCE VEGETATION COVERAGE EXCEEDS FIVE (5) PERCENT AT ANY TIME. IN WHICH CASE, SUCH VEGETATION SHALL BE REDUCED TO A COVERAGE LEVEL OF ZERO (0) PERCENT FOR EXOTICS AND FIVE (5) PERCENT FOR NUISANCE SPECIES. AFTER FIVE (5) YEARS, THE CITY SHALL MAINTAIN ALL MITIGATION AND WETLAND BUFFER AREAS SO THAT EXOTIC AND/OR NUISANCE VEGETATION SHALL NOT EXCEED FIVE (5) PERCENT COVERAGE AT ANY TIME. A ZERO (0) PERCENT COVERAGE LEVEL FOR EXOTIC VEGETATION SHALL BE ACHIEVED IMMEDIATELY FOLLOWING A MAINTENANCE EVENT. NUISANCE VEGETATION SHALL INCLUDE ANY SPECIES THAT BECOMES ESTABLISHED TO THE DETRIMENT OR EXCLUSION OF DESIREABLE NATIVE VEGETATION. SUCH SPECIES SHALL INCLUDE, BUT ARE NOT LIMITED TO, CATTAIL, PRIMROSE WILLOW, CAROLINA WILLOW, WATER

LETTUCE, DUCKWEED, ALLIGATOR-WEED, SALVINIA, AZOLLA, TORPEDO GRASS, FILAMENTOUS ALGAE AND SCIRPUS CUBENSIS. EXOTIC VEGETATION SHALL INCLUDE THOSE SPECIES IDENTIFIED IN THE FLORIDA EXOTIC PEST PLANT COUNCIL'S CATEGORY I LIST.

23. IN THE EVENT THAT THE INTRODUCTION OF RE-USE WATER INTO THE MITIGATION AREA RESULTS IN THE ESTABLISHMENT OF NUISANCE VEGETATION THAT CAUSES AN IMBALANCE IN THE NATURAL POPULATION OF FLORA OR FAUNA, AS DETERMINED BY THE DISTRICT'S GOVERNING BOARD AND BASED UPON THE MAINTENANCE AND MONITORING REQUIREMENTS OF THIS PERMIT, CORRECTIVE ACTION SHALL BE TAKEN BY THE CITY, INCLUDING, BUT NOT LIMITED TO, ADDITIONAL TREATMENT OF RE-USE WATER, MODIFIED MANAGEMENT OF ITS DISTRIBUTION OR DISCONTINUATION OF ITS APPLICATION WITHIN THE PRESERVE/MITIGATION AREA. FOR THE PURPOSE OF THIS CONDITION, AN IMBALANCE OF FLORA OR FAUNA SHALL GENERALLY BE DEFINED AS THE CHRONIC EXCEEDANCE OF THE FIVE (5) PERCENT COVERAGE BY EXOTIC AND NUISANCE SPECIES THAT CANNOT BE PRACTICALLY ACHIEVED AND MAINTAINED THROUGH CONVENTIONAL MEANS OF EXOTIC AND NUISANCE VEGETATION CONTROL.
24. CONTINUOUS WATER LEVEL MONITORING WITHIN THE PRESERVE/MITIGATION AREA SHALL BE CONDUCTED BY THE CITY OF WEST PALM BEACH AND SHALL BE INCLUDED IN THE ANNUAL MONITORING REPORTS REFERENCED IN SPECIAL CONDITION 27. WATER LEVELS WITHIN THE MITIGATION AREA SHALL NOT EXCEED EIGHT (8) INCHES ABOVE AMBIENT LEVELS, AS DETERMINED FROM A TARGET HYDROGRAPH FOR THE MITIGATION AREA. A HYDROGRAPH FROM THE CITY'S MONITORING STATION WRSW-5 (SEE EXHIBIT E7) WILL BE USED AS THE TARGET HYDROGRAPH UNTIL A SITE-SPECIFIC HYDROGRAPH IS ESTABLISHED (PRIOR TO RECLAIMED WATER APPLICATION AND AFTER HYDROLOGIC IMPROVEMENTS ARE MADE, AS REQUIRED BY THIS PERMIT). A SITE-SPECIFIC HYDROGRAPH SHALL BE ESTABLISHED OVER A ONE (1) YEAR PERIOD OF CONTINUOUS WATER LEVEL RECORDING AT TWO (2) DEDICATED MONITORING STATIONS. AFTER ESTABLISHMENT OF THE SITE-SPECIFIC HYDROGRAPHS, THE TWO (2) MONITORING STATIONS WILL BE INCORPORATED INTO THE CITY'S MONITORING NETWORK THAT WILL PROVIDE CONTINUOUS REAL-TIME FEEDBACK FROM THE MONITORING STATIONS TO THE CITY'S UTILITY OPERATIONS STAFF. THE OPERATIONAL DATA WILL BE CONTINUOUSLY FED INTO AN EXPERT SYSTEM THAT WILL PROVIDE DECISIONS REGARDING OPERATIONAL MANAGEMENT OF WETLANDS TO PROVIDE QUICK RESPONSE TO NATURAL AND MAN-MADE INFLUENCES.

IF WATER LEVELS RISE ABOVE THE EIGHT (8) INCH CRITERIA AT ANY TIME (EXCEPT AS A RESULT OF A MAJOR STORM EVENT), THE CITY WILL IMPLEMENT ONE OR MORE OF THE FOLLOWING OPERATIONAL/MANAGEMENT OPTIONS TO LOWER THE WATER LEVELS TO THE TARGET HYDROGRAPH LEVEL WITHIN 48 HOURS:

1. TURN OFF THE RE-USE WATER PUMPS FROM THE ADVANCED WASTEWATER TREATMENT FACILITY OR DIVERT THE RE-USE WATER TO THE EXISTING DEEP INJECTION WELLS. THE DEEP INJECTION WELL SYSTEM PROVIDES 100% BACKUP FOR WET WEATHER MANAGEMENT OF THE FACILITY.
2. INCREASE THE RATE OF WETLAND SURFACE WATER LEVEL CONVEYANCE FROM THE RE-USE SITE TO THE CITY'S STANDBY WELLFIELD.
3. INCREASE THE RATE OF PUMPING FROM THE CITY'S STANDBY WELLFIELD.

WATER LEVEL MONITORING CONDUCTED BY THE CITY SHALL BE INCORPORATED INTO THE ANNUAL MONITORING REPORTS REQUIRED BY SPECIAL CONDITION 27. MONITORING

REPORTS SHALL INCLUDE THE LOCATION OF THE WATER LEVEL MONITORING STATIONS IN THE MITIGATION AREA, ALONG WITH THE NEW TARGET HYDROGRAPHS WHEN THEY ARE COMPLETED. AFTER FIVE (5) YEARS, THE CITY SHALL ASSUME RESPONSIBILITY FOR ANNUAL REPORT SUBMITTAL, WHICH REPORTS SHALL INCLUDE A COMPARISON OF THE ACTUAL HYDROGRAPH FOR THE PREVIOUS YEAR WITH THE TARGET HYDROGRAPH. ANY REVISION OF THE TARGET HYDROGRAPH SHALL REQUIRE A MODIFICATION OF THIS PERMIT.

25. THE CITY OF WEST PALM BEACH SHALL NOT BE RESPONSIBLE FOR ANY PORTION OF THE GOLDEN WEST DEVELOPMENT OUTSIDE OF THE PRESERVE/MITIGATION AREA.
26. PRIOR TO THE INITIATION OF ANY WITHDRAWAL OF WATER (IRRIGATION, DEWATERING, PUBLIC WATER SUPPLY, ETC.), IT WILL BE NECESSARY TO APPLY FOR A WATER USE PERMIT. THE PERMITTEE IS CAUTIONED THAT A MINIMUM OF 90 DAYS IS REQUIRED FOR CONSIDERATION OF A COMPLETE WATER USE PERMIT APPLICATION. THE PERMITTEE IS ALSO CAUTIONED THAT THE ISSUANCE OF AN ENVIRONMENTAL RESOURCE PERMIT SHALL NOT BE CONSTRUED TO BE A GUARANTEE THAT WATER WILL BE AVAILABLE.
27. A WORK SCHEDULE SHALL BE SUBMITTED AS PART OF THE CONSTRUCTION PERMIT APPLICATION THAT PROVIDES TIME FRAMES FOR ALL MITIGATION, MONITORING, AND MAINTENANCE ACTIVITIES, INCLUDING STARTING AND COMPLETION DATES.
28. UPON SUBMITTAL OF A CONSTRUCTION APPLICATION, THE PERMITTEE SHALL SUBMIT A DEWATERING PLAN AND SHALL APPLY FOR A WATER USE PERMIT, AS NECESSARY.

DISCHARGE FACILITIES:

1-1400 GPM PUMP  
PUMP-ON AT ELEV. 15.90' NGVD  
PUMP-OFF AT ELEV. 15.50' NGVD

1-2100 GPM PUMP  
PUMP-ON AT ELEV. 16.00' NGVD  
PUMP-OFF AT ELEV. 15.92' NGVD

3500 LF OF 1.33' DIP PRESSURE PIPE

RECEIVING BODY: C-17 CANAL THROUGH EPB-11 CANAL SYSTEM

CONTROL ELEV.: 15.50' NGVD

30. GRASS SEED & MULCH, OR SOD, SHALL BE INSTALLED AND MAINTAINED ON ALL DISTURBED AREAS WITHIN 48 HOURS OF COMPLETING FINAL GRADE, AND AT OTHER TIMES, AS NECESSARY, TO PREVENT EROSION, SEDIMENTATION OR TURBID DISCHARGES INTO RECEIVING WATERS AND/OR ADJACENT WETLANDS.
31. AN EXECUTED COPY OF THE DRAINAGE AGREEMENT, ADOPTED AND PASSED ON AUGUST 10TH, 1998, BETWEEN THE CITY OF WEST PALM BEACH, NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT, GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE HAS BEEN INCLUDED WITH THIS PERMIT BY REFERENCE (PLEASE SEE PERMIT FILE, EXHIBIT 3).

## GENERAL CONDITIONS

ALL ACTIVITIES AUTHORIZED BY THIS PERMIT SHALL BE IMPLEMENTED AS SET FORTH IN THE PLANS, SPECIFICATIONS AND PERFORMANCE CRITERIA AS APPROVED BY THIS PERMIT. ANY DEVIATION FROM THE PERMITTED ACTIVITY AND THE CONDITIONS FOR UNDERTAKING THAT ACTIVITY SHALL CONSTITUTE A VIOLATION OF THIS PERMIT AND PART IV, CHAPTER 373, F.S.

2. THIS PERMIT OR A COPY THEREOF, COMPLETE WITH ALL CONDITIONS, ATTACHMENTS, EXHIBITS, AND MODIFICATIONS SHALL BE KEPT AT THE WORK SITE OF THE PERMITTED ACTIVITY. THE COMPLETE PERMIT SHALL BE AVAILABLE FOR REVIEW AT THE WORK SITE UPON REQUEST BY THE DISTRICT STAFF. THE PERMITTEE SHALL REQUIRE THE CONTRACTOR TO REVIEW THE COMPLETE PERMIT PRIOR TO COMMENCEMENT OF THE ACTIVITY AUTHORIZED BY THIS PERMIT.
3. ACTIVITIES APPROVED BY THIS PERMIT SHALL BE CONDUCTED IN A MANNER WHICH DOES NOT CAUSE VIOLATIONS OF STATE WATER QUALITY STANDARDS. THE PERMITTEE SHALL IMPLEMENT BEST MANAGEMENT PRACTICES FOR EROSION AND POLLUTION CONTROL TO PREVENT VIOLATION OF STATE WATER QUALITY STANDARDS. TEMPORARY EROSION CONTROL SHALL BE IMPLEMENTED PRIOR TO AND DURING CONSTRUCTION, AND PERMANENT CONTROL MEASURES SHALL BE COMPLETED WITHIN 7 DAYS OF ANY CONSTRUCTION ACTIVITY. TURBIDITY BARRIERS SHALL BE INSTALLED AND MAINTAINED AT ALL LOCATIONS WHERE THE POSSIBILITY OF TRANSFERRING SUSPENDED SOLIDS INTO THE RECEIVING WATERBODY EXISTS DUE TO THE PERMITTED WORK. TURBIDITY BARRIERS SHALL REMAIN IN PLACE AT ALL LOCATIONS UNTIL CONSTRUCTION IS COMPLETED AND SOILS ARE STABILIZED AND VEGETATION HAS BEEN ESTABLISHED. ALL PRACTICES SHALL BE IN ACCORDANCE WITH THE GUIDELINES AND SPECIFICATIONS DESCRIBED IN CHAPTER 6 OF THE FLORIDA LAND DEVELOPMENT MANUAL; A GUIDE TO SOUND LAND AND WATER MANAGEMENT (DEPARTMENT OF ENVIRONMENTAL REGULATION, 1988), INCORPORATED BY REFERENCE IN RULE 40E-4.091, F.A.C. UNLESS A PROJECT-SPECIFIC EROSION AND SEDIMENT CONTROL PLAN IS APPROVED AS PART OF THE PERMIT. THEREAFTER THE PERMITTEE SHALL BE RESPONSIBLE FOR THE REMOVAL OF THE BARRIERS. THE PERMITTEE SHALL CORRECT ANY EROSION OR SHOALING THAT CAUSES ADVERSE IMPACTS TO THE WATER RESOURCES.
4. THE PERMITTEE SHALL NOTIFY THE DISTRICT OF THE ANTICIPATED CONSTRUCTION START DATE WITHIN 30 DAYS OF THE DATE THAT THIS PERMIT IS ISSUED. AT LEAST 48 HOURS PRIOR TO COMMENCEMENT OF ACTIVITY AUTHORIZED BY THIS PERMIT, THE PERMITTEE SHALL SUBMIT TO THE DISTRICT AN ENVIRONMENTAL RESOURCE PERMIT CONSTRUCTION COMMENCEMENT NOTICE FORM NO. 0960 INDICATING THE ACTUAL START DATE AND THE EXPECTED COMPLETION DATE.
5. WHEN THE DURATION OF CONSTRUCTION WILL EXCEED ONE YEAR, THE PERMITTEE SHALL SUBMIT CONSTRUCTION STATUS REPORTS TO THE DISTRICT ON AN ANNUAL BASIS UTILIZING AN ANNUAL STATUS REPORT FORM. STATUS REPORT FORMS SHALL BE SUBMITTED THE FOLLOWING JUNE OF EACH YEAR.
6. WITHIN 30 DAYS AFTER COMPLETION OF CONSTRUCTION OF THE PERMITTED ACTIVITY, THE PERMITTEE SHALL SUBMIT A WRITTEN STATEMENT OF COMPLETION AND

CERTIFICATION BY A REGISTERED PROFESSIONAL ENGINEER OR OTHER APPROPRIATE INDIVIDUAL AS AUTHORIZED BY LAW, UTILIZING THE SUPPLIED ENVIRONMENTAL RESOURCE PERMIT CONSTRUCTION COMPLETION/CONSTRUCTION CERTIFICATION FORM NO.0881. THE STATEMENT OF COMPLETION AND CERTIFICATION SHALL BE BASED ON ONSITE OBSERVATION OF CONSTRUCTION OR REVIEW OF ASBUILT DRAWINGS FOR THE PURPOSE OF DETERMINING IF THE WORK WAS COMPLETED IN COMPLIANCE WITH PERMITTED PLANS AND SPECIFICATIONS. THIS SUBMITTAL SHALL SERVE TO NOTIFY THE DISTRICT THAT THE SYSTEM IS READY FOR INSPECTION. ADDITIONALLY, IF DEVIATION FROM THE APPROVED DRAWINGS ARE DISCOVERED DURING THE CERTIFICATION PROCESS, THE CERTIFICATION MUST BE ACCOMPANIED BY A COPY OF THE APPROVED PERMIT DRAWINGS WITH DEVIATIONS NOTED. BOTH THE ORIGINAL AND REVISED SPECIFICATIONS MUST BE CLEARLY SHOWN. THE PLANS MUST BE CLEARLY LABELED AS "ASBUILT" OR "RECORD" DRAWING. ALL SURVEYED DIMENSIONS AND ELEVATIONS SHALL BE CERTIFIED BY A REGISTERED SURVEYOR.

7. THE OPERATION PHASE OF THIS PERMIT SHALL NOT BECOME EFFECTIVE: UNTIL THE PERMITTEE HAS COMPLIED WITH THE REQUIREMENTS OF CONDITION (6) ABOVE, HAS SUBMITTED A REQUEST FOR CONVERSION OF ENVIRONMENTAL RESOURCE PERMIT FROM CONSTRUCTION PHASE TO OPERATION PHASE, FORM NO.0920; THE DISTRICT DETERMINES THE SYSTEM TO BE IN COMPLIANCE WITH THE PERMITTED PLANS AND SPECIFICATIONS; AND THE ENTITY APPROVED BY THE DISTRICT IN ACCORDANCE WITH SECTIONS 9.0 AND 10.0 OF THE BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS WITHIN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT - AUGUST 1995, ACCEPTS RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF THE SYSTEM. THE PERMIT SHALL NOT BE TRANSFERRED TO SUCH APPROVED OPERATION AND MAINTENANCE ENTITY UNTIL THE OPERATION PHASE OF THE PERMIT BECOMES EFFECTIVE. FOLLOWING INSPECTION AND APPROVAL OF THE PERMITTED SYSTEM BY THE DISTRICT, THE PERMITTEE SHALL INITIATE TRANSFER OF THE PERMIT TO THE APPROVED RESPONSIBLE OPERATING ENTITY IF DIFFERENT FROM THE PERMITTEE. UNTIL THE PERMIT IS TRANSFERRED PURSUANT TO SECTION 40E-1.6107, F.A.C., THE PERMITTEE SHALL BE LIABLE FOR COMPLIANCE WITH THE TERMS OF THE PERMIT.
8. EACH PHASE OR INDEPENDENT PORTION OF THE PERMITTED SYSTEM MUST BE COMPLETED IN ACCORDANCE WITH THE PERMITTED PLANS AND PERMIT CONDITIONS PRIOR TO THE INITIATION OF THE PERMITTED USE OF SITE INFRASTRUCTURE LOCATED WITHIN THE AREA SERVED BY THAT PORTION OR PHASE OF THE SYSTEM. EACH PHASE OR INDEPENDENT PORTION OF THE SYSTEM MUST BE COMPLETED IN ACCORDANCE WITH THE PERMITTED PLANS AND PERMIT CONDITIONS PRIOR TO TRANSFER OF RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF THE PHASE OR PORTION OF THE SYSTEM TO A LOCAL GOVERNMENT OR OTHER RESPONSIBLE ENTITY.
9. FOR THOSE SYSTEMS THAT WILL BE OPERATED OR MAINTAINED BY AN ENTITY THAT WILL REQUIRE AN EASEMENT OR DEED RESTRICTION IN ORDER TO ENABLE THAT ENTITY TO OPERATE OR MAINTAIN THE SYSTEM IN CONFORMANCE WITH THIS PERMIT, SUCH EASEMENT OR DEED RESTRICTION MUST BE RECORDED IN THE PUBLIC RECORDS AND SUBMITTED TO THE DISTRICT ALONG WITH ANY OTHER FINAL OPERATION AND MAINTENANCE DOCUMENTS REQUIRED BY SECTIONS 9.0 AND 10.0 OF THE BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS WITHIN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT - AUGUST 1995, PRIOR TO LOT OR UNIT SALES OR PRIOR TO THE COMPLETION OF THE SYSTEM, WHICHEVER OCCURS FIRST. OTHER DOCUMENTS CONCERNING THE ESTABLISHMENT AND AUTHORITY OF THE OPERATING ENTITY MUST BE FILED WITH THE SECRETARY OF STATE WHERE APPROPRIATE. FOR THOSE SYSTEMS WHICH ARE PROPOSED TO BE MAINTAINED BY THE COUNTY OR MUNICIPAL ENTITIES, FINAL OPERATION AND MAINTENANCE DOCUMENTS MUST BE RECEIVED BY THE

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DISTRICT WHEN MAINTENANCE AND OPERATION OF THE SYSTEM IS ACCEPTED BY THE LOCAL GOVERNMENT ENTITY. FAILURE TO SUBMIT THE APPROPRIATE FINAL DOCUMENTS WILL RESULT IN THE PERMITTEE REMAINING LIABLE FOR CARRYING OUT MAINTENANCE AND OPERATION OF THE PERMITTED SYSTEM AND ANY OTHER PERMIT CONDITIONS.

0. SHOULD ANY OTHER REGULATORY AGENCY REQUIRE CHANGES TO THE PERMITTED SYSTEM, THE PERMITTEE SHALL NOTIFY THE DISTRICT IN WRITING OF THE CHANGES PRIOR TO IMPLEMENTATION SO THAT A DETERMINATION CAN BE MADE WHETHER A PERMIT MODIFICATION IS REQUIRED.
1. THIS PERMIT DOES NOT ELIMINATE THE NECESSITY TO OBTAIN ANY REQUIRED FEDERAL, STATE, LOCAL AND SPECIAL DISTRICT AUTHORIZATIONS PRIOR TO THE START OF ANY ACTIVITY APPROVED BY THIS PERMIT. THIS PERMIT DOES NOT CONVEY TO THE PERMITTEE OR CREATE IN THE PERMITTEE ANY PROPERTY RIGHT, OR ANY INTEREST IN REAL PROPERTY, NOR DOES IT AUTHORIZE ANY ENTRANCE UPON OR ACTIVITIES ON PROPERTY WHICH IS NOT OWNED OR CONTROLLED BY THE PERMITTEE, OR CONVEY ANY RIGHTS OR PRIVILEGES OTHER THAN THOSE SPECIFIED IN THE PERMIT AND CHAPTER 40E-4 OR CHAPTER 40E-40, F.A.C.
12. THE PERMITTEE IS HEREBY ADVISED THAT SECTION 253.77, F.S. STATES THAT A PERSON MAY NOT COMMENCE ANY EXCAVATION, CONSTRUCTION, OR OTHER ACTIVITY INVOLVING THE USE OF SOVEREIGN OR OTHER LANDS OF THE STATE, THE TITLE TO WHICH IS VESTED IN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND WITHOUT OBTAINING THE REQUIRED LEASE, LICENSE, EASEMENT, OR OTHER FORM OF CONSENT AUTHORIZING THE PROPOSED USE. THEREFORE, THE PERMITTEE IS RESPONSIBLE FOR OBTAINING ANY NECESSARY AUTHORIZATIONS FROM THE BOARD OF TRUSTEES PRIOR TO COMMENCING ACTIVITY ON SOVEREIGNTY LANDS OR OTHER STATE-OWNED LANDS.
13. THE PERMITTEE MUST OBTAIN A WATER USE PERMIT PRIOR TO CONSTRUCTION DEWATERING, UNLESS THE WORK QUALIFIES FOR A GENERAL PERMIT PURSUANT TO SUBSECTION 40E-20.302(4), F.A.C., ALSO KNOWN AS THE "NO NOTICE" RULE.
14. THE PERMITTEE SHALL HOLD AND SAVE THE DISTRICT HARMLESS FROM ANY AND ALL DAMAGES, CLAIMS, OR LIABILITIES WHICH MAY ARISE BY REASON OF THE CONSTRUCTION, ALTERATION, OPERATION, MAINTENANCE, REMOVAL, ABANDONMENT OR USE OF ANY SYSTEM AUTHORIZED BY THE PERMIT.
15. ANY DELINEATION OF THE EXTENT OF A WETLAND OR OTHER SURFACE WATER SUBMITTED AS PART OF THE PERMIT APPLICATION, INCLUDING PLANS OR OTHER SUPPORTING DOCUMENTATION, SHALL NOT BE CONSIDERED BINDING UNLESS A SPECIFIC CONDITION OF THIS PERMIT OR A FORMAL DETERMINATION UNDER SECTION 373.421(2), F.S., PROVIDES OTHERWISE.
16. THE PERMITTEE SHALL NOTIFY THE DISTRICT IN WRITING WITHIN 30 DAYS OF ANY SALE, CONVEYANCE, OR OTHER TRANSFER OF OWNERSHIP OR CONTROL OF A PERMITTED SYSTEM OR THE REAL PROPERTY ON WHICH THE PERMITTED SYSTEM IS LOCATED. ALL TRANSFERS OF OWNERSHIP OR TRANSFERS OF A PERMIT ARE SUBJECT TO THE REQUIREMENTS OF RULES 40E-1.6105 AND 40E-1.6107, F.A.C. THE PERMITTEE TRANSFERRING THE PERMIT SHALL REMAIN LIABLE FOR CORRECTIVE ACTIONS THAT MAY BE REQUIRED AS A RESULT OF ANY VIOLATIONS PRIOR TO THE SALE, CONVEYANCE OR OTHER TRANSFER OF THE SYSTEM.
17. UPON REASONABLE NOTICE TO THE PERMITTEE, DISTRICT AUTHORIZED STAFF WITH



- PROPER IDENTIFICATION SHALL HAVE PERMISSION TO ENTER, INSPECT, SAMPLE AND TEST THE SYSTEM TO INSURE CONFORMITY WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE PERMIT.
18. IF HISTORICAL OR ARCHAEOLOGICAL ARTIFACTS ARE DISCOVERED AT ANY TIME ON THE PROJECT SITE, THE PERMITTEE SHALL IMMEDIATELY NOTIFY THE APPROPRIATE DISTRICT SERVICE CENTER.
  19. THE PERMITTEE SHALL IMMEDIATELY NOTIFY THE DISTRICT IN WRITING OF ANY PREVIOUSLY SUBMITTED INFORMATION THAT IS LATER DISCOVERED TO BE INACCURATE.

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**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE  
PERMIT MODIFICATION NO. 50-04120-P**

Form #0157  
Rev 08/95

DATE ISSUED: APRIL 15, 1999

PERMITTEE: GOLDEN WEST LIMITED PARTNERSHIP  
(HAMILTON BAY/MALLORY SQUARE)  
448 VIKING DRIVE, SUITE 200,  
VIRGINIA BEACH, VA 23452

ORIGINAL PERMIT ISSUED: DECEMBER 10, 1998  
ORIGINAL PROJECT DESCRIPTION: AUTHORIZATION FOR CONCEPTUAL APPROVAL OF A SURFACE WATER MANAGEMENT SYSTEM SERVING 373.5 ACRES OF RESIDENTIAL DEVELOPMENT TO BE KNOWN AS GOLDEN WEST. THE AUTHORIZATION WILL ALSO INCLUDE CONSTRUCTION AND OPERATION APPROVAL FOR CLEARING, SPECIFIC ONLY TO THE UPLAND PORTIONS OF THE SITE.

PROPOSED MODIFICATION : AUTHORIZATION FOR CONSTRUCTION AND OPERATION OF A SURFACE WATER MANAGEMENT SYSTEM SERVING 373.5 ACRES OF RESIDENTIAL DEVELOPMENT TO BE KNOWN AS HAMILTON BAY/MALLORY SQUARE.

PROJECT LOCATION: PALM BEACH COUNTY SECTION 15 TWP 43S RGE 42E

PERMIT DURATION: Five years from the date issued to complete construction of the surface water management system as authorized herein. See attached Rule 40E-4.321, Florida Administrative Code.

This Permit Modification is approved pursuant to Application No. 981016-17, dated October 15, 1998. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of any activities authorized by this permit. This Permit is issued under the provisions of Chapter 373, Part IV Florida Statutes (F.S.), and the Operating Agreement Concerning Regulation Under Part IV, Chapter 373 F.S. between South Florida Water Management District and the Department of Environmental Protection. Issuance of this Permit constitutes certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341, unless this Permit is issued pursuant to the net improvement provisions of Subsections 373.414(1)(b), F.S., or as otherwise stated herein.

This Permit Modification may be revoked, suspended, or modified at any time pursuant to the appropriate provisions of Chapter 373, F.S., and Sections 40E-4.351(1), (2), and (4), Florida Administrative Code (F.A.C.). This Permit Modification may be transferred pursuant to the appropriate provisions of Chapter 373, F.S., and Sections 40E-1.6107(1) and (2), and 40E-4.351(1), (2), and (4), F.A.C.

All specifications and special and limiting/general conditions attendant to the original Permit, unless specifically rescinded by this or previous modifications, remain in effect.

This Permit Modification shall be subject to the General Conditions set forth in Rule 40E-4.381, F.A.C., unless waived or modified by the Governing Board. The Application, and Environmental Resource Permit Staff Review Summary of the Application, including all conditions, and all plans and specifications incorporated by reference, are a part of this Permit Modification. All activities authorized by this Permit Modification shall be implemented as set forth in the plans, specifications, and performance criteria as set forth and incorporated in the Environmental Resource Permit Staff Review Summary. Within 30 days after completion of construction of the permitted activity, the Permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual, pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.361 and 40E-4.381, F.A.C.

In the event the property is sold or otherwise conveyed, the Permittee will remain liable for compliance with this Permit until transfer is approved by the District pursuant to Rule 40E-1.6107, F.A.C.

SPECIAL AND GENERAL CONDITIONS ARE AS FOLLOWS:  
SEE PAGES 2-5 OF 7 (32 SPECIAL CONDITIONS).  
SEE PAGES 6-7 OF 7 (19 GENERAL CONDITIONS).

PERMIT MODIFICATION APPROVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

FILED WITH THE CLERK OF THE  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

ON 4-27-99  
BY [Signature]  
DEPUTY CLERK

BY [Signature]  
ASSISTANT SECRETARY

SPECIAL CONDITIONS

*2 = Aerial Construction - Development  
C = City of West Palm Beach  
Responsibility*

- 1. MINIMUM BUILDING FLOOR ELEVATION: 21 FEET NGVD.
- 2. MINIMUM ROAD CROWN ELEVATION: 19 FEET NGVD.
- 3. THE PERMITTEE SHALL BE RESPONSIBLE FOR THE CORRECTION OF ANY EROSION, SHOALING OR WATER QUALITY PROBLEMS THAT RESULT FROM THE CONSTRUCTION OR OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM.
- 4. MEASURES SHALL BE TAKEN DURING CONSTRUCTION TO INSURE THAT SEDIMENTATION AND/OR TURBIDITY PROBLEMS ARE NOT CREATED IN THE RECEIVING WATER.
- 5. THE DISTRICT RESERVES THE RIGHT TO REQUIRE THAT ADDITIONAL WATER QUALITY TREATMENT METHODS BE INCORPORATED INTO THE DRAINAGE SYSTEM IF SUCH MEASURES ARE SHOWN TO BE NECESSARY.
- 6. LAKE SIDE SLOPES SHALL BE NO STEEPER THAN 4:1 (HORIZONTAL:VERTICAL) TO A DEPTH OF TWO FEET BELOW THE CONTROL ELEVATION. SIDE SLOPES SHALL BE NURTURED OR PLANTED FROM 2 FEET BELOW TO 1 FOOT ABOVE CONTROL ELEVATION TO INSURE VEGETATIVE GROWTH.
- 7. FACILITIES OTHER THAN THOSE STATED HEREIN SHALL NOT BE CONSTRUCTED WITHOUT AN APPROVED MODIFICATION OF THIS PERMIT.
- 8. ALL SPECIAL CONDITIONS PREVIOUSLY STIPULATED BY PERMIT NUMBER 50-04120-P REMAIN IN EFFECT UNLESS OTHERWISE REVISED AND SHALL APPLY TO THIS MODIFICATION.
- 9. PRIOR TO MARCH 15, 1999, THE PERMITTEE SHALL PROVIDE THE DISTRICT WITH SATISFACTORY EVIDENCE OF A DISCLOSURE STATEMENT WHICH INFORMS PROSPECTIVE PURCHASERS THAT THE WATER LEVELS IN THE PROJECT'S LAKE MAY DECLINE SIGNIFICANTLY AT CERTAIN TIMES AS A RESULT OF THE WELLFIELD PUMPAGE.
- 10. ENDANGERED SPECIES, THREATENED SPECIES, OR SPECIES OF SPECIAL CONCERN HAVE BEEN OBSERVED ONSITE AND/OR THE PROJECT CONTAINS SUITABLE HABITAT FOR THESE SPECIES. IT SHALL BE THE PERMITTEE'S RESPONSIBILITY TO COORDINATE WITH THE FLORIDA GAME AND FRESH WATER FISH COMMISSION AND/OR U.S. FISH AND WILDLIFE SERVICE FOR APPROPRIATE GUIDANCE, RECOMMENDATIONS, AND/OR NECESSARY PERMITS TO AVOID IMPACTS TO LISTED SPECIES.
- 11. SILT FENCES, HAY BALES OR OTHER SUCH SEDIMENT CONTROL MEASURES SHALL BE UTILIZED DURING CONSTRUCTION. THE PERMITTEE SHALL NOTIFY THE SFWMD'S COMPLIANCE STAFF UPON COMPLETION OF FENCING. FENCING OR OTHER SELECTED SEDIMENT CONTROL MEASURES SHALL BE INSTALLED AT THE BASE OF THE PERIMETER BERM (WETLAND SIDE) TO BE CONSTRUCTED AROUND THE DEVELOPMENT SITE. THE BERM AND ASSOCIATED FENCING SHALL BE CONSTRUCTED PRIOR TO ANY EXCAVATION, FILLING OR GRADING OF THE DEVELOPMENT SITE. THIS BERM SHALL BE STABILIZED AND VEGETATED UPON COMPLETION OF CONSTRUCTION AND PRIOR TO REMOVAL OF FENCING OR OTHER SEDIMENT CONTROL BARRIERS.
- 12. ALL EXCAVATION ASSOCIATED WITH THE CONSTRUCTION OF THE SURFACE WATER MANAGEMENT SYSTEM SHALL BE MAINTAINED A MINIMUM OF 300 FEET FROM THE EDGE OF OFFSITE WETLANDS OR WETLANDS CONTAINED IN THE PRESERVE/MITIGATION AREA.
- 13. THIS PERMIT DOES NOT CONVEY CONCEPTUAL APPROVAL FOR THE ALIGNMENT OR CONSTRUCTION OF JOG ROAD BEYOND THE DESIGN LIMITS SHOWN IN EXHIBIT 2.
- 14. A LETTER OF CREDIT IN THE AMOUNT OF ONE MILLION ONE HUNDRED AND NINETY THREE THOUSAND FIVE HUNDRED DOLLARS (\$1,193,500.00) SHALL BE OBTAINED AND A COPY SUBMITTED TO SFWMD COMPLIANCE STAFF BY GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE WITHIN 30 DAYS OF PERMIT ISSUANCE AND PRIOR TO ANY DREDGE AND FILL ACTIVITIES IN WETLANDS. THIS LETTER OF CREDIT SHALL CONFORM WITH THE DRAFT FORM ATTACHED TO THIS PERMIT AS EXHIBIT E4.
- 15. THE CITY OF WEST PALM BEACH SHALL SUBMIT TO THE SFWMD COMPLIANCE STAFF COPIES OF ALL PERMIT APPLICATIONS SUBMITTED TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR ACTIVITIES RELATED TO THE DISCHARGE OR MANAGEMENT OF RE-USE WATER THAT COULD POTENTIALLY IMPACT THE PERMITTED, ON-SITE MITIGATION AREA.
- 16. AN ON-SITE MITIGATION PROGRAM SHALL BE IMPLEMENTED IN ACCORDANCE WITH EXHIBITS E1 AND E2. GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE SHALL RESTORE/PRESERVE 33.9 ACRES OF WETLANDS, ENHANCE/PRESERVE 31.7 ACRES OF WETLANDS, AND ENHANCE/PRESERVE 89.4 ACRES OF UPLANDS CONTAINED WITHIN A 155 ACRE PRESERVE/MITIGATION AREA SHOWN ON EXHIBIT E1. THE RESTRICTIVE COVENANTS AND LEGAL DESCRIPTION INCLUDED ON EXHIBIT E3 SHALL BE RECORDED BY THE CITY OF WEST PALM BEACH AGAINST THE EXISTING DEED FOR THIS PROPERTY. A COPY OF THE RECORDED DOCUMENT SHALL BE SUBMITTED TO THE SFWMD'S COMPLIANCE STAFF WITHIN 30 DAYS OF PERMIT ISSUANCE.
- 17. ALL HYDROLOGIC ENHANCEMENT ACTIVITIES ASSOCIATED WITH THE ON-SITE PRESERVE/MITIGATION AREA, INCLUDING PLACEMENT OF IMPERMEABLE BARRIERS, DITCH BACKFILLING, BERM CONSTRUCTION ON THE EAST SIDE

OF THE PRESERVE/MITIGATION AREA. THE EXCAVATION OF THE SIX (6) WETLAND FLOW-WAYS SHOWN IN THE MITIGATION PLAN, AND ROAD REMOVAL/RE-GRADING SHALL BE COMPLETED PRIOR TO OR SIMULTANEOUS WITH PLANTING. THE IMPERMEABLE BARRIER SHALL EXTEND TO THE DEPTH OF THE TURNPIKE DITCH, AS INDICATED ON EXHIBIT 2

18. AN ON-SITE MITIGATION, MONITORING AND MAINTENANCE PROGRAM SHALL BE IMPLEMENTED IN ACCORDANCE WITH EXHIBIT E5. THE MONITORING PROGRAM CONDUCTED BY GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE SHALL EXTEND FOR A PERIOD OF FIVE (5) YEARS WITH SEMI-ANNUAL MONITORING EVENTS AND ANNUAL REPORTS SUBMITTED TO SFWMD COMPLIANCE STAFF. AT THE END OF THE SECOND YEAR OF MONITORING, ALL RESTORATION AND ENHANCEMENT AREAS, INCLUDING FLOW-WAYS, SHALL ACHIEVE AN 80 PERCENT COVERAGE OF DESTROYABLE OBLIGATE AND FACULTATIVE WETLAND SPECIES (WETLAND AREAS) AND DESIRABLE UPLAND AND TRANSITIONAL SPECIES (UPLAND AREAS). AT NO TIME SHALL THERE BE MORE THAN 20 PERCENT MORTALITY OF EXISTING UPLAND TREE SPECIES IN UPLAND AREAS. UPLAND AREAS SHALL, AT ALL TIMES, CONTAIN MORE THAN 50 PERCENT COVERAGE OF UPLAND AND FACULTATIVE VEGETATION. IF THE REQUIRED COVERAGE IS NOT OBTAINED AFTER TWO (2) YEARS, ADDITIONAL PLANTING SHALL BE CONDUCTED TO ACHIEVE REQUIRED COVERAGE LEVELS OR MODIFICATIONS SHALL BE MADE TO THE CITY'S WASTEWATER RE-USE DELIVERY SYSTEM. THE LANDOWNERS, GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE, SHALL BE RESPONSIBLE FOR ALL MAINTENANCE AND MONITORING FOR THE INITIAL FIVE (5) YEAR MONITORING PERIOD. THE CITY OF WEST PALM BEACH SHALL BE RESPONSIBLE FOR PERPETUAL MAINTENANCE (AFTER FIVE (5) YEARS), AS WELL AS LONG-TERM WATER LEVEL MONITORING.
19. A MAINTENANCE PROGRAM SHALL BE IMPLEMENTED FOR THE ON-SITE PRESERVE/MITIGATION AND BUFFER AREAS IN ACCORDANCE WITH EXHIBIT E5. MAINTENANCE SHALL BE CONDUCTED BY GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE ON A SEMI-ANNUAL BASIS FOR THE FIRST FIVE (5) YEARS, UNLESS EXOTIC AND/OR NUISANCE VEGETATION COVERAGE EXCEEDS FIVE (5) PERCENT AT ANY TIME. IN WHICH CASE, SUCH VEGETATION SHALL BE REDUCED TO A COVERAGE LEVEL OF ZERO (0) PERCENT FOR EXOTICS AND FIVE (5) PERCENT FOR NUISANCE SPECIES. AFTER FIVE (5) YEARS, THE CITY SHALL MAINTAIN ALL MITIGATION AND WETLAND BUFFER AREAS SO THAT EXOTIC AND/OR NUISANCE VEGETATION SHALL NOT EXCEED FIVE (5) PERCENT COVERAGE AT ANY TIME. A ZERO (0) PERCENT COVERAGE LEVEL FOR EXOTIC VEGETATION SHALL BE ACHIEVED IMMEDIATELY FOLLOWING A MAINTENANCE EVENT. NUISANCE VEGETATION SHALL INCLUDE ANY SPECIES THAT BECOMES ESTABLISHED TO THE DETRIMENT OR EXCLUSION OF DESIRABLE NATIVE VEGETATION. SUCH SPECIES SHALL INCLUDE, BUT ARE NOT LIMITED TO, CATTAIL, PRIMROSE WILLOW, CAROLINA WILLOW, WATER LETTUCE, DUCKWEED, ALLIGATOR-WEED, SALVINIA, AZOLLA, TORPEDO GRASS, FILAMENTOUS ALGAE AND SCIRPUS CUBENSIS. EXOTIC VEGETATION SHALL INCLUDE THOSE SPECIES IDENTIFIED IN THE FLORIDA EXOTIC PEST PLANT COUNCIL'S CATEGORY I LIST
20. IN THE EVENT THAT THE INTRODUCTION OF RE-USE WATER INTO THE ON-SITE MITIGATION AREA RESULTS IN THE ESTABLISHMENT OF NUISANCE VEGETATION THAT CAUSES AN IMBALANCE IN THE NATURAL POPULATION OF FLORA OR FAUNA, AS DETERMINED BY THE DISTRICT'S GOVERNING BOARD AND BASED UPON THE MAINTENANCE AND MONITORING REQUIREMENTS OF THIS PERMIT, CORRECTIVE ACTION SHALL BE TAKEN BY THE CITY, INCLUDING BUT NOT LIMITED TO, ADDITIONAL TREATMENT OF RE-USE WATER, MODIFIED MANAGEMENT OF ITS DISTRIBUTION OR DISCONTINUATION OF ITS APPLICATION WITHIN THE PRESERVE/MITIGATION AREA. FOR THE PURPOSE OF THIS CONDITION, AN IMBALANCE OF FLORA OR FAUNA SHALL GENERALLY BE DEFINED AS THE CHRONIC EXCEEDANCE OF THE FIVE (5) PERCENT COVERAGE BY EXOTIC AND NUISANCE SPECIES THAT CANNOT BE PRACTICALLY ACHIEVED AND MAINTAINED THROUGH CONVENTIONAL MEANS OF EXOTIC AND NUISANCE VEGETATION CONTROL.
21. CONTINUOUS WATER LEVEL MONITORING WITHIN THE ON-SITE PRESERVE/MITIGATION AREA SHALL BE CONDUCTED BY THE CITY OF WEST PALM BEACH AND SHALL BE INCLUDED IN THE ANNUAL MONITORING REPORTS REFERENCED IN SPECIAL CONDITION 24. WATER LEVELS WITHIN THE MITIGATION AREA SHALL NOT EXCEED EIGHT (8) INCHES ABOVE AMBIENT LEVELS, AS DETERMINED FROM A TARGET HYDROGRAPH FOR THE MITIGATION AREA. A HYDROGRAPH FROM THE CITY'S MONITORING STATION WRSW-5 (SEE EXHIBIT E7) WILL BE USED AS THE TARGET HYDROGRAPH UNTIL A SITE-SPECIFIC HYDROGRAPH IS ESTABLISHED (PRIOR TO RECLAIMED WATER APPLICATION AND AFTER HYDROLOGIC IMPROVEMENTS ARE MADE, AS REQUIRED BY THIS PERMIT). A SITE-SPECIFIC HYDROGRAPH SHALL BE ESTABLISHED OVER A ONE (1) YEAR PERIOD OF CONTINUOUS WATER LEVEL RECORDING AT TWO (2) DEDICATED MONITORING STATIONS. AFTER ESTABLISHMENT OF THE SITE-SPECIFIC HYDROGRAPHS, THE TWO (2) MONITORING STATIONS WILL BE INCORPORATED INTO THE CITY'S MONITORING NETWORK THAT WILL PROVIDE CONTINUOUS REAL-TIME FEEDBACK FROM THE MONITORING STATIONS TO THE CITY'S UTILITY OPERATIONS STAFF. THE OPERATIONAL DATA WILL BE CONTINUOUSLY FED INTO AN EXPERT SYSTEM THAT WILL PROVIDE DECISIONS REGARDING OPERATIONAL MANAGEMENT OF WETLANDS TO PROVIDE QUICK RESPONSE TO NATURAL AND MAN-MADE INFLUENCES.
- IF WATER LEVELS RISE ABOVE THE EIGHT (8) INCH CRITERIA AT ANY TIME (EXCEPT AS A RESULT OF A MAJOR STORM EVENT), THE CITY WILL IMPLEMENT ONE OR MORE OF THE FOLLOWING OPERATIONAL/MANAGEMENT OPTIONS TO LOWER THE WATER LEVELS TO THE TARGET HYDROGRAPH LEVEL WITHIN 48 HOURS.
1. TURN OFF THE RE-USE WATER PUMPS FROM THE ADVANCED WASTEWATER TREATMENT FACILITY OR DIVERT THE RE-USE WATER TO THE EXISTING DEEP INJECTION WELLS. THE DEEP INJECTION WELL SYSTEM PROVIDES 100% BACKUP FOR WET WEATHER MANAGEMENT OF THE FACILITY.
  2. INCREASE THE RATE OF WETLAND SURFACE WATER LEVEL CONVEYANCE FROM THE RE-USE SITE TO THE CITY'S STANDBY WELLFIELD.

INCREASE THE RATE OF PUMPING FROM THE CITY'S STANDBY WELLFIELD

WATER LEVEL MONITORING CONDUCTED BY THE CITY SHALL BE INCORPORATED INTO THE ANNUAL MONITORING REPORTS REQUIRED BY SPECIAL CONDITION 24. MONITORING REPORTS SHALL INCLUDE THE LOCATION OF THE WATER LEVEL MONITORING STATIONS IN THE MITIGATION AREA, ALONG WITH THE NEW TARGET HYDROGRAPHS WHEN THEY ARE COMPLETED. AFTER FIVE (5) YEARS THE CITY SHALL ASSUME RESPONSIBILITY FOR ANNUAL REPORT SUBMITTAL WHICH REPORTS SHALL INCLUDE A COMPARISON OF THE ACTUAL HYDROGRAPH FOR THE PREVIOUS YEAR WITH THE TARGET HYDROGRAPH. ANY REVISION OF THE TARGET HYDROGRAPH SHALL REQUIRE A MODIFICATION OF THIS PERMIT.

- 22. THE CITY OF WEST PALM BEACH SHALL NOT BE RESPONSIBLE FOR ANY PORTION OF THE GOLDEN WEST DEVELOPMENT OUTSIDE OF THE ON-SITE PRESERVE/MITIGATION AREA.
- 23. PRIOR TO THE INITIATION OF ANY WITHDRAWAL OF WATER (IRRIGATION, DEWATERING, PUBLIC WATER SUPPLY, ETC.), IT WILL BE NECESSARY TO APPLY FOR A WATER USE PERMIT. THE PERMITTEE IS CAUTIONED THAT A MINIMUM OF 90 DAYS IS REQUIRED FOR CONSIDERATION OF A COMPLETE WATER USE PERMIT APPLICATION. THE PERMITTEE IS ALSO CAUTIONED THAT THE ISSUANCE OF AN ENVIRONMENTAL RESOURCE PERMIT SHALL NOT BE CONSTRUED TO BE A GUARANTEE THAT WATER WILL BE AVAILABLE.
- 24. ACTIVITIES ASSOCIATED WITH IMPLEMENTATION OF THE WETLAND MITIGATION PLAN SHALL BE IN ACCORDANCE WITH THE FOLLOWING WORK SCHEDULE. ANY DEVIATION FROM THESE TIME FRAMES SHALL REQUIRE FORMAL SFWMD APPROVAL. SUCH REQUESTS MUST BE MADE IN WRITING AND SHALL INCLUDE (1) REASON FOR THE MODIFICATION; (2) PROPOSED START/FINISH DATES; AND (3) PROGRESS REPORT ON THE STATUS OF THE EXISTING MITIGATION EFFORTS.

| COMPLETION DATE    | ACTIVITY  |     |
|--------------------|---|-----|
| MAY 15, 1999       | SUBMIT COPY OF RECORDED RESTRICTIVE COVENANTS                   | A   |
| MAY 15, 1999       | SUBMIT COPY OF EXECUTED LETTER OF CREDIT                        | A   |
| MAY 15, 1999       | REMIT PAYMENT TO PALM BEACH COUNTY FOR UNIT 11                  | A   |
| JUNE 15, 1999      | SUBMIT VERIFICATION OF PAYMENT TO PALM BEACH COUNTY FOR UNIT 11 | A   |
| AUGUST 31, 1999    | PLACE FILL TO STOP FLOWS FROM DOT LAKE                          | A   |
| AUGUST 31, 1999    | REMOVE ROAD IN SE CORNER OF MITIGATION AREA                     | A   |
| SEPTEMBER 30, 1999 | INSTALL IMPERMEABLE BARRIER                                     | A   |
| OCTOBER 31, 1999   | EXCAVATE INTERNAL FLOWWAYS IN MITIGATION AREA                   | A   |
| NOVEMBER 30, 1999  | CONSTRUCT BERM ON EAST SIDE OF MITIGATION AREA                  | A/C |
| NOVEMBER 30, 1999  | EXCAVATE FLOWWAY ON EAST SIDE OF MITIGATION AREA                | A/C |
| NOVEMBER 30, 1999  | ERADICATE EXOTIC/NUISANCE VEGETATION                            | A/C |
| NOVEMBER 30, 1999  | PLANT MITIGATION AREA   | A/C |
| NOVEMBER 30, 1999  | PLANT WETLAND BUFFER AREAS                                      | A/C |
| NOVEMBER 30, 1999  | INSTALL WATER LEVEL MONITORING SYSTEM FOR MIT. AREA             | A/C |
| DECEMBER 31, 1999  | SUBMIT TIME ZERO MONITORING REPORT                              | A   |
| FEBRUARY 28, 2001  | SUBMIT FIRST MONITORING REPORT                                  | A   |
| MARCH 31, 2001     | SUBMIT TARGET HYDROGRAPH FOR WATER LEVEL MONITORING             | A   |
| FEBRUARY 28, 2002  | SUBMIT SECOND MONITORING REPORT                                 | A   |
| FEBRUARY 28, 2003  | SUBMIT THIRD MONITORING REPORT                                  | A   |
| FEBRUARY 28, 2004  | SUBMIT FOURTH MONITORING REPORT                                 | A   |
| FEBRUARY 28, 2005  | SUBMIT FIFTH MONITORING REPORT                                  | A   |

- 25. ENDANGERED SPECIES, THREATENED SPECIES, OR SPECIES OF SPECIAL CONCERN HAVE BEEN OBSERVED ONSITE AND/OR THE PROJECT CONTAINS SUITABLE HABITAT FOR THESE SPECIES. IT SHALL BE THE PERMITTEE'S RESPONSIBILITY TO COORDINATE WITH THE FLORIDA GAME AND FRESHWATER FISH COMMISSION AND/OR U.S. FISH AND WILDLIFE SERVICE FOR APPROPRIATE GUIDANCE, RECOMMENDATIONS, AND/OR NECESSARY PERMITS TO AVOID IMPACTS TO LISTED SPECIES.
- 26. THE PERMITTEE SHALL REMIT TO PALM BEACH COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT WITHIN THIRTY (30) DAYS OF PERMIT ISSUANCE AND PRIOR TO COMMENCEMENT OF ANY WORK INCURRING IMPACTS TO ONSITE WETLANDS, A CHECK INTENDED FOR THE ACQUISITION, ENHANCEMENT AND LONG-TERM MANAGEMENT OF 30 ACRES LOCATED IN THE UNIT 11 MITIGATION AREA. IN ADDITION, NO IMPACTS SHALL OCCUR WITHIN THE WETLAND AREA UNTIL EVIDENCE HAS BEEN PROVIDED TO THE DISTRICT STAFF THAT THE MITIGATION PAYMENT HAS BEEN MADE TO PALM BEACH COUNTY. THE CHECK SHALL BE IN THE AMOUNT OF \$289,500.00 AND SHALL BE PAYABLE TO THE PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS.
- 27. THE PERMITTEE SHALL SUBMIT TO THE DISTRICT'S POST PERMIT COMPLIANCE STAFF WITHIN THIRTY (30) DAYS OF PAYMENT, VERIFICATION OF PAYMENT ACCEPTANCE BY PALM BEACH COUNTY FOR THE ACQUISITION, ENHANCEMENT, AND LONG TERM MANAGEMENT OF 30 ACRES LOCATED IN UNIT 11, PALM BEACH COUNTY.

IF FOR ANY REASON PALM BEACH COUNTY IS UNABLE TO COMPLETE THE INTENDED ACQUISITION, ENHANCEMENT AND LONG-TERM MANAGEMENT OF LANDS WITHIN UNIT 11, THE PERMITTEE SHALL SUBMIT AN ACCEPTABLE ALTERNATIVE MITIGATION PLAN TO THE DISTRICT WITHIN 60 DAYS OF SUCH NOTICE BY THE DISTRICT. THE PERMITTEE IS

ULTIMATELY RESPONSIBLE FOR ALL MITIGATION REQUIRED IN THIS PERMIT, INCLUDING MITIGATION WITHIN UNIT 11.

29. DISCHARGE FACILITIES:

1-1400 GPM PUMP  
PUMP-ON AT ELEV. 16.05' NGVD  
PUMP-OFF AT ELEV. 15.50' NGVD

1-2100 GPM PUMP  
PUMP-ON AT ELEV. 16.20' NGVD  
PUMP-OFF AT ELEV. 16.10' NGVD

3500 LF OF 1.33' DIP PRESSURE PIPE

RECEIVING BODY: C-17 CANAL THROUGH EPB-11 CANAL SYSTEM

CONTROL ELEV.: 15.50' NGVD

30. GRASS SEED & MULCH, OR SOD, SHALL BE INSTALLED AND MAINTAINED ON ALL DISTURBED AREAS WITHIN 48 HOURS OF COMPLETING FINAL GRADE, AND AT OTHER TIMES, AS NECESSARY, TO PREVENT EROSION, SEDIMENTATION OR TURBID DISCHARGES INTO RECEIVING WATERS AND/OR ADJACENT WETLANDS. A
31. AN EXECUTED COPY OF THE DRAINAGE AGREEMENT, ADOPTED AND PASSED ON AUGUST 10TH, 1998, BETWEEN THE CITY OF WEST PALM BEACH, NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT, GOLDEN WEST LIMITED PARTNERSHIP AND HAE JOINT VENTURE HAS BEEN INCLUDED WITH THE ORIGINAL PERMIT FILE (APPLICATION NO. 960703-16).
32. OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM SHALL BE THE RESPONSIBILITY OF THE BURGESS PROPERTY MASTER ASSOCIATION, INC. OPERATION OF THE PUMP STATION AND ITS RELATED FACILITIES SHALL BE THE RESPONSIBILITY OF THE NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT.

## GENERAL CONDITIONS

1. ALL ACTIVITIES AUTHORIZED BY THIS PERMIT SHALL BE IMPLEMENTED AS SET FORTH IN THE PLANS, SPECIFICATIONS AND PERFORMANCE CRITERIA AS APPROVED BY THIS PERMIT. ANY DEVIATION FROM THE PERMITTED ACTIVITY AND THE CONDITIONS FOR UNDERTAKING THAT ACTIVITY SHALL CONSTITUTE A VIOLATION OF THIS PERMIT AND PART IV, CHAPTER 373, F.S.
2. THIS PERMIT OR A COPY THEREOF, COMPLETE WITH ALL CONDITIONS, ATTACHMENTS, EXHIBITS, AND MODIFICATIONS SHALL BE KEPT AT THE WORK SITE OF THE PERMITTED ACTIVITY. THE COMPLETE PERMIT SHALL BE AVAILABLE FOR REVIEW AT THE WORK SITE UPON REQUEST BY THE DISTRICT STAFF. THE PERMITTEE SHALL REQUIRE THE CONTRACTOR TO REVIEW THE COMPLETE PERMIT PRIOR TO COMMENCEMENT OF THE ACTIVITY AUTHORIZED BY THIS PERMIT.
3. ACTIVITIES APPROVED BY THIS PERMIT SHALL BE CONDUCTED IN A MANNER WHICH DOES NOT CAUSE VIOLATIONS OF STATE WATER QUALITY STANDARDS. THE PERMITTEE SHALL IMPLEMENT BEST MANAGEMENT PRACTICES FOR EROSION AND POLLUTION CONTROL TO PREVENT VIOLATION OF STATE WATER QUALITY STANDARDS. TEMPORARY EROSION CONTROL SHALL BE IMPLEMENTED PRIOR TO AND DURING CONSTRUCTION, AND PERMANENT CONTROL MEASURES SHALL BE COMPLETED WITHIN 7 DAYS OF ANY CONSTRUCTION ACTIVITY. TURBIDITY BARRIERS SHALL BE INSTALLED AND MAINTAINED AT ALL LOCATIONS WHERE THE POSSIBILITY OF TRANSFERRING SUSPENDED SOLIDS INTO THE RECEIVING WATERBODY EXISTS DUE TO THE PERMITTED WORK. TURBIDITY BARRIERS SHALL REMAIN IN PLACE AT ALL LOCATIONS UNTIL CONSTRUCTION IS COMPLETED AND SOILS ARE STABILIZED AND VEGETATION HAS BEEN ESTABLISHED. ALL PRACTICES SHALL BE IN ACCORDANCE WITH THE GUIDELINES AND SPECIFICATIONS DESCRIBED IN CHAPTER 6 OF THE FLORIDA LAND DEVELOPMENT MANUAL: A GUIDE TO SOUND LAND AND WATER MANAGEMENT (DEPARTMENT OF ENVIRONMENTAL REGULATION, 1988), INCORPORATED BY REFERENCE IN RULE 40E-4.091, F.A.C. UNLESS A PROJECT-SPECIFIC EROSION AND SEDIMENT CONTROL PLAN IS APPROVED AS PART OF THE PERMIT. THEREAFTER THE PERMITTEE SHALL BE RESPONSIBLE FOR THE REMOVAL OF THE BARRIERS. THE PERMITTEE SHALL CORRECT ANY EROSION OR SHOALING THAT CAUSES ADVERSE IMPACTS TO THE WATER RESOURCES.
4. THE PERMITTEE SHALL NOTIFY THE DISTRICT OF THE ANTICIPATED CONSTRUCTION START DATE WITHIN 30 DAYS OF THE DATE THAT THIS PERMIT IS ISSUED, AT LEAST 48 HOURS PRIOR TO COMMENCEMENT OF ACTIVITY AUTHORIZED BY THIS PERMIT. THE PERMITTEE SHALL SUBMIT TO THE DISTRICT AN ENVIRONMENTAL RESOURCE PERMIT CONSTRUCTION COMMENCEMENT NOTICE FORM NO. 0960 INDICATING THE ACTUAL START DATE AND THE EXPECTED COMPLETION DATE.
5. WHEN THE DURATION OF CONSTRUCTION WILL EXCEED ONE YEAR, THE PERMITTEE SHALL SUBMIT CONSTRUCTION STATUS REPORTS TO THE DISTRICT ON AN ANNUAL BASIS UTILIZING AN ANNUAL STATUS REPORT FORM. STATUS REPORT FORMS SHALL BE SUBMITTED THE FOLLOWING JUNE OF EACH YEAR.
6. WITHIN 30 DAYS AFTER COMPLETION OF CONSTRUCTION OF THE PERMITTED ACTIVITY, THE PERMITTEE SHALL SUBMIT A WRITTEN STATEMENT OF COMPLETION AND CERTIFICATION BY A REGISTERED PROFESSIONAL ENGINEER OR OTHER APPROPRIATE INDIVIDUAL AS AUTHORIZED BY LAW, UTILIZING THE SUPPLIED ENVIRONMENTAL RESOURCE PERMIT CONSTRUCTION COMPLETION/CONSTRUCTION CERTIFICATION FORM NO 0881. THE STATEMENT OF COMPLETION AND CERTIFICATION SHALL BE BASED ON ONSITE OBSERVATION OF CONSTRUCTION OR REVIEW OF ASBUILT DRAWINGS FOR THE PURPOSE OF DETERMINING IF THE WORK WAS COMPLETED IN COMPLIANCE WITH PERMITTED PLANS AND SPECIFICATIONS. THIS SUBMITTAL SHALL SERVE TO NOTIFY THE DISTRICT THAT THE SYSTEM IS READY FOR INSPECTION. ADDITIONALLY, IF DEVIATION FROM THE APPROVED DRAWINGS ARE DISCOVERED DURING THE CERTIFICATION PROCESS, THE CERTIFICATION MUST BE ACCOMPANIED BY A COPY OF THE APPROVED PERMIT DRAWINGS WITH DEVIATIONS NOTED, BOTH THE ORIGINAL AND REVISED SPECIFICATIONS MUST BE CLEARLY SHOWN. THE PLANS MUST BE CLEARLY LABELED AS "ASBUILT" OR "RECORD" DRAWING. ALL SURVEYED DIMENSIONS AND ELEVATIONS SHALL BE CERTIFIED BY A REGISTERED SURVEYOR.
7. THE OPERATION PHASE OF THIS PERMIT SHALL NOT BECOME EFFECTIVE, UNTIL THE PERMITTEE HAS COMPLIED WITH THE REQUIREMENTS OF CONDITION (6) ABOVE, HAS SUBMITTED A REQUEST FOR CONVERSION OF ENVIRONMENTAL RESOURCE PERMIT FROM CONSTRUCTION PHASE TO OPERATION PHASE, FORM NO. 0920; THE DISTRICT DETERMINES THE SYSTEM TO BE IN COMPLIANCE WITH THE PERMITTED PLANS AND SPECIFICATIONS; AND THE ENTITY APPROVED BY THE DISTRICT IN ACCORDANCE WITH SECTIONS 9.0 AND 10.0 OF THE BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS WITHIN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT - AUGUST 1995, ACCEPTS RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF THE SYSTEM. THE PERMIT SHALL NOT BE TRANSFERRED TO SUCH APPROVED OPERATION AND MAINTENANCE ENTITY UNTIL THE OPERATION PHASE OF THE PERMIT BECOMES EFFECTIVE. FOLLOWING INSPECTION AND APPROVAL OF THE PERMITTED SYSTEM BY THE DISTRICT, THE PERMITTEE SHALL INITIATE TRANSFER OF THE PERMIT TO THE APPROVED RESPONSIBLE OPERATING ENTITY IF DIFFERENT FROM THE PERMITTEE. UNTIL THE PERMIT IS TRANSFERRED PURSUANT TO SECTION 40E-1.6107, F.A.C., THE PERMITTEE SHALL BE LIABLE FOR COMPLIANCE WITH THE TERMS OF THE PERMIT.
8. EACH PHASE OR INDEPENDENT PORTION OF THE PERMITTED SYSTEM MUST BE COMPLETED IN ACCORDANCE WITH THE PERMITTED PLANS AND PERMIT CONDITIONS PRIOR TO THE INITIATION OF THE PERMITTED USE OF SITE INFRASTRUCTURE LOCATED WITHIN THE AREA SERVED BY THAT PORTION OR PHASE OF THE SYSTEM. EACH PHASE OR INDEPENDENT PORTION OF THE SYSTEM MUST BE COMPLETED IN ACCORDANCE WITH THE PERMITTED PLANS AND PERMIT CONDITIONS PRIOR TO TRANSFER OF RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF THE PHASE OR PORTION OF THE SYSTEM TO A LOCAL GOVERNMENT OR OTHER RESPONSIBLE ENTITY.

FOR THOSE SYSTEMS THAT WILL BE OPERATED OR MAINTAINED BY AN ENTITY THAT WILL REQUIRE AN EASEMENT OR DEED RESTRICTION IN ORDER TO ENABLE THAT ENTITY TO OPERATE OR MAINTAIN THE SYSTEM IN CONFORMANCE WITH THIS PERMIT. SUCH EASEMENT OR DEED RESTRICTION MUST BE RECORDED IN THE PUBLIC RECORDS AND SUBMITTED TO THE DISTRICT ALONG WITH ANY OTHER FINAL OPERATION AND MAINTENANCE DOCUMENTS REQUIRED BY SECTIONS 9.0 AND 10.0 OF THE BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS WITHIN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT - AUGUST 1995. PRIOR TO LOT OR UNIT SALES OR PRIOR TO THE COMPLETION OF THE SYSTEM, WHICHEVER OCCURS FIRST, OTHER DOCUMENTS CONCERNING THE ESTABLISHMENT AND AUTHORITY OF THE OPERATING ENTITY MUST BE FILED WITH THE SECRETARY OF STATE WHERE APPROPRIATE. FOR THOSE SYSTEMS WHICH ARE PROPOSED TO BE MAINTAINED BY THE COUNTY OR MUNICIPAL ENTITIES, FINAL OPERATION AND MAINTENANCE DOCUMENTS MUST BE RECEIVED BY THE DISTRICT WHEN MAINTENANCE AND OPERATION OF THE SYSTEM IS ACCEPTED BY THE LOCAL GOVERNMENT ENTITY. FAILURE TO SUBMIT THE APPROPRIATE FINAL DOCUMENTS WILL RESULT IN THE PERMITTEE REMAINING LIABLE FOR CARRYING OUT MAINTENANCE AND OPERATION OF THE PERMITTED SYSTEM AND ANY OTHER PERMIT CONDITIONS.

- J. SHOULD ANY OTHER REGULATORY AGENCY REQUIRE CHANGES TO THE PERMITTED SYSTEM, THE PERMITTEE SHALL NOTIFY THE DISTRICT IN WRITING OF THE CHANGES PRIOR TO IMPLEMENTATION SO THAT A DETERMINATION CAN BE MADE WHETHER A PERMIT MODIFICATION IS REQUIRED.
1. THIS PERMIT DOES NOT ELIMINATE THE NECESSITY TO OBTAIN ANY REQUIRED FEDERAL, STATE, LOCAL AND SPECIAL DISTRICT AUTHORIZATIONS PRIOR TO THE START OF ANY ACTIVITY APPROVED BY THIS PERMIT. THIS PERMIT DOES NOT CONVEY TO THE PERMITTEE OR CREATE IN THE PERMITTEE ANY PROPERTY RIGHT, OR ANY INTEREST IN REAL PROPERTY, NOR DOES IT AUTHORIZE ANY ENTRANCE UPON OR ACTIVITIES ON PROPERTY WHICH IS NOT OWNED OR CONTROLLED BY THE PERMITTEE, OR CONVEY ANY RIGHTS OR PRIVILEGES OTHER THAN THOSE SPECIFIED IN THE PERMIT AND CHAPTER 40E-4 OR CHAPTER 40E-40, F.A.C.
2. THE PERMITTEE IS HEREBY ADVISED THAT SECTION 253.77, F.S., STATES THAT A PERSON MAY NOT COMMENCE ANY EXCAVATION, CONSTRUCTION, OR OTHER ACTIVITY INVOLVING THE USE OF SOVEREIGN OR OTHER LANDS OF THE STATE, THE TITLE TO WHICH IS VESTED IN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND WITHOUT OBTAINING THE REQUIRED LEASE, LICENSE, EASEMENT, OR OTHER FORM OF CONSENT AUTHORIZING THE PROPOSED USE. THEREFORE, THE PERMITTEE IS RESPONSIBLE FOR OBTAINING ANY NECESSARY AUTHORIZATIONS FROM THE BOARD OF TRUSTEES PRIOR TO COMMENCING ACTIVITY ON SOVEREIGNTY LANDS OR OTHER STATE-OWNED LANDS.
3. THE PERMITTEE MUST OBTAIN A WATER USE PERMIT PRIOR TO CONSTRUCTION DEWATERING, UNLESS THE WORK QUALIFIES FOR A GENERAL PERMIT PURSUANT TO SUBSECTION 40E-20.302(4), F.A.C., ALSO KNOWN AS THE "NO NOTICE" RULE.
4. THE PERMITTEE SHALL HOLD AND SAVE THE DISTRICT HARMLESS FROM ANY AND ALL DAMAGES, CLAIMS, OR LIABILITIES WHICH MAY ARISE BY REASON OF THE CONSTRUCTION, ALTERATION, OPERATION, MAINTENANCE, REMOVAL, ABANDONMENT OR USE OF ANY SYSTEM AUTHORIZED BY THE PERMIT.
5. ANY DELINEATION OF THE EXTENT OF A WETLAND OR OTHER SURFACE WATER SUBMITTED AS PART OF THE PERMIT APPLICATION, INCLUDING PLANS OR OTHER SUPPORTING DOCUMENTATION, SHALL NOT BE CONSIDERED BINDING UNLESS A SPECIFIC CONDITION OF THIS PERMIT OR A FORMAL DETERMINATION UNDER SECTION 373.421(2), F.S., PROVIDES OTHERWISE.
6. THE PERMITTEE SHALL NOTIFY THE DISTRICT IN WRITING WITHIN 30 DAYS OF ANY SALE, CONVEYANCE, OR OTHER TRANSFER OF OWNERSHIP OR CONTROL OF A PERMITTED SYSTEM OR THE REAL PROPERTY ON WHICH THE PERMITTED SYSTEM IS LOCATED. ALL TRANSFERS OF OWNERSHIP OR TRANSFERS OF A PERMIT ARE SUBJECT TO THE REQUIREMENTS OF RULES 40E-1.6105 AND 40E-1.6107, F.A.C. THE PERMITTEE TRANSFERRING THE PERMIT SHALL REMAIN LIABLE FOR CORRECTIVE ACTIONS THAT MAY BE REQUIRED AS A RESULT OF ANY VIOLATIONS PRIOR TO THE SALE, CONVEYANCE OR OTHER TRANSFER OF THE SYSTEM.
17. UPON REASONABLE NOTICE TO THE PERMITTEE, DISTRICT AUTHORIZED STAFF WITH PROPER IDENTIFICATION SHALL HAVE PERMISSION TO ENTER, INSPECT, SAMPLE AND TEST THE SYSTEM TO INSURE CONFORMITY WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE PERMIT.
18. IF HISTORICAL OR ARCHAEOLOGICAL ARTIFACTS ARE DISCOVERED AT ANY TIME ON THE PROJECT SITE, THE PERMITTEE SHALL IMMEDIATELY NOTIFY THE APPROPRIATE DISTRICT SERVICE CENTER.
19. THE PERMITTEE SHALL IMMEDIATELY NOTIFY THE DISTRICT IN WRITING OF ANY PREVIOUSLY SUBMITTED INFORMATION THAT IS LATER DISCOVERED TO BE INACCURATE.



3

SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE  
STANDARD GENERAL PERMIT NO. 50-04120-P-02

m #0941

08/95

DATE ISSUED: July 29, 1999

PERMITTEE: PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS  
C/O 4152 W. BLUE HERON BOULEVARD  
SUITE 128  
RIVIERA BEACH, FL 33404

PROJECT DESCRIPTION: MODIFICATION OF A SURFACE WATER MANAGEMENT SYSTEM SERVING 30.91 ACRES OF HIGHWAY DEVELOPMENT KNOWN AS JOG ROAD NORTH OF OKEECHOBEE THROUGH HAMILTON BAY/MALLORY SQUARE.

PROJECT LOCATION: PALM BEACH COUNTY, SECTION 15 TWP 43S RGE 42E

PERMIT DURATION: Five years from the date issued to complete construction of the surface water management system as authorized herein. See attached Rule 40E-4.321, Florida Administrative Code.

This is to notify you of the District's agency action concerning Notice of Intent for Permit Application No. 981223-12, dated December 23, 1998. This action is taken pursuant to Rule 40E-1.603 and Chapter 40E-40, Florida Administrative Code (F.A.C.).

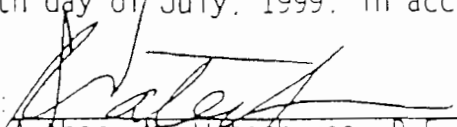
Based on the information provided, District rules have been adhered to and an Environmental Resource General Permit is in effect for this project subject to:

- 1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
- 2. the attached General Conditions.
- 3. the attached 11 Special Conditions, and
- 4. the attached 4 Exhibit(s).

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a "Notice of Rights" has been mailed to the Permittee (and the persons listed in the attached distribution list) no later than 5:00 p.m. on this 29th day of July, 1999, in accordance with Section 120.60(3), Florida Statutes.

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

CC TONYA W. SCOTT  
JUE W. WATSON  
EDWARD J. ...  
OLIVE ...

Certified Mail No. Z 532 993 189

Enclosures

## GENERAL CONDITIONS

1. ALL ACTIVITIES AUTHORIZED BY THIS PERMIT SHALL BE IMPLEMENTED AS SET FORTH IN THE PLANS, SPECIFICATIONS AND PERFORMANCE CRITERIA AS APPROVED BY THIS PERMIT. ANY DEVIATION FROM THE PERMITTED ACTIVITY AND THE CONDITIONS FOR UNDERTAKING THAT ACTIVITY SHALL CONSTITUTE A VIOLATION OF THIS PERMIT AND PART IV, CHAPTER 373, F.S.
2. THIS PERMIT OR A COPY THEREOF, COMPLETE WITH ALL CONDITIONS, ATTACHMENTS, EXHIBITS, AND MODIFICATIONS SHALL BE KEPT AT THE WORK SITE OF THE PERMITTED ACTIVITY. THE COMPLETE PERMIT SHALL BE AVAILABLE FOR REVIEW AT THE WORK SITE UPON REQUEST BY THE DISTRICT STAFF. THE PERMITTEE SHALL REQUIRE THE CONTRACTOR TO REVIEW THE COMPLETE PERMIT PRIOR TO COMMENCEMENT OF THE ACTIVITY AUTHORIZED BY THIS PERMIT.
3. ACTIVITIES APPROVED BY THIS PERMIT SHALL BE CONDUCTED IN A MANNER WHICH DOES NOT CAUSE VIOLATIONS OF STATE WATER QUALITY STANDARDS. THE PERMITTEE SHALL IMPLEMENT BEST MANAGEMENT PRACTICES FOR EROSION AND POLLUTION CONTROL TO PREVENT VIOLATION OF STATE WATER QUALITY STANDARDS. TEMPORARY EROSION CONTROL SHALL BE IMPLEMENTED PRIOR TO AND DURING CONSTRUCTION, AND PERMANENT CONTROL MEASURES SHALL BE COMPLETED WITHIN 7 DAYS OF ANY CONSTRUCTION ACTIVITY. TURBIDITY BARRIERS SHALL BE INSTALLED AND MAINTAINED AT ALL LOCATIONS WHERE THE POSSIBILITY OF TRANSFERRING SUSPENDED SOLIDS INTO THE RECEIVING WATERBODY EXISTS DUE TO THE PERMITTED WORK. TURBIDITY BARRIERS SHALL REMAIN IN PLACE AT ALL LOCATIONS UNTIL CONSTRUCTION IS COMPLETED AND SOILS ARE STABILIZED AND VEGETATION HAS BEEN ESTABLISHED. ALL PRACTICES SHALL BE IN ACCORDANCE WITH THE GUIDELINES AND SPECIFICATIONS DESCRIBED IN CHAPTER 6 OF THE FLORIDA LAND DEVELOPMENT MANUAL: A GUIDE TO SOUND LAND AND WATER MANAGEMENT (DEPARTMENT OF ENVIRONMENTAL REGULATION, 1988), INCORPORATED BY REFERENCE IN RULE 40E-4.091, F.A.C. UNLESS A PROJECT-SPECIFIC EROSION AND SEDIMENT CONTROL PLAN IS APPROVED AS PART OF THE PERMIT. THEREAFTER THE PERMITTEE SHALL BE RESPONSIBLE FOR THE REMOVAL OF THE BARRIERS. THE PERMITTEE SHALL CORRECT ANY EROSION OR SHOALING THAT CAUSES ADVERSE IMPACTS TO THE WATER RESOURCES.
4. THE PERMITTEE SHALL NOTIFY THE DISTRICT OF THE ANTICIPATED CONSTRUCTION START DATE WITHIN 30 DAYS OF THE DATE THAT THIS PERMIT IS ISSUED. AT LEAST 48 HOURS PRIOR TO COMMENCEMENT OF ACTIVITY AUTHORIZED BY THIS PERMIT, THE PERMITTEE SHALL SUBMIT TO THE DISTRICT AN ENVIRONMENTAL RESOURCE PERMIT CONSTRUCTION COMMENCEMENT NOTICE FORM NO. 0960 INDICATING THE ACTUAL START DATE AND THE EXPECTED COMPLETION DATE.
5. WHEN THE DURATION OF CONSTRUCTION WILL EXCEED ONE YEAR, THE PERMITTEE SHALL SUBMIT CONSTRUCTION STATUS REPORTS TO THE DISTRICT ON AN ANNUAL BASIS UTILIZING AN ANNUAL STATUS REPORT FORM. STATUS REPORT FORMS SHALL BE SUBMITTED THE FOLLOWING JUNE OF EACH YEAR.

6. WITHIN 30 DAYS AFTER COMPLETION OF CONSTRUCTION OF THE PERMITTED ACTIVITY, THE PERMITTEE SHALL SUBMIT A WRITTEN STATEMENT OF COMPLETION AND CERTIFICATION BY A REGISTERED PROFESSIONAL ENGINEER OR OTHER APPROPRIATE INDIVIDUAL AS AUTHORIZED BY LAW, UTILIZING THE SUPPLIED ENVIRONMENTAL RESOURCE PERMIT CONSTRUCTION COMPLETION/CONSTRUCTION CERTIFICATION FORM NO.0881. THE STATEMENT OF COMPLETION AND CERTIFICATION SHALL BE BASED ON ONSITE OBSERVATION OF CONSTRUCTION OR REVIEW OF ASBUILT DRAWINGS FOR THE PURPOSE OF DETERMINING IF THE WORK WAS COMPLETED IN COMPLIANCE WITH PERMITTED PLANS AND SPECIFICATIONS. THIS SUBMITTAL SHALL SERVE TO NOTIFY THE DISTRICT THAT THE SYSTEM IS READY FOR INSPECTION. ADDITIONALLY, IF DEVIATION FROM THE APPROVED DRAWINGS ARE DISCOVERED DURING THE CERTIFICATION PROCESS, THE CERTIFICATION MUST BE ACCOMPANIED BY A COPY OF THE APPROVED PERMIT DRAWINGS WITH DEVIATIONS NOTED. BOTH THE ORIGINAL AND REVISED SPECIFICATIONS MUST BE CLEARLY SHOWN. THE PLANS MUST BE CLEARLY LABELED AS "ASBUILT" OR "RECORD" DRAWING. ALL SURVEYED DIMENSIONS AND ELEVATIONS SHALL BE CERTIFIED BY A REGISTERED SURVEYOR.
7. THE OPERATION PHASE OF THIS PERMIT SHALL NOT BECOME EFFECTIVE: UNTIL THE PERMITTEE HAS COMPLIED WITH THE REQUIREMENTS OF CONDITION (6) ABOVE, HAS SUBMITTED A REQUEST FOR CONVERSION OF ENVIRONMENTAL RESOURCE PERMIT FROM CONSTRUCTION PHASE TO OPERATION PHASE, FORM NO.0920; THE DISTRICT DETERMINES THE SYSTEM TO BE IN COMPLIANCE WITH THE PERMITTED PLANS AND SPECIFICATIONS; AND THE ENTITY APPROVED BY THE DISTRICT IN ACCORDANCE WITH SECTIONS 9.0 AND 10.0 OF THE BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS WITHIN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT - AUGUST 1995, ACCEPTS RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF THE SYSTEM. THE PERMIT SHALL NOT BE TRANSFERRED TO SUCH APPROVED OPERATION AND MAINTENANCE ENTITY UNTIL THE OPERATION PHASE OF THE PERMIT BECOMES EFFECTIVE. FOLLOWING INSPECTION AND APPROVAL OF THE PERMITTED SYSTEM BY THE DISTRICT, THE PERMITTEE SHALL INITIATE TRANSFER OF THE PERMIT TO THE APPROVED RESPONSIBLE OPERATING ENTITY IF DIFFERENT FROM THE PERMITTEE. UNTIL THE PERMIT IS TRANSFERRED PURSUANT TO SECTION 40E-1.6107, F.A.C., THE PERMITTEE SHALL BE LIABLE FOR COMPLIANCE WITH THE TERMS OF THE PERMIT.
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9. FOR THOSE SYSTEMS THAT WILL BE OPERATED OR MAINTAINED BY AN ENTITY THAT WILL REQUIRE AN EASEMENT OR DEED RESTRICTION IN ORDER TO ENABLE THAT ENTITY TO OPERATE OR MAINTAIN THE SYSTEM IN CONFORMANCE WITH THIS PERMIT, SUCH EASEMENT OR DEED RESTRICTION MUST BE RECORDED IN THE PUBLIC RECORDS AND SUBMITTED TO THE DISTRICT ALONG WITH ANY OTHER FINAL OPERATION AND MAINTENANCE DOCUMENTS REQUIRED BY SECTIONS 9.0 AND 10.0 OF THE BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS WITHIN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT - AUGUST 1995, PRIOR TO LOT OR UNIT SALES OR PRIOR TO THE COMPLETION OF THE SYSTEM, WHICHEVER OCCURS FIRST. OTHER DOCUMENTS CONCERNING THE ESTABLISHMENT AND AUTHORITY OF THE OPERATING ENTITY MUST BE FILED WITH THE SECRETARY OF STATE WHERE APPROPRIATE. FOR THOSE SYSTEMS WHICH ARE PROPOSED TO BE MAINTAINED BY THE COUNTY OR MUNICIPAL ENTITIES, FINAL OPERATION AND MAINTENANCE DOCUMENTS MUST BE RECEIVED BY THE DISTRICT WHEN MAINTENANCE AND OPERATION OF THE SYSTEM IS ACCEPTED BY THE LOCAL GOVERNMENT ENTITY. FAILURE TO SUBMIT THE APPROPRIATE FINAL DOCUMENTS WILL RESULT IN THE PERMITTEE REMAINING LIABLE FOR CARRYING OUT MAINTENANCE AND OPERATION OF THE PERMITTED SYSTEM AND ANY OTHER PERMIT CONDITIONS.

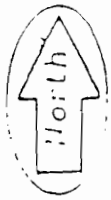
10. SHOULD ANY OTHER REGULATORY AGENCY REQUIRE CHANGES TO THE PERMITTED SYSTEM, THE PERMITTEE SHALL NOTIFY THE DISTRICT IN WRITING OF THE CHANGES PRIOR TO IMPLEMENTATION SO THAT A DETERMINATION CAN BE MADE WHETHER A PERMIT MODIFICATION IS REQUIRED.
11. THIS PERMIT DOES NOT ELIMINATE THE NECESSITY TO OBTAIN ANY REQUIRED FEDERAL, STATE, LOCAL AND SPECIAL DISTRICT AUTHORIZATIONS PRIOR TO THE START OF ANY ACTIVITY APPROVED BY THIS PERMIT. THIS PERMIT DOES NOT CONVEY TO THE PERMITTEE OR CREATE IN THE PERMITTEE ANY PROPERTY RIGHT, OR ANY INTEREST IN REAL PROPERTY, NOR DOES IT AUTHORIZE ANY ENTRANCE UPON OR ACTIVITIES ON PROPERTY WHICH IS NOT OWNED OR CONTROLLED BY THE PERMITTEE, OR CONVEY ANY RIGHTS OR PRIVILEGES OTHER THAN THOSE SPECIFIED IN THE PERMIT AND CHAPTER 40E-4 OR CHAPTER 40E-40, F.A.C.
12. THE PERMITTEE IS HEREBY ADVISED THAT SECTION 253.77, F.S. STATES THAT A PERSON MAY NOT COMMENCE ANY EXCAVATION, CONSTRUCTION, OR OTHER ACTIVITY INVOLVING THE USE OF SOVEREIGN OR OTHER LANDS OF THE STATE, THE TITLE TO WHICH IS VESTED IN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND WITHOUT OBTAINING THE REQUIRED LEASE, LICENSE, EASEMENT, OR OTHER FORM OF CONSENT AUTHORIZING THE PROPOSED USE. THEREFORE, THE PERMITTEE IS RESPONSIBLE FOR OBTAINING ANY NECESSARY AUTHORIZATIONS FROM THE BOARD OF TRUSTEES PRIOR TO COMMENCING ACTIVITY ON SOVEREIGNTY LANDS OR OTHER STATE-OWNED LANDS.
13. THE PERMITTEE MUST OBTAIN A WATER USE PERMIT PRIOR TO CONSTRUCTION DEWATERING, UNLESS THE WORK QUALIFIES FOR A GENERAL PERMIT PURSUANT TO SUBSECTION 40E-20.302(4), F.A.C., ALSO KNOWN AS THE "NO NOTICE" RULE.
14. THE PERMITTEE SHALL HOLD AND SAVE THE DISTRICT HARMLESS FROM ANY AND ALL DAMAGES, CLAIMS, OR LIABILITIES WHICH MAY ARISE BY REASON OF THE CONSTRUCTION, ALTERATION, OPERATION, MAINTENANCE, REMOVAL, ABANDONMENT OR USE OF ANY SYSTEM AUTHORIZED BY THE PERMIT.
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16. THE PERMITTEE SHALL NOTIFY THE DISTRICT IN WRITING WITHIN 30 DAYS OF ANY SALE, CONVEYANCE, OR OTHER TRANSFER OF OWNERSHIP OR CONTROL OF A PERMITTED SYSTEM OR THE REAL PROPERTY ON WHICH THE PERMITTED SYSTEM IS LOCATED. ALL TRANSFERS OF OWNERSHIP OR TRANSFERS OF A PERMIT ARE SUBJECT TO THE REQUIREMENTS OF RULES 40E-1.6105 AND 40E-1.6107, F.A.C. THE PERMITTEE TRANSFERRING THE PERMIT SHALL REMAIN LIABLE FOR CORRECTIVE ACTIONS THAT MAY BE REQUIRED AS A RESULT OF ANY VIOLATIONS PRIOR TO THE SALE, CONVEYANCE OR OTHER TRANSFER OF THE SYSTEM.
17. UPON REASONABLE NOTICE TO THE PERMITTEE, DISTRICT AUTHORIZED STAFF WITH PROPER IDENTIFICATION SHALL HAVE PERMISSION TO ENTER, INSPECT, SAMPLE AND TEST THE SYSTEM TO INSURE CONFORMITY WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE PERMIT.
18. IF HISTORICAL OR ARCHAEOLOGICAL ARTIFACTS ARE DISCOVERED AT ANY TIME ON THE PROJECT SITE, THE PERMITTEE SHALL IMMEDIATELY NOTIFY THE APPROPRIATE DISTRICT SERVICE CENTER.
19. THE PERMITTEE SHALL IMMEDIATELY NOTIFY THE DISTRICT IN WRITING OF ANY PREVIOUSLY SUBMITTED INFORMATION THAT IS LATER DISCOVERED TO BE INACCURATE.

## SPECIAL CONDITIONS

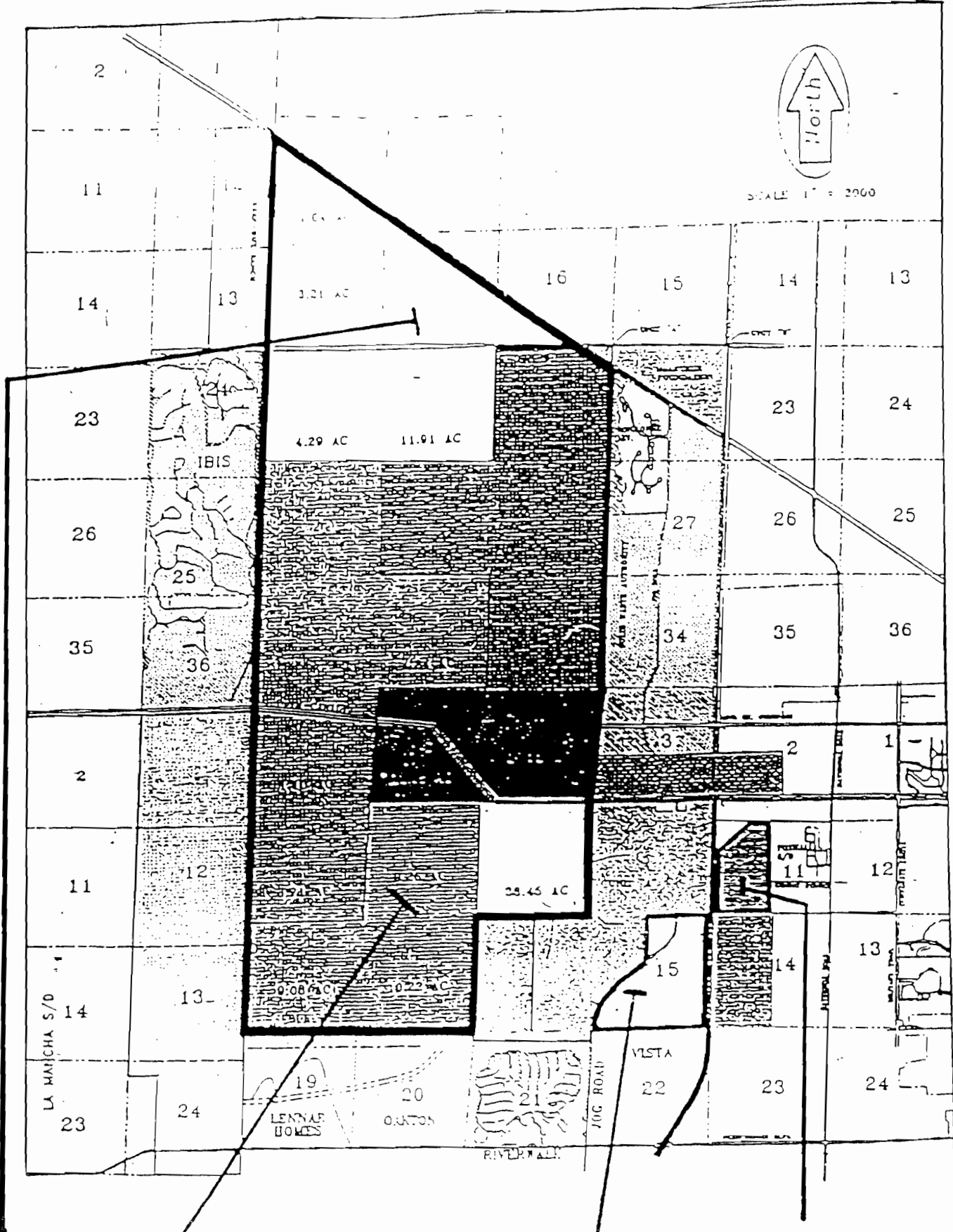
1. DISCHARGE FACILITIES: THROUGH PREVIOUSLY PERMITTED FACILITIES.
2. THE PERMITTEE SHALL BE RESPONSIBLE FOR THE CORRECTION OF ANY EROSION, SHOALING OR WATER QUALITY PROBLEMS THAT RESULT FROM THE CONSTRUCTION OR OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM.
3. MEASURES SHALL BE TAKEN DURING CONSTRUCTION TO INSURE THAT SEDIMENTATION AND/OR TURBIDITY PROBLEMS ARE NOT CREATED IN THE RECEIVING WATER.
4. THE DISTRICT RESERVES THE RIGHT TO REQUIRE THAT ADDITIONAL WATER QUALITY TREATMENT METHODS BE INCORPORATED INTO THE DRAINAGE SYSTEM IF SUCH MEASURES ARE SHOWN TO BE NECESSARY.
5. FACILITIES OTHER THAN THOSE STATED HEREIN SHALL NOT BE CONSTRUCTED WITHOUT AN APPROVED MODIFICATION OF THIS PERMIT.
6. ALL SPECIAL CONDITIONS PREVIOUSLY STIPULATED BY PERMIT NUMBER 50-04120-P REMAIN IN EFFECT UNLESS OTHERWISE REVISED AND SHALL APPLY TO THIS MODIFICATION.
7. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF FUTURE PHASES, PAVING, GRADING, AND DRAINAGE PLANS SHALL BE SUBMITTED TO THE DISTRICT FOR PERMIT MODIFICATIONS.
8. OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM SHALL BE THE RESPONSIBILITY OF THE PERMITTEE. PRIOR TO TRANSFER OF TITLE FOR ANY PORTION OF THE PROJECT TO A THIRD PARTY, MODIFICATION OF THE PERMIT WILL BE REQUIRED TO VERIFY CONTINUED COMPLIANCE WITH LIMITING CONDITION NO. 8.
9. SILT SCREENS, HAY BALES OR OTHER SUCH SEDIMENT CONTROL MEASURES SHALL BE UTILIZED DURING CONSTRUCTION. THE SELECTED SEDIMENT CONTROL MEASURES SHALL BE INSTALLED LANDWARD OF THE UPLAND BUFFER ZONES AROUND ALL PROTECTED WETLANDS. ALL AREAS SHALL BE STABILIZED AND VEGETATED IMMEDIATELY AFTER CONSTRUCTION TO PREVENT EROSION INTO THE WETLANDS AND UPLAND BUFFER ZONES.
10. MINIMUM ROAD CROWN ELEVATION:  

STATION 047+58 TO STATION 100+00: 18.0 FEET NGVD

STATION 100+00 TO STATION 162+32: 19.0 FEET NGVD
11. REFERENCE IS MADE TO EXHIBIT 2, SHEETS 1 THROUGH 65, BY PALM BEACH COUNTY ENGINEERING AND PUBLIC WORKS, CONSISTING OF DRAINAGE DETAILS, CROSS SECTIONS AND PLAN/PROFILE SHEETS. THE DRAWINGS HAVE BEEN SIGNED AND SEALED BY BOGDAN T. PIORKOWSKI, P.E., OF PALM BEACH COUNTY ENGINEERING ON NOVEMBER 18, 1998 AND HAVE BEEN INCLUDED IN THIS PERMIT FILE BY REFERENCE (PLEASE REFER TO PERMIT FILE).



SCALE 1" = 2000



WATER CATCHMENT AREA

HAMILTON BAY/MALLORY SQUARE

CITY OF WEST PALM BEACH WASTEWATER TREATMENT FACILITY

PROJECT: JOG ROAD NORTH OF OKEECHOBEE THRU BURGESS MONTCLAIR

PERMIT SUMMARY SHEET

APPLICATION NUMBER: 981223-12

PERMIT MODIFICATION NO.: 50-04120-P-02

LOCATION: PALM BEACH COUNTY, S15/T43S/R42E

OWNER: PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

ENGINEER: SCHAEFER FAGAN CONSULTING ENGINEERING INC

PROJECT AREA: 30.91 ACRES DRAINAGE AREA: 30.91 ACRES

PROJECT USE: HIGHWAY

## FACILITIES:

1. EXISTING: Presently, this is an undeveloped site which is located immediately west of the Florida Turnpike and the City of West Palm Beach standby wellfield. Vista Center, a golf course and commercial development, is situated to the south and east of the project area. The West Palm Beach Water Catchment Area is located to the northwest of the site, separated by a buffer area (please refer to Exhibit 1).

Immediately north of its intersection with Okeechobee Boulevard, Jog Road has been constructed as its ultimate roadway section. The roadway then begins to taper to a two-lane section and terminates approximately 1.0 mile to the north.

On April 10, 1986, the Governing Board of this District issued construction and operation approval for a section of Jog Road (north of Okeechobee Boulevard) which would discharge to the adjacent Vista Center master surface water management (SWM) system.

On December 10, 1998, a letter of Conceptual Approval was issued for a SWM system serving 373.5 acres of residential development known as Golden West. On April 15, 1999, construction and operation approval was issued for the backbone SWM system and for various sections within the development.

2. PROPOSED: Reference is made to Exhibit 2, Sheets 1 through 65, by Palm Beach County Engineering and Public Works, consisting of Drainage Details, Cross Sections and Plan/Profile Sheets. The drawings have been signed and sealed by Bogdan T. Piorowski, P.E., of Palm Beach County Engineering on November 18, 1998 and have been included in this permit file by reference (please refer to permit file).

Authorization for construction and operation has been requested for a SWM system serving 30.91 acres of highway development known as Jog Road. Of the referenced project area, 16.73 acres lies within

APPLICATION NUMBER: 981223-12

and discharges to the previously permitted Hamilton Bay/Mallory Square residential development. An additional 14.18 acres of Jog Road R/W continues south of the residential property, toward Okeechobee Boulevard, and has been permitted to discharge through the adjacent Vista Center Development.

Runoff from the project will be collected by a series of inlets and culverts and directed to the Vista Center and Hamilton Bay/Mallory Square master SWM systems for water quality treatment and storm attenuation. Runoff collected by inlets from Station 47+58 through Station 100+00 will be directed to the Vista Center master SWM system with a final outfall into the C-51 Canal. Beginning at Station 100+00 through Station 162+32, runoff will be directed to the Hamilton Bay/Mallory Square master SWM system and ultimately discharge to the C-17 Canal.

PROJECT LEVEL:

DRAINAGE BASIN: C-17 & C-51

RECEIVING BODY: HAMILTON BAY/MALLORY SQUARE & VISTA CENTER MASTER SYSTEMS

WATER QUALITY:

Water quality treatment for the proposed section of roadway will be provided in the Vista Center and Hamilton Bay/Mallory Square surface water management systems.

ENVIRONMENTAL ASSESSMENT:

PROJECT SITE DESCRIPTION:

The project area consists of a dedicated right-of-way corridor through the permitted Hamilton Bay/Mallory Square development. The entire area has been cleared and graded as part of the construction authorization for Hamilton Bay/Mallory Square.



APPLICATION NUMBER: 981223-12

ENVIRONMENTAL SUMMARY:

The applicant is proposing to construct a portion of Jog Road through the previously permitted Hamilton Bay/Mallory Square development. All wetland impacts associated with this project were approved and mitigated for as part of the Hamilton Bay/Mallory Square project, SFWMD Permit No. 50-04120-P, Application No. 981016-17.

The proposed activities have been evaluated for potential secondary and cumulative impacts and to determine if the project is contrary to the public interest. Based upon the proposed project design, the District has determined that the project will not cause adverse secondary or cumulative impacts to the water resources and is not contrary to the public interest.

APPLICABLE LAND USE:

The categories listed as TOTAL ACREAGE and PAVEMENT include 14.18 acres and 11.35 acres, respectively, of the proposed section of Jog which will connect from its existing terminus (just north of Okeechobee Boulevard) to the Hamilton Bay/Mallory Square southern boundary.

|             | TOTAL PROJECT | PREVIOUSLY PERMITTED | THIS PHASE |       |
|-------------|---------------|----------------------|------------|-------|
| TOTAL ACRES | 30.91         |                      | 30.91      | acres |
| PAVEMENT    | 25.08         |                      | 25.08      | acres |
| PERVIOUS    | 5.83          |                      | 5.83       | acres |

COMMENTS:

1. Discharge Rate: This section of Jog Road, beginning at its existing terminus, extending north for approximately 6,200 lineal feet, will overflow to the Vista Center and Hamilton Bay/Mallory Square master surface water management systems. The proposed project is consistent with the site grading and land use assumptions from the design of the respective surface water management systems, therefore, discharge will not be limited to a specified rate for the design storm event.

APPLICATION NUMBER: 981223-12

DIVISIONAL APPROVAL:

NATURAL RESOURCE MANAGEMENT

Donald L. Medellico  
Donald L. Medellico

DATE: 7/25/99

SURFACE WATER MANAGEMENT

Maria C. Clemente  
Maria C. Clemente, P.E.

DATE: 7/23/99

STAFF REPORT DISTRIBUTION LIST

JOG ROAD NORTH OF OKEECHOBEE THRU BURGESS MONTCLAIR

APPLICATION NUMBER: 981223-12

PERMIT MODIFICATION NUMBER: 50-04120-P-02

INTERNAL DISTRIBUTION

Reviewer:

X Kevin P. Snell

X Kristina K. Serbesoff

X Donald L. Medellin

X Maria C. Clemente, P.E.

J. Giddings - LEC

J. Golden - REG

X J. Gronberg

F. Lund - LEC

R. Robbins - NRM

X P. Walker - GPA

A. Waterhouse - REG

X 50-01329-S PERMIT FILE

X P. Bell - LEG

Enforcement

X Environmental PPC Reviewer

X Environmental Resource Compliance

X Permit File

DEPT. OF ENVIRONMENTAL PROTECTION

EXTERNAL DISTRIBUTION

X Applicant:

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

X Applicant's Consultant

SCHAEFER FAGAN CONSULTING ENGINEERING IN

X Engineer, County of:

PALM BEACH

X Engineer, City of:

West Palm Beach

X Local Drainage District:

NPBCID

COUNTY

X Palm Beach -Building Division

-Environmental Res Mgmt.

-Health Dept.

-Land Development Div.

-School Brd., Growth Mgt.

BUILDING AND ZONING

OTHER

X David Sinclair

F.G.F.W.F.C.

FDEP

Florida Audubon - Charles Lee

Mr. Ed Dailey, President

X Terrell K. Arline



Form #0299  
Rev. 5/93

SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
WATER USE PERMIT NO. 50-04395-W

( NON - ASSIGNABLE )

Date Issued: SEPTEMBER 9, 1999

Expiration Date: September 9, 2002

Authorizing: THE USE OF SURFACE WATER FROM THE SURFICIAL AQUIFER FOR DEWATERING USE WITH AN ANNUAL ALLOCATION OF 1.769 MILLION GALLONS.

Located In: Palm Beach County,

S15/T43S/R42E

Issued To: GOLDEN WEST  
(HAMILTON BAY/MALLORY SQUARE)  
C/O SCHAEFER FAGAN CONSULTING ENGINEERS  
4152 WEST BLUE HERON BLVD  
RIVIERA BEACH, FL 33404

This Permit is issued pursuant to Application No. 990204-7, dated June 21, 1999, for the Use of Water as specified above and subject to the Special Conditions set forth below. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, maintenance or use of activities authorized by this permit. Said application, including all plan and specifications attached thereto, is by reference made a part hereof.

Upon written notice to the permittee, this permit may be temporarily modified, or restricted under a Declaration of Water Shortage or a Declaration of Emergency due to Water Shortage in accordance with provisions of Ch. 370, Fla. Statutes and applicable rules and regulations of the South Florida Water Management District.

This Permit may be permanently or temporarily revoked, in whole or in part, for the violation of the conditions of the permit, or for the violation of any provision of the Water Resources Act and regulations thereunder.

This Permit does not convey to the permittee any property rights nor any privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation, or requirement affecting the rights of other bodies or agencies.

Special Conditions are as follows:

SEE PAGES 2-5 OF 5 (30 LIMITING CONDITIONS).

Filed with the Clerk of the South Florida Water Management District

South Florida Water Management District by its Governing Board

On 9-20-99  
By [Signature]  
Deputy Clerk

By [Signature]  
Assistant Secretary

## LIMITING CONDITIONS

1. IN THE EVENT OF A DECLARED WATER SHORTAGE, WATER WITHDRAWAL REDUCTIONS WILL BE ORDERED BY THE DISTRICT IN ACCORDANCE WITH THE WATER SHORTAGE PLAN, CHAPTER 40E-21, FLORIDA ADMINISTRATIVE CODE. THE APPLICANT IS ADVISED THAT DURING A WATER SHORTAGE PUMPAGE REPORTS SHALL BE SUBMITTED AS REQUIRED BY CHAPTER 40E-21, FLORIDA ADMINISTRATIVE CODE.
2. SOURCE CLASSIFICATION IS:  
  
SURFACE WATER FROM THE SURFICIAL AQUIFER
3. PERMITTEE SHALL MITIGATE ANY ADVERSE IMPACT ON EXISTING LEGAL USES CAUSED BY WITHDRAWALS. WHEN ADVERSE IMPACTS OCCUR, OR ARE IMMINENT, THE DISTRICT RESERVES THE RIGHT TO CURTAIL WITHDRAWAL RATES. ADVERSE IMPACTS ARE:
  - A) REDUCTION IN WELL WATER LEVELS THAT IMPAIRS THE ABILITY OF AN ADJACENT WELL, INCLUDING A DOMESTIC WELL, LAWN IRRIGATION WELL, OR PUBLIC WATER SUPPLY WELL, TO PRODUCE WATER BY 10% OR GREATER.
  - B) SIGNIFICANT REDUCTION IN LEVELS IN AN ADJACENT WATER BODY SUCH AS A LAKE, POND, OR A CANAL SYSTEM THAT IMPAIRS THE ABILITY TO PRODUCE WATER BY 10% OR GREATER.
  - C) SALINE WATER INTRUSION OR INDUCED MOVEMENT OF POLLUTANTS INTO THE WATER SUPPLY OF AN ADJACENT WATER USE, RESULTING IN A SIGNIFICANT REDUCTION IN WATER QUALITY, AND
  - D) CHANGE IN WATER QUALITY CAUSED BY THE PERMITTEE THAT RESULTS IN SIGNIFICANT IMPAIRMENT OR LOSS OF USE OF A WELL OR WATER BODY.
4. PERMITTEE SHALL MITIGATE ANY ADVERSE IMPACT ON EXISTING OFF-SITE LAND USE AS A CONSEQUENCE OF WITHDRAWALS PERMITTED HEREIN. IF INCREASED WITHDRAWALS CAUSE AN ADVERSE IMPACT ON EXISTING LAND USE, THE DISTRICT RESERVES THE RIGHT TO CURTAIL FUTURE WITHDRAWAL RATES. ADVERSE IMPACTS ARE:
  - A) SIGNIFICANT REDUCTION IN WATER LEVELS IN AN ADJACENT SURFACE WATER BODY, INCLUDING IMPOUNDMENTS, TO THE EXTENT THAT THE DESIGNED FUNCTION OF THE WATER BODY IS IMPAIRED.
  - B) LAND COLLAPSE OR SUBSIDENCE CAUSED BY REDUCTION IN WATER LEVELS; AND
  - C) DAMAGE TO CROPS AND OTHER TYPES OF VEGETATION.
5. AUTHORIZED REPRESENTATIVES OF THE DISTRICT SHALL BE PERMITTED TO ENTER, INSPECT, AND OBSERVE THE PERMITTED SYSTEM TO DETERMINE COMPLIANCE WITH SPECIAL CONDITIONS.
6. IF ANY CONDITION OF THE PERMIT IS VIOLATED, THE PERMIT SHALL BE SUBJECT TO REVIEW AND POSSIBLE MODIFICATION, ENFORCEMENT ACTION, OR REVOCATION.
7. APPLICATION FOR A PERMIT MODIFICATION MAY BE MADE AT ANY TIME.

8. WITHDRAWAL FACILITIES ARE:
  - SURFACE WATER - PROPOSED:
  - 3 - 8" X 150 HP X 2500 GPM CENTRIFUGAL PUMPS
9. THIS PERMIT SHALL EXPIRE ON SEPTEMBER 09, 2002.
10. ANNUAL ALLOCATION SHALL NOT EXCEED 1769 MG.
  - MAXIMUM DAILY ALLOCATION SHALL NOT EXCEED 10.80 MG.
11. USE CLASSIFICATION IS DEWATERING.
12. THE PERMITTEE IS ADVISED THAT THIS PERMIT DOES NOT RELIEVE ANY PERSON FROM THE REQUIREMENT TO OBTAIN ALL NECESSARY FEDERAL, STATE, LOCAL AND SPECIAL DISTRICT AUTHORIZATIONS.
13. THE PERMIT DOES NOT CONVEY ANY PROPERTY RIGHT TO THE PERMITTEE, NOR ANY RIGHTS AND PRIVILEGES OTHER THAN THOSE SPECIFIED IN THE PERMIT AND CHAPTER 40E-2, F.A.C.
14. IF ADVERSE IMPACTS OCCUR TO NATURAL RESOURCES AS A RESULT OF THE PERMITTEE'S WATER WITHDRAWALS, THE PERMITTEE SHALL MITIGATE FOR SUCH IMPACTS. WHEN ADVERSE IMPACTS OCCUR, OR ARE IMMINENT, DISTRICT RESERVES THE RIGHT TO CURTAIL WITHDRAWAL RATES. EXAMPLES OF ADVERSE IMPACTS ARE:
  - A) REDUCTION IN GROUND WATER LEVELS THAT RESULTS IN SIGNIFICANT LATERAL MOVEMENT OF THE FRESH WATER/SALT WATER INTERFACE.
  - B) REDUCTION IN WATER LEVELS THAT ADVERSELY IMPACT THE HYDROPERIOD OF PROTECTED WETLAND ENVIRONMENTS.
  - C) SIGNIFICANT REDUCTION IN WATER LEVELS OR HYDROPERIOD IN A NATURALLY OCCURRING WATER BODY SUCH AS A LAKE OR POND.
  - D) INDUCED MOVEMENT OR INDUCTION OF POLLUTANTS INTO THE WATER SUPPLY RESULTING IN A SIGNIFICANT REDUCTION IN WATER QUALITY, AND
  - E) SIGNIFICANT HARM TO THE NATURAL SYSTEM INCLUDING DAMAGE TO HABITAT FOR RARE OR ENDANGERED SPECIES.
15. PRIOR TO MARCH 09, 2000, PERMITTEE SHALL PROVIDE THE RESULTS OF THE CALIBRATION TESTING OF THE IDENTIFIED WATER ACCOUNTING METHOD(S) AND EQUIP ALL EXISTING AND PROPOSED WITHDRAWAL FACILITIES WITH APPROVED WATER USE ACCOUNTING METHOD(S) PURSUANT TO SECTION 4.1 OF THE WATER USE BASIS OF REVIEW.
16. PERMITTEE SHALL SUBMIT ALL DATA AS REQUIRED BY THE IMPLEMENTATION SCHEDULE FOR EACH OF THE LIMITING CONDITIONS TO: S.F.W.M.D., SUPERVISING PROFESSIONAL - P.P.C., WATER USE DIVISION (4040), P.O. BOX 24680, WEST PALM BEACH, FL 33416-4680

17. THE PERMITTEE SHALL MAINTAIN RECORDS OF THE CALIBRATED DAILY WITHDRAWALS FROM EACH PUMP. THESE RECORDS SHALL BE AVAILABLE FOR REVIEW UPON REQUEST BY DISTRICT STAFF. MONTHLY WITHDRAWALS FOR EACH PUMP SHALL BE SUBMITTED TO THE DISTRICT QUARTERLY. MAXIMUM DAILY WITHDRAWALS FOR EACH MONTH FOR THE ENTIRE SYSTEM SHALL BE SUBMITTED TO THE DISTRICT QUARTERLY. THE WATER ACCOUNTING METHOD AND MEANS OF CALIBRATION SHALL BE STATED ON EACH REPORT.
18. IF THE NEED TO EXCEED THE ALLOCATION SPECIFIED IN LIMITING CONDITION NUMBER 10 ARISES, THE PERMITTEE MAY SUBMIT, FOR DISTRICT STAFF REVIEW, A REQUEST FOR A MODIFICATION OF THIS PERMIT OR THE ISSUANCE OF AN EMERGENCY WATER USE PERMIT. IF THE NEED TO EXCEED THE SPECIFIED MAXIMUM DAILY ALLOCATION ARISES AS A CONSEQUENCE OF UNUSUAL RAINFALL CONDITIONS, THE PERMITTEE IS REQUIRED TO RECEIVE APPROVAL FROM DISTRICT STAFF PRIOR TO EXCEEDING THE WITHDRAWAL RATES AUTHORIZED IN THIS PERMIT.
19. THE BORROW PIT SHALL BE CONSTRUCTED USING SOUND ENGINEERING PRACTICE. IF THE EXCAVATION ENDANGERS THE PROPERTIES OF ADJACENT OWNERS (THROUGH EROSION, SIDE WALL COLLAPSE, ETC.), THE PERMITTEE SHALL CEASE OPERATION UPON NOTIFICATION BY THE DISTRICT UNTIL A METHOD TO PREVENT SUCH OCCURRENCES IS FOUND AND INSTITUTED. IF THE EXCAVATION ENDANGERS THE PROPERTIES OF ADJACENT OWNER (THROUGH EROSION, SIDE WALL COLLAPSE, ETC.), THE PERMITTEE SHALL BE RESPONSIBLE FOR FINDING AND INSTITUTING METHODS TO STOP SUCH OCCURRENCES.
20. THE PERMITTEE IS ADVISED THAT THIS PERMIT DOES NOT RELIEVE IT OF COMPLYING WITH ALL COUNTY, STATE, AND FEDERAL REGULATIONS GOVERNING THESE OPERATIONS, MAINTENANCE, AND RECLAMATION OF THE BORROW PIT.
21. PERMITTEE SHALL ESTABLISH AND MAINTAIN A SURVEYED DATUM POINT FROM WHICH WATER LEVELS IN THE BORROW PIT CAN BE REFERENCED
22. PERMITTEE SHALL IMMEDIATELY CEASE DEWATERING WHEN CONTINUED DEWATERING WOULD CREATE A CONDITION HAZARDOUS TO THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE PEOPLE OF THE DISTRICT.
23. PERMITTEE SHALL BE RESPONSIBLE FOR CLEARING SHOALING IF THE PERMITTEE'S DEWATERING OPERATION CREATES SHOALING IN ADJACENT WATER BODIES.
24. PERMITTEE SHALL COMPLY WITH TURBIDITY AND GENERAL WATER QUALITY STANDARDS FOR SURFACE DISCHARGE INTO RECEIVING STREAMS, AS ESTABLISHED BY CHAPTER 62-3, FLORIDA ADMINISTRATIVE CODE (F.A.C.).
25. PERMITTEE SHALL NOT LOWER THE WATER TABLE BELOW 0 FEET NGVD WHICH IS 16 FEET BELOW GROUND SURFACE. THE DEPTH OF THE PIT SHALL NOT EXCEED 30 FEET BELOW GROUND SURFACE.
26. UPON COMPLETION OF CONSTRUCTION, ALL ABOVE GROUND DIKES, LEVEES, AND BERMS THAT WILL CONTAIN WATER SHALL BE SUBSEQUENTLY INSPECTED FOR STRUCTURAL ADEQUACY IN APRIL AND NOVEMBER, WITH REPORTS SUBMITTED TO THE DISTRICT THE FOLLOWING MONTH. THESE REPORTS SHALL INCLUDE PROPOSAL OF TECHNIQUE AND SCHEDULE FOR REPAIR OF ANY DEFICIENCIES NOTED, AND SHALL BE SIGNED AND

SEALED BY A FLORIDA REGISTERED PROFESSIONAL ENGINEER.

27. ALL DEWATERING WATER SHALL BE RETAINED ON THE PERMITTEE'S LAND. OFF-SITE DISCHARGE OF DEWATERING EFFLUENT SHALL NOT BE MADE.
28. EVERY TWO YEARS FROM THE DATE OF PERMIT ISSUANCE, THE PERMITTEE SHALL SUBMIT RE-CALIBRATION DATA ON EACH WATER PUMPING ACCOUNTING FACILITY, FOR THOSE PERMITTEES WHOSE ACCOUNTING METHOD(S) REQUIRE RE-CALIBRATION.
29. DURING TIMES OF DISCHARGE TO THE NPBCID TURNPIKE CANAL, TURBIDITY MEASUREMENTS SHALL BE MADE TWICE DAILY AT THE POINT OF DISCHARGE FROM THE PROJECT SITE AND SUBMITTED TO THE DISTRICT WEEKLY. IF TURBIDITY LEVELS EXCEED STATE WATER QUALITY STANDARDS, THE APPLICANT IS REQUIRED TO CORRECT THE SITUATION AND CEASE DEWATERING OPERATIONS UNTIL WATER QUALITY STANDARDS ARE MET.
30. PRIOR TO COMMENCING DEWATERING, THE PERMITTEE SHALL:
  - A. SUBMIT PLANS FOR REVIEW AND APPROVAL IDENTIFYING THE LOCATION, ORIENTATION, AND SPECIFICATIONS OF THE RECHARGE TRENCH SYSTEM AND MONITORING WELLS.
  - B. CONSTRUCT THE APPROVED RECHARGE TRENCH SYSTEM AND INSTALL ONE STAFF GAUGE IN EACH OF THE TWO RECHARGE TRENCHES AND FOUR PAIRS OF MONITORING WELLS, EACH PAIR CONSISTING OF ONE WELL CONSTRUCTED TO 4 FEET BELOW LAND SURFACE (BLS) AND THE OTHER WELL CONSTRUCTED TO 16 FEET BLS. EACH MONITORING WELL PAIR SHALL BE LOCATED BETWEEN THE RECHARGE TRENCHES AND THE LAKE CONSTRUCTION ADJACENT TO LAKES 2, 3, 7, AND 9 AS SHOWN IN EXHIBIT 6. IN ADDITION, THE PERMITTEE SHALL INSTALL A STAFF GAUGE IN EACH LAKE UPON COMPLETION OF ITS EXCAVATION. WATER LEVEL DATA FROM ALL MONITORING POINTS SHALL BE COLLECTED WEEKLY AND SUBMITTED TO THE DISTRICT WEEKLY.
  - C. CONTACT THE DISTRICT'S POST-PERMIT COMPLIANCE SECTION TO SCHEDULE A SITE INSPECTION OF THE RECHARGE TRENCH SYSTEM AND MONITORING WELLS, AND RECEIVE WRITTEN APPROVAL FROM THE DISTRICT PRIOR TO BEGINNING DEWATERING.AFTER INITIATION OF DEWATERING, THE PERMITTEE SHALL ENSURE THAT:
  - D. WHEN WATER LEVELS IN THE RECHARGE TRENCH AND THOSE IN THE MONITORING WELLS LOCATED ADJACENT TO THE TRENCH DIFFER BY MORE THAN TWO FEET FOR TWO CONSECUTIVE READINGS, THE TRENCH SHALL BE CLEANED OF SEDIMENTS. SHOULD THE WATER LEVELS IN THE MONITORING WELLS FAIL TO RECOVER TO WITHIN LESS THAN TWO FEET BELOW THE WATER LEVELS IN THE RECHARGE TRENCH, DEWATERING SHALL CEASE PENDING DISTRICT EVALUATION OF THE RECHARGE TRENCH SYSTEM.





## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 • TDD (561) 697-2574  
 Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

CON 24-06

Regulation Department  
 Application No.: 991020-19

November 4, 1999

Ken Bailey  
 Arland Community Development  
 448 Viking Drive, Suite 225  
 Virginia Beach, VA 23452

Dear Permittee:

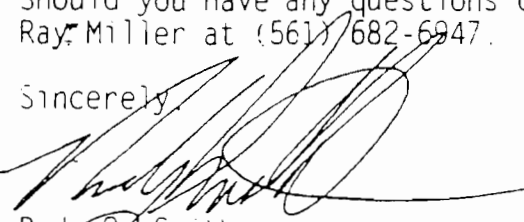
SUBJECT: PERMIT MODIFICATION NO.: 50-04120-P  
 Project: HAMILTON BAY/MALLORY SQUARE  
 Location: PALM BEACH COUNTYS15/T43S/R42E

District staff has reviewed the information submitted on October 20, 1999, (copy attached) from Mr. Ed Weinberg of EW Consultants, Inc. requesting a modification to revise the mitigation work schedule for the subject project due to delays in construction, finalizing bonds, and soliciting bids.

District staff has determined the proposed modification is in compliance with the intent of the original permit and appropriate provisions of F.A.C. Rule 40E-4.331(2)(b). Therefore, the change to Special Condition Number 24 of Permit 50-04120-P issued on April 15, 1999, has been recorded into our files. Attach a copy of this letter and the revised schedule to the original permit for your records. Please understand that your permit remains subject to the Nineteen (19) General Conditions and all other Special Conditions not modified and as originally issued.

Should you have any questions or require further assistance, please contact Ray Miller at (561) 682-6947.

Sincerely,

  
 Rudy O. Smith  
 Sr. Regulatory Supervisor  
 West Palm Beach Service Center

ROS/rm

c: Ed Weinberg, EW Consultants, Inc.  
 Bob Paulson, ACOE, West Palm Beach  
 Ken Reardon, Dept of Public Util., City of WPB  
 Steve Liller, Arland Community Development, West Palm Beach

SPECIAL CONDITIONS

1. ACTIVITIES ASSOCIATED WITH IMPLEMENTATION OF THE WETLAND MITIGATION, MONITORING AND MAINTENANCE SHALL BE IN ACCORDANCE WITH THE FOLLOWING WORK SCHEDULE. ANY DEVIATION FROM THESE TIME FRAMES SHALL REQUIRE FORMAL SFWMD APPROVAL. SUCH REQUESTS MUST BE MADE IN WRITING AND SHALL INCLUDE (1) REASON FOR THE MODIFICATION; (2) PROPOSED START/FINISH DATES; AND (3) PROGRESS REPORT ON THE STATUS OF THE EXISTING MITIGATION EFFORTS.

| COMPLETION DATE   | ACTIVITY                                      |
|-------------------|---|
| JANUARY 31, 2000  | ROAD REMOVAL IN SE CORNER OF MITIGATION AREA  |
| JANUARY 31, 2000  | PLACE FILL TO STOP FLOWS FROM FDOT LAKE       |
| MARCH 31, 2000    | INSTALL IMPERMEABLE BARRIER                   |
| MARCH 31, 2000    | BERM CONSTRUCTION ON EAST SIDE OF MITIGATION  |
| MARCH 31, 2000    | EXCAVATE FLOWWAY ADJACENT TO BERM             |
| MARCH 31, 2000    | INSTALL MITIGATION WATER LEVEL MONIT. SYSTEM  |
| JUNE 30, 2000     | EXCAVATE INTERNAL FLOWWAYS IN MITIGATION AREA |
| JUNE 30, 2000     | EXOTIC/NUISANCE VEGETATION REMOVAL            |
| JUNE 30, 2000     | PLANTING MITIGATION AREA                      |
| JUNE 30, 2000     | PLANTING WETLAND MITIGATION AREA BUFFERS      |
| JULY 31, 2000     | TIME ZERO MONITORING REPORT                   |
| NOVEMBER 30, 2001 | FIRST MONITORING REPORT                       |
| NOVEMBER 30, 2002 | SECOND MONITORING REPORT                      |
| NOVEMBER 30, 2003 | THIRD MONITORING REPORT                       |
| NOVEMBER 30, 2004 | FOURTH MONITORING REPORT                      |
| NOVEMBER 30, 2005 | FIFTH MONITORING REPORT                       |



ORIGINAL SUBMITTAL

OCT 20 1999

WPB

**RECEIVED**

OCT 20 1999

**ENVIRONMENTAL SECTION  
NRM**

October 19, 1999

Ray Miller  
 South Florida Water Management District  
 3301 Gun Club Road  
 West Palm Beach, FL 33406

RE: Permit No. 50-04120-P; Hamilton Bay/Mallory Square

Dear Ray:

This letter is being provided to update you on the status of the permit requirements for the above referenced project. There are several items that were initially scheduled for completion by August 31, 1999, as well as others that are scheduled for completion in the next few months that have fallen behind schedule. A detailed summary of these items is provided below.

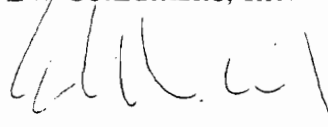
- 1) **Submit recorded copy of restrictive covenants (due 5/15/99)** - A fully executed copy of the recorded restrictive covenants was transmitted to SFWMD by letter dated October 6, 1999.
- 2) **Place fill plug in ditch from DOT lake (due 8/31/99)** - An on-site pre-construction meeting was held in August, however, weather and construction delays have pushed back several necessary items to complete this activity. Specifically, the clearing necessary to access this area, as well as grading of the access road had not been completed, thus the necessary fill could not be delivered. Based on the present site conditions, this effort is expected to be completed in January 2000. A proposed modified project schedule reflecting this change is provided with this letter.
- 3) **Remove berm/road at SE corner of mitigation area (due 8/31/99)** - An on-site pre-construction meeting was held in August, however, weather and construction delays have pushed back several necessary items to complete this activity. Specifically, the clearing necessary to access this area, had not been completed, thus the necessary earthwork could not be completed. Based on the present site conditions, this effort is expected to be completed in January 2000. A proposed modified project schedule reflecting this change is provided with this letter.

- 4) Install impermeable barrier (due 9/30/99) - As with items 2) and 3) above, site conditions have resulted in a delay of this activity. Additionally, an agreement is being negotiated with the City of West Palm Beach to coordinate construction of this and the following item. It is anticipated that this item can be completed in March 2000. A proposed modified project schedule reflecting this change is provided with this letter.
- 5) **Construct berm/flowway on east boundary of mitigation (due 11/30/99)** - As stated above, an agreement is currently being negotiated with the City of West Palm Beach regarding this construction. Because the berm/flowway structure as depicted in the mitigation plan is a required element of the City's water reuse project, construction will ultimately be the responsibility of the City under the aforementioned agreement. However, a smaller berm will be constructed as part of the Golden West project during installation of the impermeable barrier. That berm will be of sufficient height to contain surface water within the mitigation area as designed, until the City constructs their flowway/berm.
- 6) **Remaining mitigation specific construction (due 10/31/99 thru 12/31/99)** - The mitigation construction activity is to be conducted as part of the NPBCID bond for the project. There have been substantial delays in finalizing the bond and soliciting bids, and these items will be delayed as a result. Based on the current status of the bond process, bid opening for this project cannot yet be projected accurately. Based on the anticipated construction time period for the selected contractor, the completion date for the mitigation construction activity (exotic removal, flowways, replanting, etc.) is anticipated to be 180 days after Notice to Proceed to the selected contractor.

This letter is a formal request for modification of the time schedule for the requested items, including the mitigation construction. Additionally, the dates for submittal of time zero and annual monitoring reports will need to be modified accordingly. A proposed project schedule reflecting these changes is included with this letter.

Please contact me when you have had a chance to review this request so that we can proceed in a manner that maintains compliance with the permit.

Sincerely,  
EW/Consultants, Inc.



Ed Weinberg, President

cc: Ken Bailey  
Steve Liller  
Bob Brown

PROPOSED REVISED PROJECT SCHEDULE

|  |                             |
|--|-----------------------------|
| Submit Copy of Recorded Restrictive Covenants    | Complete                    |
| Submit Copy of Executed Letter of Credit         | Complete                    |
| Remit Payment to Palm Beach County Unit 11       | Complete                    |
| Submit Verification of Payment for Unit 11       | Complete                    |
| Place Fill to Stop Flows from DOT Lake           | January 2000                |
| Road Removal in SE Corner of Mitigation          | January 2000                |
| Install Impermeable Barrier                      | March 2000                  |
| Excavate Internal Flowways in Mitigation Area    | June 2000 (approximate)     |
| Berm Construction on East Side of Mitigation     | March 2000                  |
| Excavate Flowway Adjacent to Berm                | March 2000                  |
| Eradication of Exotic/Nuisance Vegetation        | June 2000 (approximate)     |
| Planting of Mitigation Area                      | June 2000 (approximate)     |
| Planting Wetland Mitigation Area Buffers         | June 2000 (approximate)     |
| Install Mitigation Water Level Monitoring System | March 2000                  |
| Time Zero Monitoring Report Submittal            | July 2000 (approximate)     |
| First Monitoring Report Submittal                | November 2001 (approximate) |
| Submit Target Hydrograph from Monitoring         | November 2001               |
| Second Monitoring Report Submittal               | November 2002 (approximate) |
| Third Monitoring Report Submittal                | November 2003 (approximate) |
| Fourth Monitoring Report Submittal               | November 2004 (approximate) |
| Fifth Monitoring Report Submittal                | November 2005 (approximate) |



SOUTH FLORIDA WATER MANAGEMENT DISTRICT ENVIRONMENTAL RESOURCE

PERMIT MODIFICATION NO. 50-04120-P

DATE ISSUED: APRIL 13, 2000

FORM 1015 Rev. 08/95

ERMITTEE: HAE JOINT VENTURE (HAMILTON BAY/MALLORY SQUARE) 2350 SOUTH CONGRESS AVENUE. DELRAY BEACH, FL 33445

GOLDEN WEST LIMITED PARTNERSHIP (HAMILTON BAY/MALLORY SQUARE) 448 VIKING DRIVE, SUITE 200. VIRGINIA BEACH, VA 23452

RIGINAL PERMIT ISSUED: DECEMBER 10, 1998

RIGINAL PROJECT DESCRIPTION: AUTHORIZATION FOR CONCEPTUAL APPROVAL OF A SWM SYSTEM SERVING 373.5 ACRES OF RESIDENTIAL DEVELOPMENT TO BE KNOWN AS GOLDEN WEST. THE AUTHORIZATION WILL ALSO INCLUDE CONSTRUCTION/OPERATION APPROVAL FOR CLEARING, SPECIFIC ONLY TO THE UPLAND PORTIONS OF THE SITE.

APPROVED MODIFICATION : AUTHORIZATION FOR MODIFICATION OF A SWM SYSTEM SERVING 373.5 ACRES OF RESIDENTIAL DEVELOPMENT, KNOWN AS HAMILTON BAY/MALLORY SQUARE, TO ALLOW FOR SUBSTITUTING TWO ALTERNATING 8 CFS (3590 GPM) PUMPS (TO BE USED SINGULARLY WITH A PROPORTIONALLY REDUCED OPERATING SCHEDULE) FOR THE 3.1 CFS (1400 GPM) AND 4.7 CFS (2100 GPM) PUMPS WHICH WERE TO BE USED SINGULARLY OR IN TANDEM (DEPENDING ON CONDITIONS).

PROJECT LOCATION: PALM BEACH COUNTY, SECTION 15 TWP 43S RGE 42E

PERMIT DURATION: Five years from the date issued to complete construction of the surface water management system as authorized herein. See attached Rule 40E-4.321, Florida Administrative Code.

This Permit Modification is approved pursuant to Application No. 991215-1, dated December 15, 1999. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of any activities authorized by this Permit. This Permit is issued under the provisions of Chapter 373, Part IV Florida Statutes(F.S.), and the Operating Agreement Concerning Regulation Under Part IV, Chapter 373 F.S. between South Florida Water Management District and the Department of Environmental Protection. Issuance of this Permit constitutes certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341, unless this Permit is issued pursuant to the net improvement provisions of Subsections 373.414(1)(b), F.S. or as otherwise stated herein.

This Permit Modification may be revoked, suspended, or modified at any time pursuant to the appropriate provisions of Chapter 373, F.S., and Sections 40E-4.351(1), (2), and (4), Florida Administrative Code (F.A.C.). This Permit Modification may be transferred pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-1.6107(1) and (2), and 40E-4.351(1), (2), and (4), F.A.C.

All specifications and special and limiting/general conditions attendant to the original Permit, unless specifically rescinded by this or previous modifications, remain in effect.

This Permit Modification shall be subject to the General Conditions set forth in Rule 40E-4.381, F.A.C., unless waived or modified by the Governing Board. The Application, and Environmental Resource Permit Staff Review Summary of the Application, including all conditions, and all plans and specifications incorporated by reference, are a part of this Permit Modification. All activities authorized by this Permit Modification shall be implemented as set forth in the plans, specifications, and performance criteria as set forth and incorporated in the Environmental Resource Permit Staff Review Summary. Within 30 days after completion of construction of the permitting activity, the Permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual, pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.361 and 40E-4.381, F.A.C.

In the event the property is sold or otherwise conveyed, the Permittee will remain liable for compliance with this Permit until transfer is approved by the District pursuant to Rule 40E-1.6107, F.A.C.

SPECIAL AND GENERAL CONDITIONS ARE AS FOLLOWS:

- SEE PAGES 2 - 3 OF 6 (11 SPECIAL CONDITIONS).
SEE PAGES 4 - 6 OF 6 (19 GENERAL CONDITIONS).

PERMIT MODIFICATION APPROVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

FILED WITH THE CLERK OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

ON 4-20-00 BY [Signature] DEPUTY CLERK

BY [Signature] ASSISTANT SECRETARY

## SPECIAL CONDITIONS

1. THE PERMITTEE SHALL BE RESPONSIBLE FOR THE CORRECTION OF ANY EROSION, SHOALING OR WATER QUALITY PROBLEMS THAT RESULT FROM THE CONSTRUCTION OR OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM.
2. MEASURES SHALL BE TAKEN DURING CONSTRUCTION TO INSURE THAT SEDIMENTATION AND/OR TURBIDITY PROBLEMS ARE NOT CREATED IN THE RECEIVING WATER.
3. THE DISTRICT RESERVES THE RIGHT TO REQUIRE THAT ADDITIONAL WATER QUALITY TREATMENT METHODS BE INCORPORATED INTO THE DRAINAGE SYSTEM IF SUCH MEASURES ARE SHOWN TO BE NECESSARY.
4. LAKE SIDE SLOPES SHALL BE NO STEEPER THAN 4:1 (HORIZONTAL:VERTICAL) TO A DEPTH OF TWO FEET BELOW THE CONTROL ELEVATION. SIDE SLOPES SHALL BE NURTURED OR PLANTED FROM 2 FEET BELOW TO 1 FOOT ABOVE CONTROL ELEVATION TO INSURE VEGETATIVE GROWTH.
5. FACILITIES OTHER THAN THOSE STATED HEREIN SHALL NOT BE CONSTRUCTED WITHOUT AN APPROVED MODIFICATION OF THIS PERMIT.
6. OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM SHALL BE THE RESPONSIBILITY OF NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT.
7. PRIOR TO JULY 10, 2000, THE PERMITTEE SHALL PROVIDE THE DISTRICT WITH SATISFACTORY EVIDENCE OF A DISCLOSURE STATEMENT WHICH INFORMS PROSPECTIVE PURCHASERS THAT THE WATER LEVELS IN THE PROJECT'S LAKE MAY DECLINE SIGNIFICANTLY AT CERTAIN TIMES AS A RESULT OF THE WELLFIELD PUMPAGE.

## DISCHARGE FACILITIES:

1-3590 GPM PUMP  
 PUMP-ON AT ELEV. 16.05' NGVD  
 PUMP-OFF AT ELEV. 15.50' NGVD

1-3590 GPM PUMP  
 PUMP-ON AT ELEV. 16.20' NGVD  
 PUMP-OFF AT ELEV. 16.10' NGVD

3500 LF OF 1.67' DIP PRESSURE PIPE

RECEIVING BODY: C-17 CANAL THROUGH EPB-11 CANAL SYSTEM

CONTROL ELEV.: 15.50' NGVD

IN RESPONSE TO MORE SEVERE EVENTS (THOSE WHICH RESULT IN STAGES ABOVE EL. 16.2' NGVD), ONE OF THE TWO ALTERNATING PUMPS WILL DISCHARGE CONTINUOUSLY UNTIL STAGES HAVE BEEN REDUCED TO EL. 16.1. THE 8 CFS (3590 GPM) DISCHARGE RATE IS IDENTICAL TO THE PREVIOUSLY PERMITTED DISCHARGE RATE, FOR SIMILAR CONDITIONS BETWEEN EL. 16.2 AND EL. 16.1).

IN RESPONSE TO LESSER EVENTS (THOSE WHICH RESULT IN STAGES BETWEEN EL. 16.05 AND EL. 16.2 ON RISING HEAD, AND BETWEEN EL. 16.1 AND EL. 15.5 ON FALLING HEAD), ONE OF THE TWO ALTERNATING PUMPS WILL DISCHARGE SUCH THAT THE OVERALL PUMPING SCHEDULE WILL BE CYCLICAL WITH 3.5 HOUR "ON" PERIODS FOLLOWED BY 6.5 HOUR "OFF" PERIODS. THE RESULTANT 65% REDUCTION IN PUMPING DURATION WILL (WHEN COMBINED WITH THE INVERSELY PROPORTIONAL INCREASE IN PUMP CAPACITY) RESULT IN DISCHARGE RATES WHICH ARE EQUIVALENT TO (WHEN INTEGRATED OVER TYPICAL PUMPING DURATIONS) THE PREVIOUSLY PERMITTED ALLOWABLE DISCHARGE RATE, FOR SIMILAR CONDITIONS (BETWEEN EL. 16.05 AND EL. 16.2 ON RISING HEAD, AND BETWEEN EL. 16.1 AND EL. 15.5 ON FALLING HEAD).

9. GRASS SEED & MULCH, OR SOD, SHALL BE INSTALLED AND MAINTAINED ON ALL DISTURBED AREAS WITHIN 48 HOURS OF COMPLETING FINAL GRADE, AND AT OTHER TIMES, AS NECESSARY, TO PREVENT EROSION, SEDIMENTATION OR TURBID DISCHARGES INTO RECEIVING WATERS AND/OR ADJACENT WETLANDS.
10. UNLESS SPECIFICALLY MODIFIED BY THIS PERMIT MODIFICATION, ALL CONDITIONS OF PERMIT NO. 50-04120-P SHALL REMAIN IN FULL EFFECT.
11. WITHIN THIRTY (30) DAYS OF COMPLETION OF THE PUMP INSTALLATION, THE PERMITTEE SHALL SUBMIT SIGNED AND SEALED IN-SITU PUMP RATINGS (FOR THE COMBINED PUMP AND PIPE SYSTEM) WHICH DEMONSTRATE THAT NEITHER PUMP CAN DISCHARGE AT A RATE EXCEEDING THE 8 CFS PERMITTED DISCHARGE RATE.



## GENERAL CONDITIONS

1. ALL ACTIVITIES AUTHORIZED BY THIS PERMIT SHALL BE IMPLEMENTED AS SET FORTH IN THE PLANS, SPECIFICATIONS AND PERFORMANCE CRITERIA AS APPROVED BY THIS PERMIT. ANY DEVIATION FROM THE PERMITTED ACTIVITY AND THE CONDITIONS FOR UNDERTAKING THAT ACTIVITY SHALL CONSTITUTE A VIOLATION OF THIS PERMIT AND PART IV, CHAPTER 373, F.S.
2. THIS PERMIT OR A COPY THEREOF, COMPLETE WITH ALL CONDITIONS, ATTACHMENTS, EXHIBITS, AND MODIFICATIONS SHALL BE KEPT AT THE WORK SITE OF THE PERMITTED ACTIVITY. THE COMPLETE PERMIT SHALL BE AVAILABLE FOR REVIEW AT THE WORK SITE UPON REQUEST BY THE DISTRICT STAFF. THE PERMITTEE SHALL REQUIRE THE CONTRACTOR TO REVIEW THE COMPLETE PERMIT PRIOR TO COMMENCEMENT OF THE ACTIVITY AUTHORIZED BY THIS PERMIT.
3. ACTIVITIES APPROVED BY THIS PERMIT SHALL BE CONDUCTED IN A MANNER WHICH DOES NOT CAUSE VIOLATIONS OF STATE WATER QUALITY STANDARDS. THE PERMITTEE SHALL IMPLEMENT BEST MANAGEMENT PRACTICES FOR EROSION AND POLLUTION CONTROL TO PREVENT VIOLATION OF STATE WATER QUALITY STANDARDS. TEMPORARY EROSION CONTROL SHALL BE IMPLEMENTED PRIOR TO AND DURING CONSTRUCTION, AND PERMANENT CONTROL MEASURES SHALL BE COMPLETED WITHIN 7 DAYS OF ANY CONSTRUCTION ACTIVITY. TURBIDITY BARRIERS SHALL BE INSTALLED AND MAINTAINED AT ALL LOCATIONS WHERE THE POSSIBILITY OF TRANSFERRING SUSPENDED SOLIDS INTO THE RECEIVING WATERBODY EXISTS DUE TO THE PERMITTED WORK. TURBIDITY BARRIERS SHALL REMAIN IN PLACE AT ALL LOCATIONS UNTIL CONSTRUCTION IS COMPLETED AND SOILS ARE STABILIZED AND VEGETATION HAS BEEN ESTABLISHED. ALL PRACTICES SHALL BE IN ACCORDANCE WITH THE GUIDELINES AND SPECIFICATIONS DESCRIBED IN CHAPTER 6 OF THE FLORIDA LAND DEVELOPMENT MANUAL; A GUIDE TO SOUND LAND AND WATER MANAGEMENT (DEPARTMENT OF ENVIRONMENTAL REGULATION, 1988), INCORPORATED BY REFERENCE IN RULE 40E-4.091, F.A.C. UNLESS A PROJECT-SPECIFIC EROSION AND SEDIMENT CONTROL PLAN IS APPROVED AS PART OF THE PERMIT. THEREAFTER THE PERMITTEE SHALL BE RESPONSIBLE FOR THE REMOVAL OF THE BARRIERS. THE PERMITTEE SHALL CORRECT ANY EROSION OR SHOALING THAT CAUSES ADVERSE IMPACTS TO THE WATER RESOURCES.
4. THE PERMITTEE SHALL NOTIFY THE DISTRICT OF THE ANTICIPATED CONSTRUCTION START DATE WITHIN 30 DAYS OF THE DATE THAT THIS PERMIT IS ISSUED. AT LEAST 48 HOURS PRIOR TO COMMENCEMENT OF ACTIVITY AUTHORIZED BY THIS PERMIT, THE PERMITTEE SHALL SUBMIT TO THE DISTRICT AN ENVIRONMENTAL RESOURCE PERMIT CONSTRUCTION COMMENCEMENT NOTICE FORM NO. 0960 INDICATING THE ACTUAL START DATE AND THE EXPECTED COMPLETION DATE.
5. WHEN THE DURATION OF CONSTRUCTION WILL EXCEED ONE YEAR, THE PERMITTEE SHALL SUBMIT CONSTRUCTION STATUS REPORTS TO THE DISTRICT ON AN ANNUAL BASIS UTILIZING AN ANNUAL STATUS REPORT FORM. STATUS REPORT FORMS SHALL BE SUBMITTED THE FOLLOWING JUNE OF EACH YEAR.
6. WITHIN 30 DAYS AFTER COMPLETION OF CONSTRUCTION OF THE PERMITTED ACTIVITY, THE PERMITTEE SHALL SUBMIT A WRITTEN STATEMENT OF COMPLETION AND CERTIFICATION BY A REGISTERED PROFESSIONAL ENGINEER OR OTHER APPROPRIATE INDIVIDUAL AS AUTHORIZED BY LAW, UTILIZING THE SUPPLIED ENVIRONMENTAL RESOURCE PERMIT CONSTRUCTION COMPLETION/CONSTRUCTION CERTIFICATION FORM NO.0881. THE STATEMENT OF COMPLETION AND CERTIFICATION SHALL BE BASED ON ONSITE OBSERVATION OF CONSTRUCTION OR REVIEW OF ASBUILT DRAWINGS FOR THE PURPOSE OF DETERMINING IF THE WORK WAS COMPLETED IN COMPLIANCE WITH PERMITTED PLANS AND SPECIFICATIONS. THIS SUBMITTAL SHALL SERVE TO NOTIFY THE DISTRICT THAT THE SYSTEM IS READY FOR INSPECTION. ADDITIONALLY, IF DEVIATION FROM THE APPROVED DRAWINGS ARE DISCOVERED DURING THE CERTIFICATION PROCESS, THE CERTIFICATION MUST BE ACCOMPANIED BY A COPY OF THE APPROVED PERMIT DRAWINGS WITH DEVIATIONS NOTED. BOTH THE ORIGINAL AND REVISED SPECIFICATIONS MUST BE CLEARLY SHOWN. THE PLANS MUST BE CLEARLY LABELED AS "ASBUILT" OR "RECORD" DRAWING. ALL SURVEYED DIMENSIONS AND ELEVATIONS SHALL BE CERTIFIED BY A

REGISTERED SURVEYOR.

7. THE OPERATION PHASE OF THIS PERMIT SHALL NOT BECOME EFFECTIVE: UNTIL THE PERMITTEE HAS COMPLIED WITH THE REQUIREMENTS OF CONDITION (6) ABOVE, HAS SUBMITTED A REQUEST FOR CONVERSION OF ENVIRONMENTAL RESOURCE PERMIT FROM CONSTRUCTION PHASE TO OPERATION PHASE, FORM NO.0920; THE DISTRICT DETERMINES THE SYSTEM TO BE IN COMPLIANCE WITH THE PERMITTED PLANS AND SPECIFICATIONS; AND THE ENTITY APPROVED BY THE DISTRICT IN ACCORDANCE WITH SECTIONS 9.0 AND 10.0 OF THE BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS WITHIN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT - AUGUST 1995, ACCEPTS RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF THE SYSTEM. THE PERMIT SHALL NOT BE TRANSFERRED TO SUCH APPROVED OPERATION AND MAINTENANCE ENTITY UNTIL THE OPERATION PHASE OF THE PERMIT BECOMES EFFECTIVE. FOLLOWING INSPECTION AND APPROVAL OF THE PERMITTED SYSTEM BY THE DISTRICT, THE PERMITTEE SHALL INITIATE TRANSFER OF THE PERMIT TO THE APPROVED RESPONSIBLE OPERATING ENTITY IF DIFFERENT FROM THE PERMITTEE. UNTIL THE PERMIT IS TRANSFERRED PURSUANT TO SECTION 40E-1.6107, F.A.C., THE PERMITTEE SHALL BE LIABLE FOR COMPLIANCE WITH THE TERMS OF THE PERMIT.
8. EACH PHASE OR INDEPENDENT PORTION OF THE PERMITTED SYSTEM MUST BE COMPLETED IN ACCORDANCE WITH THE PERMITTED PLANS AND PERMIT CONDITIONS PRIOR TO THE INITIATION OF THE PERMITTED USE OF SITE INFRASTRUCTURE LOCATED WITHIN THE AREA SERVED BY THAT PORTION OR PHASE OF THE SYSTEM. EACH PHASE OR INDEPENDENT PORTION OF THE SYSTEM MUST BE COMPLETED IN ACCORDANCE WITH THE PERMITTED PLANS AND PERMIT CONDITIONS PRIOR TO TRANSFER OF RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF THE PHASE OR PORTION OF THE SYSTEM TO A LOCAL GOVERNMENT OR OTHER RESPONSIBLE ENTITY.
9. FOR THOSE SYSTEMS THAT WILL BE OPERATED OR MAINTAINED BY AN ENTITY THAT WILL REQUIRE AN EASEMENT OR DEED RESTRICTION IN ORDER TO ENABLE THAT ENTITY TO OPERATE OR MAINTAIN THE SYSTEM IN CONFORMANCE WITH THIS PERMIT, SUCH EASEMENT OR DEED RESTRICTION MUST BE RECORDED IN THE PUBLIC RECORDS AND SUBMITTED TO THE DISTRICT ALONG WITH ANY OTHER FINAL OPERATION AND MAINTENANCE DOCUMENTS REQUIRED BY SECTIONS 9.0 AND 10.0 OF THE BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS WITHIN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT - AUGUST 1995, PRIOR TO LOT OR UNIT SALES OR PRIOR TO THE COMPLETION OF THE SYSTEM, WHICHEVER OCCURS FIRST. OTHER DOCUMENTS CONCERNING THE ESTABLISHMENT AND AUTHORITY OF THE OPERATING ENTITY MUST BE FILED WITH THE SECRETARY OF STATE WHERE APPROPRIATE. FOR THOSE SYSTEMS WHICH ARE PROPOSED TO BE MAINTAINED BY THE COUNTY OR MUNICIPAL ENTITIES, FINAL OPERATION AND MAINTENANCE DOCUMENTS MUST BE RECEIVED BY THE DISTRICT WHEN MAINTENANCE AND OPERATION OF THE SYSTEM IS ACCEPTED BY THE LOCAL GOVERNMENT ENTITY. FAILURE TO SUBMIT THE APPROPRIATE FINAL DOCUMENTS WILL RESULT IN THE PERMITTEE REMAINING LIABLE FOR CARRYING OUT MAINTENANCE AND OPERATION OF THE PERMITTED SYSTEM AND ANY OTHER PERMIT CONDITIONS.
10. SHOULD ANY OTHER REGULATORY AGENCY REQUIRE CHANGES TO THE PERMITTED SYSTEM, THE PERMITTEE SHALL NOTIFY THE DISTRICT IN WRITING OF THE CHANGES PRIOR TO IMPLEMENTATION SO THAT A DETERMINATION CAN BE MADE WHETHER A PERMIT MODIFICATION IS REQUIRED.
11. THIS PERMIT DOES NOT ELIMINATE THE NECESSITY TO OBTAIN ANY REQUIRED FEDERAL, STATE, LOCAL AND SPECIAL DISTRICT AUTHORIZATIONS PRIOR TO THE START OF ANY ACTIVITY APPROVED BY THIS PERMIT. THIS PERMIT DOES NOT CONVEY TO THE PERMITTEE OR CREATE IN THE PERMITTEE ANY PROPERTY RIGHT, OR ANY INTEREST IN REAL PROPERTY, NOR DOES IT AUTHORIZE ANY ENTRANCE UPON OR ACTIVITIES ON PROPERTY WHICH IS NOT OWNED OR CONTROLLED BY THE PERMITTEE, OR CONVEY ANY RIGHTS OR PRIVILEGES OTHER THAN THOSE SPECIFIED IN THE PERMIT AND CHAPTER 40E-4 OR CHAPTER 40E-40, F.A.C.
12. THE PERMITTEE IS HEREBY ADVISED THAT SECTION 253.77, F.S. STATES THAT A PERSON MAY NOT COMMENCE ANY EXCAVATION, CONSTRUCTION, OR OTHER ACTIVITY INVOLVING THE USE OF SOVEREIGN OR OTHER LANDS OF THE STATE, THE TITLE TO WHICH IS VESTED IN THE BOARD

OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND WITHOUT OBTAINING THE REQUIRED LEASE, LICENSE, EASEMENT, OR OTHER FORM OF CONSENT AUTHORIZING THE PROPOSED USE. THEREFORE, THE PERMITTEE IS RESPONSIBLE FOR OBTAINING ANY NECESSARY AUTHORIZATIONS FROM THE BOARD OF TRUSTEES PRIOR TO COMMENCING ACTIVITY ON SOVEREIGNTY LANDS OR OTHER STATE-OWNED LANDS.

13. THE PERMITTEE MUST OBTAIN A WATER USE PERMIT PRIOR TO CONSTRUCTION DEWATERING, UNLESS THE WORK QUALIFIES FOR A GENERAL PERMIT PURSUANT TO SUBSECTION 40E-20.302(4), F.A.C., ALSO KNOWN AS THE "NO NOTICE" RULE.
14. THE PERMITTEE SHALL HOLD AND SAVE THE DISTRICT HARMLESS FROM ANY AND ALL DAMAGES, CLAIMS, OR LIABILITIES WHICH MAY ARISE BY REASON OF THE CONSTRUCTION, ALTERATION, OPERATION, MAINTENANCE, REMOVAL, ABANDONMENT OR USE OF ANY SYSTEM AUTHORIZED BY THE PERMIT.
15. ANY DELINEATION OF THE EXTENT OF A WETLAND OR OTHER SURFACE WATER SUBMITTED AS PART OF THE PERMIT APPLICATION, INCLUDING PLANS OR OTHER SUPPORTING DOCUMENTATION, SHALL NOT BE CONSIDERED BINDING UNLESS A SPECIFIC CONDITION OF THIS PERMIT OR A FORMAL DETERMINATION UNDER SECTION 373.421(2), F.S., PROVIDES OTHERWISE.
16. THE PERMITTEE SHALL NOTIFY THE DISTRICT IN WRITING WITHIN 30 DAYS OF ANY SALE, CONVEYANCE, OR OTHER TRANSFER OF OWNERSHIP OR CONTROL OF A PERMITTED SYSTEM OR THE REAL PROPERTY ON WHICH THE PERMITTED SYSTEM IS LOCATED. ALL TRANSFERS OF OWNERSHIP OR TRANSFERS OF A PERMIT ARE SUBJECT TO THE REQUIREMENTS OF RULES 40E-1.6105 AND 40E-1.6107, F.A.C. THE PERMITTEE TRANSFERRING THE PERMIT SHALL REMAIN LIABLE FOR CORRECTIVE ACTIONS THAT MAY BE REQUIRED AS A RESULT OF ANY VIOLATIONS PRIOR TO THE SALE, CONVEYANCE OR OTHER TRANSFER OF THE SYSTEM.  
  
UPON REASONABLE NOTICE TO THE PERMITTEE, DISTRICT AUTHORIZED STAFF WITH PROPER IDENTIFICATION SHALL HAVE PERMISSION TO ENTER, INSPECT, SAMPLE AND TEST THE SYSTEM TO INSURE CONFORMITY WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE PERMIT.
18. IF HISTORICAL OR ARCHAEOLOGICAL ARTIFACTS ARE DISCOVERED AT ANY TIME ON THE PROJECT SITE, THE PERMITTEE SHALL IMMEDIATELY NOTIFY THE APPROPRIATE DISTRICT SERVICE CENTER.
19. THE PERMITTEE SHALL IMMEDIATELY NOTIFY THE DISTRICT IN WRITING OF ANY PREVIOUSLY SUBMITTED INFORMATION THAT IS LATER DISCOVERED TO BE INACCURATE.



## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-452-2045 • TDD (561) 697-2574  
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.stwmd.gov

BOOK 13056 PAGE 0126  
Dorothy H. Wilken, Clerk

CON 24-06

Environmental Resource Regulation Division  
Application No.: 000626-15

July 26, 2000

HAE JOINT VENTURE  
2350 SOUTH CONGRESS AVE  
DELRAY BEACH, FL 33445

AND

GOLDEN WEST LIMITED PARTNERSHIP  
448 VIKING DRIVE  
SUITE 200  
VIRGINIA BEACH, VA 23452

Dear Permittee:

SUBJECT: PERMIT MODIFICATION NO.: 50-04120-P  
Project: HAMILTON BAY/MALLORY SQUARE  
Location: Palm Beach County, S15/T43S/R42E

District staff has reviewed the information submitted through June 26, 2000, for revisions to the perimeter buffer detail. No other modifications are approved with this authorization. Based on that information, District staff has determined that the proposed activities are in compliance with the original environmental resource permit and appropriate provisions of FAC Rule 40E-4.331(2)(b). Therefore, these changes have been recorded in our files. Please understand that your permit remains subject to the General Conditions and all other Special Conditions not modified and as originally issued.

Sincerely,

A handwritten signature in cursive script that reads "Maria C. Clemente".

Maria C. Clemente, P.E.  
Senior Supervising Engineer  
Palm Beach Service Center

MC/re

c: Palm Beach County Engineer  
SCHAEFER FAGAN CONSULTING ENGINEERS INC



Prepared By and Return to:  
 Joel D. Kopelman, Esq.  
 Navon, Kopelman, O'Donnell & Lavin, P.A.  
 2699 Stirling Road, Suite B-100  
 Ft. Lauderdale, FL 33312

04/19/2002 10:27:14 2002020016  
 DR BK 13624 PG 0441  
 Palm Beach County, Florida

**AMENDMENT TO THE  
 MASTER DECLARATION FOR BRIAR BAY**

**THIS FIRST AMENDMENT TO THE MASTER DECLARATION FOR BRIAR BAY** ("Amendment") is made as of the 3 day of APRIL, 2002, by **GOLDEN WEST LIMITED PARTNERSHIP, a Virginia limited partnership** (hereinafter referred to as "Declarant"), whose address is Suite 220, 448 Viking Drive, Virginia Beach, Virginia 23452.

WITNESSETH:

**WHEREAS**, Declarant is the Declarant defined in that certain Master Declaration for Briar Bay which was recorded November 5, 2001 in Official Records Book 13056, Page 1, of the Public Records of Palm Beach County, Florida, (the "Declaration"); and

**WHEREAS**, the Declarant has the right to amend the Declaration in accordance with Section 11.1.3 of the Declaration, without the approval of any other party; and

**WHEREAS**, the Declarant has deemed it necessary to amend Section 2.15 of the Declaration.

**NOW, THEREFORE**, in accordance with the terms and provisions of the Declaration, the Declarant hereby amends the Declaration as follows:

1. The foregoing recitations are true and correct are incorporated herein by reference. Defined terms in the Declaration shall have the same meaning in the Amendment, unless the context otherwise requires.

2. Section 2.15 of Declaration is hereby amended and restated in its entirety to provide as follows:

2.15. Perimeter Wall, Fence, Berm or Landscaping. DECLARANT and the COMMUNITY ASSOCIATION shall have an easement around the perimeter of the SUBJECT PROPERTY, and adjacent to the collector roads servicing the SUBJECT PROPERTY, for the installation of any wall, fence, berm or landscaping and for the COMMUNITY ASSOCIATION (and not the DECLARANT) to maintain and repair the aforesaid improvements; provided, however if the obligation to maintain or repair such improvements is the responsibility of another person(s) or entity(ies), the COMMUNITY ASSOCIATION shall not be obligated to perform such maintenance or repair.

Notwithstanding anything in the Section 2.15 to the contrary, the DECLARANT shall have no obligation to maintain, repair or replace any such improvements located in such easement referred to above or in any other area provided for in this Section 2.15. Said easement shall be shown on the subdivision plat for the SUBJECT PROPERTY. In the event said easement is absent from the subdivision plat, the DECLARANT and the COMMUNITY ASSOCIATION hereby reserve adequate area as necessary for the purposes and uses as provided above in this Section 2.15 to install and/or maintain (subject to the limitations set forth above regarding maintenance or repair) any wall, fence, berm or landscaping. If any wall, fence, berm or landscaping is constructed within such easement by the DECLARANT or the COMMUNITY ASSOCIATION, then, unless the obligation of maintenance is the responsibility of another person(s) or entity(ies), the COMMUNITY ASSOCIATION shall maintain the wall, fence, berm or landscaping located between the wall, fence, or berm and the aforesaid perimeter of the SUBJECT PROPERTY and the area adjacent to the collector roads servicing the SUBJECT PROPERTY. However, where any wall or fence constructed by DECLARANT or the COMMUNITY ASSOCIATION is located on a LOT, the OWNER shall maintain the side of the wall or fence facing the OWNER's LOT. Notwithstanding anything in the section 2.15 to the contrary, no improvements shall be made by the Community Association to any property owned by or to be maintained by the Hamal Community Development District, without the prior written consent of Hamal Community Development District in each instance.

3. Except as amended by this Amendment, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be executed in its name, as of the day and year first above written.

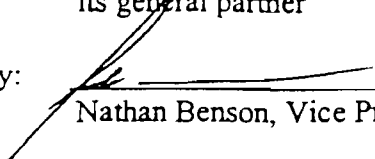
{Signature page to follow}

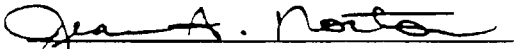
Signed, sealed and delivered  
in the presence of:

GOLDEN WEST LIMITED PARTNERSHIP, a Virginia  
limited partnership

By: GOLDEN WEST, INC., a Virginia corporation,  
its general partner

  
Print Name: Dona O. Matteson

By:   
Nathan Benson, Vice President

  
Print Name: Jean A. Norton

GOLDEN WEST, INC  
VA

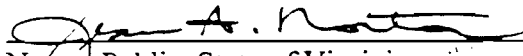
COMMONWEALTH OF VIRGINIA

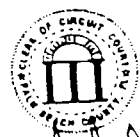
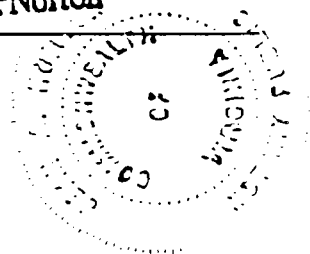
CITY OF VIRGINIA BEACH

I hereby certify that on this day, before me, an officer duly authorized in the State and City aforesaid, to take acknowledgments, personally appeared Nathan Benson, as Vice President of GOLDEN WEST, INC., as the general partner of GOLDEN WEST LIMITED PARTNERSHIP, a Virginia limited partnership, who is personally known to me or has produced \_\_\_\_\_ as identification, and who has executed the foregoing instrument on behalf of the partnership for the purposes expressed therein.

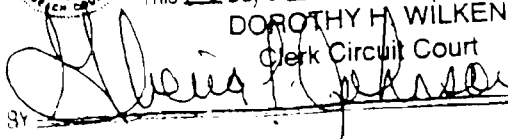
WITNESS my hand and official seal this 3 day of Apr, 2002.

My commission expires:  
My Commission Expires November 09, 2004

  
Notary Public, State of Virginia  
Print Name Jean A. Norton



PALM BEACH COUNTY - STATE OF FLORIDA  
I hereby certify that the foregoing is a  
true copy of the record in my office.  
This 3 Day of April 20 02  
DOROTHY H. WILKEN  
Clerk Circuit Court

  
BY \_\_\_\_\_



PREPARED BY AND RETURN TO:  
WILL CALL BOX #45  
HILLEY & WYANT-CORTEZ, P.A.  
860 US Highway One, Suite 108  
North Palm Beach, FL 33408  
(561) 627-0009

CFN 20070221473  
CR BK 21705 PG 0574  
RECORDED 05/07/2007 14:37:10  
Palm Beach County, Florida  
Sharon R. Bock, CLERK & COMPTROLLER  
Pgs 0574 - 576; (3pgs)

**CERTIFICATE OF RESOLUTION ADOPTING AMENDMENTS TO THE WATERS EDGE AT  
BRIAR BAY ASSOCIATION, INC. BYLAWS**

WHEREAS, the WATERS EDGE AT BRIAR BAY ASSOCIATION, INC. is a Florida corporation not-for-profit as filed with the Secretary of State on June 12, 2003, whose Document Number is N03000005023, and

WHEREAS, Waters Edge at Briar Bay Association, Inc., is a homeowner association as set forth in that certain Declaration of Covenants and Restrictions recorded in the Public Records of the Clerk of the Circuit Court in and for Palm Beach County, Florida, at Official Record Book 15515, Page 1250, along with Articles of Incorporation and Bylaws recorded as exhibits to said Declaration, each owner being subject to the said Declaration, Articles of Incorporation and Bylaws, and

WHEREAS, the afore-described Bylaws permit it to be amended from time to time by the membership, and

WHEREAS, in compliance with the requirements of the above-described Bylaws, the membership has amended same as hereinafter set forth,

IT IS HEREBY,

RESOLVED, that the following amendments were adopted as required by the Bylaws for Waters Edge at Briar Bay Association, Inc.:

4.3 **Notices.** Written notice stating the place, day and hour of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by first-class mail or personal delivery to each member entitled to vote at such meeting not less than fourteen (14)~~10~~ nor more than thirty (30)~~60~~ days before the date of the meeting, either personally or by first-class mail, by or at the direction of the president, the secretary or the officer or persons calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears in the records of the ASSOCIATION, with postage thereon pre-paid. For the purposes of determining members entitled to notice of, or to vote at, any meeting of the members of the ASSOCIATION, or in order to make a determination of the members for any other purpose, the BOARD shall be entitled to rely upon the member register as same exists fourteen (14)~~ten~~ days prior to the giving of the notice of any meeting...(the end of this section remains unchanged).

4.5 **Annual Meeting.** The annual meeting for the purpose of electing directors and transacting any other business shall be held in the first calendar quarter of each year as shall be selected by the BOARD and as is contained in the notice of such meeting. If the BOARD fails to call such meeting by the end of the first calendar quarter of any year, then within thirty (30) days after the written request by any Member, or any Officer or Director of the ASSOCIATION, the Secretary shall call an annual meeting~~once each year at a time and place to be determined by the BOARD and as is~~



contained in the notice of such meeting. However, so long as DECLARANT is entitled to appoint a majority of the directors of the Association, no annual meetings will be required.

5.1.2 Director Qualifications. Directors must be members of the ASSOCIATION and on the deed for their unit. No more than one person owning a unit may serve on the Board at any time. (i.e. if a husband and wife own a unit together, only one of them may serve on the Board at any given time).

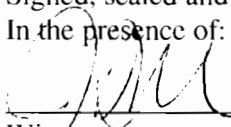

5.7 Notice of Meetings. (Beginning of this section remains unchanged)...Notice of any meeting of the BOARD shall not be required to be given to the members or posted unless otherwise required by law. If notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency. Notwithstanding this general notice requirement, notice may be provided by posting or mailing the notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the Association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and the agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition, provided the member has consented in writing to receive notice by electronic transmission, notice of all board meetings and committee meetings requiring notice under this section, may be provided by electronic transmission, including but not limited to e-mail, facsimile, or in any other manner of electronic transmission. Rules that regulate the use of parcels in the community may not be adopted, amended, or revoked at a board meeting unless a written meeting notice is provided to all members at least fourteen (14) days before the meeting, which notice includes a statement that changes to the rules regarding the use of parcels will be considered at the meeting. An assessment may not be levied at a board meeting unless a written notice of the meeting is provided to all members at least fourteen (14) days before the meeting ... (the end of this section remains unchanged).

**\*\*The foregoing text which is underlined is added and that which is stricken-out is deleted.\*\***

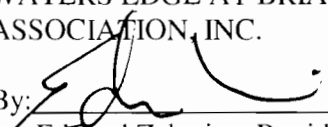
THE FOREGOING AMENDMENTS were passed by the affirmative vote of at least a majority of the membership (unit owners) in compliance with the amendment procedure set forth in the Bylaws.

IN WITNESS WHEREOF, WATERS EDGE AT BRIAR BAY ASSOCIATION, INC., a Florida not-for-profit corporation, has caused this Certificate of Amendment to the Bylaws as set forth above, of the Waters Edge at Briar Bay Association, Inc., to be executed this 26 day of April, 2007.

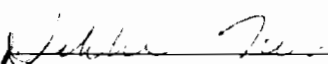
Signed, sealed and delivered  
In the presence of:

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Witness

WATERS EDGE AT BRIAR BAY  
ASSOCIATION, INC.

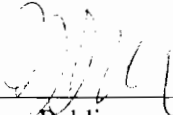
By:   
\_\_\_\_\_  
Edward Zakarian, President


ATTEST:

  
\_\_\_\_\_  
Debbie Nikolis, Secretary

STATE OF FLORIDA                    )  
COUNTY OF PALM BEACH    ) ss:

The foregoing instrument was acknowledged before me this 26 day of April, 2007 by Edward Zakarian and Debbie Nikolis, the President and Secretary, respectively of WATERS EDGE AT BRIAR BAY ASSOCIATION, INC., a Florida not-for-profit corporation on behalf of the corporation, who  are personally known OR  have produced \_\_\_\_\_ as identification and who have not taken an oath.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: March 22, 2011

NOTARY PUBLIC - STATE OF FLORIDA  
 Yolanda Ivette Vidro  
Commission #DD654157  
Expires: MAR. 22, 2011  
BONDED THRU ATLANTIC BONDING CO., INC.