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Prepared by and return to:  
Timothy M. Williams  
1901 South Harbor City Blvd., #500  
Melbourne, FL 32901

C →

**NOTICE OF PRESERVATION OF RESTRICTIVE COVENANTS  
UNDER MARKETABLE RECORD TITLE ACT**

Pursuant to Chapter 712, Florida Statutes, the undersigned Claimant files this Notice to preserve and protect its restrictive covenants from extinguishment by the operation of the Marketable Record Title Act.

The name of the entity filing this Notice is Windward Cove Homeowners Association, Inc., whose post office address is P.O. Box 372571, Satellite Beach, FL 32937.

As is affirmed in the affidavit attached hereto as Exhibit A, Windward Cove Homeowners Association, Inc. has mailed or hand-delivered a notice of meeting containing a Statement of Marketable Title Action in the form attached to the affidavit to all members of the Association at least 7 days prior to the meeting.

The lands affected by this Notice are described as:

SEE EXHIBIT B

The claim is based on a recorded covenant or restriction. The nature, description, and extent of the claim is as described in the restrictive covenants recorded on July 24, 1986 in Official Records Book 2716, Page 2019, of the public records of Brevard County, Florida.

A copy of said restrictive covenants is attached hereto as Exhibit C.

The preservation of the restrictive covenants was approved by at least 2/3 of the members of the board of directors of Windward Cove Homeowners Association, Inc. at the meeting described in the notice of meeting attached to Exhibit A.

Dated this 23<sup>rd</sup> day of May, 2016.

SIGNATURES ON FOLLOWING PAGE

Signed, sealed and delivered  
Inc.  
in our presence:

Windward Cove Homeowners Association,

Veronica Lepri  
Print Name: Veronica Lepri

By: Mike Ziegler  
Mike Ziegler, President

Andrea Suhey  
Print Name: Andrea Suhey

STATE OF FLORIDA  
COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Mike Ziegler, as President of Windward Cove Homeowners Association, Inc., who acknowledged before me that he executed the same, on behalf of the corporation. Said person ( ) is personally known to me or (X) presented the following form of identification. FL DL

Witness my hand and official seal in the County and State last aforesaid this 23<sup>rd</sup> day of May, 2016.

Andrea Suhey  
Notary Signature



Andrea Suhey  
State of Florida  
My Commission Expires 01/01/2019  
Commission No. FF 186902

**AFFIDAVIT OF DELIVERY OF STATEMENT OF MARKETABLE TITLE ACTION**

BEFORE ME, a notary public authorized in the State and County identified below to administer oaths and take acknowledgments, this day personally appeared Malcolm E. Baird (the "Affiant") who, after being duly sworn, stated that:

1. Affiant is the Secretary of the board of the Windward Cove Homeowners Association ("WCHA"), and is the appropriate member of the board to execute this affidavit.
2. Affiant has personal knowledge of the matters set forth herein.
3. Affiant affirms that a notice of the meeting of the board of WCHA at which the board was to take action to preserve the association's restrictive covenants, which contained a Statement of Marketable Title Action in the form attached hereto as Exhibit A, was mailed or hand delivered to each member of WCHA at least 7 days before the meeting.

*Malcolm E. Baird*  
 \_\_\_\_\_  
 Malcolm E. Baird, Secretary of WCHA

STATE OF FLORIDA  
COUNTY OF BREVARD

SWORN TO AND SUBSCRIBED before me this 11<sup>th</sup> day of May, 2016, by Malcolm E. Baird, as Secretary of WCHA, who [] is personally known to me, or [] has produced \_\_\_\_\_ as identification.



*Mary Whitehead Hirst*  
 \_\_\_\_\_  
 NOTARY PUBLIC



**EXHIBIT A**

**STATEMENT OF MARKETABLE TITLE ACTION**

The Windward Cove Homeowners Association (the "Association") has taken action to ensure that the Declaration of Covenants and Restrictions of Windward Cove, recorded in Official Records Book 2716, Page 2019, of the public records of Brevard County, Florida, as may be amended from time to time, currently burdening the property of each and every member of the Association, retains its status as the source of marketable title with regard to the transfer of a member's residence. To this end, the Association shall cause the notice required by chapter 712, Florida Statutes, to be recorded in the public records of Brevard County, Florida. Copies of this notice and its attachments are available through the Association pursuant to the Association's governing documents regarding official records of the Association.

*[Faint, illegible text]*



EXHIBIT **B**

All of the Plat of Windward Cove according to the Plat thereof recorded in Plat Book 32, at Page 91, of the Public Records of Brevard County, Florida.



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PREPARED BY:  
Eric A. Simon, Esquire  
4901 NW 17th Way, #303  
Ft. Lauderdale, FL 33309

RecFee \$ 189.00  
DocSt \$ \_\_\_\_\_  
IntTax \$ \_\_\_\_\_  
SerChg \$ \_\_\_\_\_

189.00  
DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
WINDWARD COVE

RETURN TO:  
JOEL C. MOSES  
Attorney at Law  
47 W. U.S. Highway Ave., Suite 200  
McAlhoun, FL 32061

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF WINDWARD COVE is made this 23rd day of July, 1986, by McWILLIAMS DEVELOPMENT CO., INC., a Florida corporation ("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 will 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, and such additions as may hereafter be made pursuant to the terms of this declaration, 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:

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

1.02 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.

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

1.04 BOARD means the Board of Directors of the ASSOCIATION.

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

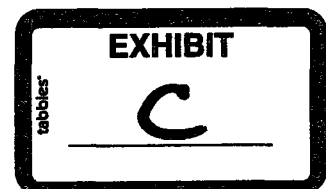
1.06 COMMON AREAS means all of the roads shown on the plat of the SUBJECT PROPERTY which are not dedicated to the public or any governmental authority, and any other property, whether improved or unimproved, or any easement or interest therein, now or hereafter owned by the ASSOCIATION or which is declared to be a COMMON AREA by this DECLARATION. COMMON AREAS may include, but are not limited to, parks, open areas, lakes, 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.

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

1.07.1 Expenses incurred in connection with the ownership, maintenance, repair, improvement or operation of the COMMON AREAS, or any

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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.

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

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

1.07.4 Common water, sewer, trash removal, and other common utility, governmental, or similiar services for the UNITS which are not seperately metered or charged to the OWNERS, or which the ASSOCIATION determines to pay in common in the best interest of the OWNERS.

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

1.07.6 Membership fees payable pursuant to the Mandatory Club Membership Agreement attached hereto as Exhibit "D".

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

1.09 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 who 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 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 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 defaults or obligations incurred by any prior DECLARANT, except as same may be expressly assumed by the subsequent DECLARANT.

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

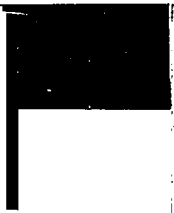
1.11 INSTITUTIONAL LENDER means the holder of a mortgage encumbering a LOT, which holder in the ordinary course of business makes, purchases, guarantees, or insures mortgage loans, and which is not owned or controlled by the OWNER of the LOT encumbered. An INSTITUTIONAL LENDER may include, but is not 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.

1.12 LOT means any 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.

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

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

1.15 SUBJECT PROPERTY means all of the property subject to this DECLARATION from time to time, which initially is the property described in Exhibit "A" attached hereto, and includes any UNITS or improvements constructed thereon.



1.16 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.

2.01 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.

2.02 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.

2.03 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.

2.04 Approval or Disapproval of Matters. Whenever the decision of the OWNERS is required upon any matter, whether or not the subject of an ASSOCIATION meeting, such decision shall be expressed in accordance with the ARTICLES and the BYLAWS, except as otherwise provided herein.

2.05 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. Notwithstanding the foregoing, if the OWNERS disagree with any action taken by the BOARD, the OWNERS may call a special meeting of the OWNERS as provided by the BYLAWS, and at such meeting either revoke the action taken by the BOARD or require the BOARD to take any other action approved by the OWNERS.

2.06 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.

2.07 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.

2.08 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.

3.01 Conveyance of COMMON AREAS to ASSOCIATION.

3.01.1 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.

3.01.2 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.

3.02 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 PROPERTY 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 the title to their PROPERTY.

3.03 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.

3.04 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 two-thirds (2/3) of the votes 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.

3.05 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.

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

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

3.07.1 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, 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.

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3.07.2 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.

3.07.3 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 units plus reserve funds.

3.07.4 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.

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

3.07.6 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 the OWNERS.

3.07.7 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 ten (10) 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 UNITS which secure the largest aggregate indebtedness shall control.

3.08 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.

3.09 Damage or Destruction. In the event any improvement 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. 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. In such event, where applicable the ASSOCIATION shall so notify any OWNER otherwise responsible for such operation or maintenance, and thereafter such property shall be operated and/or maintained by the ASSOCIATION and not by the OWNER, until the BOARD determines no longer to assume the obligation to operate

and/or maintain such property and so notifies the appropriate OWNER in writing. 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 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 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 ASSOCIATION for the cost of repair or restoration to the extent not covered by the ASSOCIATION's insurance.

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 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 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 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 any controlling governmental authority.

3.12 Mortgage and Sale of COMMON AREAS. The ASSOCIATION shall not abandon, partition, subdivide, encumber, sell or transfer any COMMON AREA owned by the ASSOCIATION without the approval of at least 2/3 of the votes of the OWNERS. Notwithstanding the foregoing, as to any portion of any COMMON AREA that is unimproved and is to consist of landscaped open area around future UNITS not yet constructed, if DECLARANT changes the location of any future UNITS 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 area to DECLARANT, and in connection therewith, DECLARANT shall convey to ASSOCIATION any area which was formerly intended to be a LOT which is, due to the relocation of any LOT, then intended to be a COMMON AREA. 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).

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.

4.01 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.

4.02 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.

4.03 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 and UNIT 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; provided such right of access shall not unreasonably interfere with the OWNER's permitted use of the LOT and, except in the event of an emergency, entry into any UNIT shall be made with reasonable notice to the OWNER.

4.04 Support. Every portion of a UNIT contributing to the support of a BUILDING or an adjacent UNIT shall be burdened with an easement of support for the benefit of all other UNITS in the BUILDING.

4.05 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 nonpurposeful 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.

4.06 Wall. An easement 5 feet into LOTS 4-13, as shown on the plat of the SUBJECT PROPERTY, from the northeast boundary of the SUBJECT PROPERTY, in favor of the ASSOCIATION, for the construction and maintenance of a wall within such area. Any wall constructed within such area shall be maintained by the ASSOCIATION.

4.07 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.

4.08 Additional Easements. DECLARANT (so long as it owns any LOTS) 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 the OWNERS and residents of the SUBJECT PROPERTY and their guests and invitees, or in favor of 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 and residents of the SUBJECT PROPERTY and their guests and invitees 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 for any other reason or 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 LOTS for dwelling purposes, no joinder 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 joinder 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.

4.09 Sale and Development Easement. DECLARANT 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 and promotion, or leasing, of any LOT or UNIT.

5. USE RESTRICTIONS.

5.01 One UNIT Per LOT. Only one UNIT shall be constructed on any LOT, which shall comply with the following minimum standards:

5.01.1 Maximum Height. The maximum height of any UNIT shall be 30 feet above the finish floor grade of the first floor of the UNIT.

5.01.2 Garages. Each UNIT shall have a garages or garages providing parking for at least two automobiles. No garage shall be erected which is separate from the UNIT, provided that the ASSOCIATION may approve a garage which, while separated from the UNIT, is connected by a portico or similar structure. No garage shall be permanently enclosed, and no portion of a garage required for the parking of an automobile shall be converted into a living space or storage area without the prior written consent of the ASSOCIATION. All garage doors shall remain closed when not in use. All UNITS shall be served with a paved driveway of concrete (or other material approved by the ASSOCIATION) construction at least 16 feet in width for the entire length of the driveway. No fiberglass garage doors will be permitted. All garage doors must be approved pursuant to Paragraph 5.28.

5.01.3 Sidewalks. Each LOT containing a UNIT shall have a concrete sidewalk constructed in front of the LOT so as to connect evenly in all places with sidewalks on adjoining LOTS. The sidewalks shall be four feet wide and shall be constructed along the entire front of the LOT, except corner LOTS shall have similar sidewalks on all street frontages. All sidewalks shall be installed at the OWNER's expense concurrent with the construction of a UNIT on the LOT, or by December 31, 1992, whichever occurs first, unless waived by the ASSOCIATION.

5.01.4 Building Materials. The sides of all UNITS shall be composed of either stone, brick, stucco, wood, or a combination thereof, as approved by the ASSOCIATION.



5.01.5 Minimum Square Footage. The floor area, exclusive of open or screened porches, patios, and garages, of any UNIT shall not be less than 2,000 square feet for a one-story UNIT, and no less than 1,000 square feet for the ground floor area of a two-story UNIT with a minimum total of 2,000 square feet for all of the area of a two-story UNIT.

5.01.6 Roofs. Unless otherwise approved in accordance with Paragraph 5.28 below, all roofs shall be composed of either tile, slate, heavy fiberglass, heavy asbestos shingle, cedar shake single, or simulated architectural shingle.

5.02 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.

5.03 No Trade or Business. No trade, business, profession, or commercial activity, or any other nonresidential use, shall be conducted upon any portion of the SUBJECT PROPERTY or within any LOT or UNIT by any OWNER or resident of the SUBJECT PROPERTY.

5.04 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 six months.

5.05 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 other personal property commonly kept outside.

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

5.07 Garbage and Trash. Each OWNER shall regularly pick up all garbage, trash, refuse or rubbish on the OWNER's LOT. Garbage, trash, refuse or rubbish that is required to be placed at the front of the LOT in order to be collected may be placed and kept at the front of the LOT 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. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. All containers, dumpsters or garbage facilities shall be stored inside a UNIT or fenced-in area and screened from view and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted.

5.08 Vehicles. No vehicle other than a private passenger automobile shall be parked outside any UNIT for a period of more than 24 hours without the prior written consent of the ASSOCIATION. No vehicle shall be parked outside of a UNIT overnight without the prior written consent of the ASSOCIATION if commercial lettering or signs are painted to or affixed to the vehicle, or if commercial equipment is placed upon the vehicle, or if the vehicle is a truck, recreational vehicle, camper, trailer, or other than a private passenger vehicle as specified above. The OWNER and residents of any UNIT may not keep more than four vehicles within the SUBJECT PROPERTY on a permanent basis without the prior written consent of the ASSOCIATION. 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 no vehicle which is unlicensed or which cannot operate on its own power shall remain within the SUBJECT PROPERTY for more than 24 hours, and no major repair of any vehicle shall be made on the SUBJECT PROPERTY. Motorcycles are not permitted except with the prior written consent of the ASSOCIATION which may be

OFF. REC'D DECLARATION - 9 .PAGE

2716

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withdrawn at any time, and any permitted motorcycle must be equipped with appropriate noise muffling equipment so that the operation of same does not create an unreasonable annoyance to the residents of the SUBJECT PROPERTY.

5.09 Pets. No animals, livestock or poultry of any kind shall be permitted within the SUBJECT PROPERTY except for common household domestic pets. Any pet must be carried or kept on a leash when outside of a UNIT or fenced-in area. No pet shall be kept outside of a UNIT unless someone is present in the UNIT. Each OWNER shall be responsible for his pets, and the pets of any person residing in his UNIT. Any pet must not be an unreasonable nuisance or annoyance to 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, except for designated pet-walk areas, if any. No commercial breeding of pets is permitted within the SUBJECT PROPERTY. The ASSOCIATION may require any pet to be immediately and permanently removed from the SUBJECT PROPERTY due to a violation of this paragraph.

5.10 Landscaping.

5.10.1 The OWNER of each LOT containing a UNIT shall be required to install and maintain tasteful landscaping on his LOT, 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 landscaping plans approved by the ASSOCIATION. All such landscaping shall be maintained by the OWNER in first class condition and appearance and, as reasonably required, mowing, watering, trimming, fertilizing, and weed, insect and disease control shall be performed by the OWNER. Underground sprinkler systems shall be installed, maintained and used for irrigation purposes. All landscaped areas shall be primarily sodded with grass, and shall not be paved or covered with gravel or any artificial surface without the prior written consent of the ASSOCIATION. All sod, plants, trees, shrubs or flowers shall be maintained in good health, and all dead or diseased items shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be promptly removed. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior of any LOT. Prior to the construction of improvements upon a LOT, the OWNER of the LOT shall maintain the LOT in good appearance and free from overgrown weeds and rubbish.

5.10.2 Simultaneously with the submission of building plans for a new UNIT to be approved pursuant to Paragraph 5.28 below, the applicable OWNER shall also provide a landscaping plan for approval pursuant to said paragraph, which shall indicate all plants to be used including size, quantity and placement. In any event, a minimum of one tree for every 25 feet of road frontage or portion thereof, with a height minimum of 10 feet, shall be required on each LOT when a UNIT is constructed thereon. The type and location of the foregoing shall be approved pursuant to Paragraph 5.28. A minimum of \$2,500.00 shall be spent on each LOT for trees and plants, not including sod, mulch, or labor.

5.11 Maintenance. Each OWNER shall maintain his UNIT and all improvements upon his LOT in first class condition at all times, except any portions thereof to be maintained by the ASSOCIATION as provided in this DECLARATION. The exterior of all UNITS including but not limited to roofs, walls, windows, patio areas, pools, screenings, and awnings shall be maintained in first class condition and repair and in a neat and attractive manner. All exterior painted areas shall be painted as reasonably necessary, with colors which are harmonious with other UNITS, and no excessive rust deposits on the exterior of any UNIT, peeling of paint or discoloration of same shall be permitted. No OWNER shall change the exterior color of his UNIT without the consent of the ASSOCIATION. 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.

5.12 Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are

permitted. All exterior air conditioning units and equipment must be visually screened from view by landscaping or other approved materials, and in any event, no exterior air conditioning units or equipment shall be placed in the front of the UNIT.

5.13 Clotheslines and Outside Clothes Drying. No clothesline or clothespole 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 ASSOCIATION 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.

5.14 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.

5.15 Outside Antennas. No outside signal receiving or sending antennas, dishes or devices are permitted without the prior written consent of the ASSOCIATION. The foregoing shall not prohibit any common antenna or signal receiving dish owned by the ASSOCIATION.

5.16 Further Subdivision. No LOTS shall be further subdivided without the prior written consent of the ASSOCIATION if same would result in the creation of more LOTS than before such resubdivision. Notwithstanding the foregoing, portions of a LOT 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.

5.17 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 as approved by the ASSOCIATION so that they shall be substantially concealed or hidden from any eye-level view from any street or adjacent property.

5.18 Signs. No signs shall be placed upon any LOT, 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 ASSOCIATION. Any permitted signs must comply with any specifications adopted by the ASSOCIATION.

5.19 Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted.

5.20 Boats. No boats or trailers may be kept or stored upon any LOT and outside of any UNIT, without the prior written consent of the ASSOCIATION.

5.21 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 ASSOCIATION and any controlling governmental authority, including but not limited to the excavation or filling in of any lake or 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.

5.22 Swimming Pools. Construction of a swimming pool may be only of concrete or a concrete-type material. The outside edge of any pool shall not be closer than five feet to a line extended and aligned with the side walls of the UNIT. No screening of pool area may extend beyond a line extended and aligned with the side walls of the UNIT. Pool screening may not be higher than two stories. No overhead electrical wires shall cross any pool. All pool lights, other than underwater lights, must be at least four feet from the edge of the pool. No swimming pool having an elevation exceeding four feet above normal grade shall be permitted. In cases where the back yard surrounding a pool is not fenced in, the pool itself must be enclosed with a fence not less than five feet in height, or a screen enclosure. The entrance gate to the back yard or the pool itself, as the case may be, is to be constructed with a self-closing latch placed at least 40 inches above the ground.

5.23 Boat Docks. All boat docks shall be maintained in good condition at all times, and in conformance with the requirements of any controlling governmental authority.

5.24 Gas Appliances. Each new UNIT shall be required to have installed therein gas heating and gas hot water appliances, unless waived by DECLARANT.

5.25 Fences. Any fence constructed upon the SUBJECT PROPERTY shall be no higher than five feet. All fencing material must be wood and must be a shadow box style approved pursuant to Paragraph 5.28 below. All fences must be painted or stained and maintained in good condition.

5.26 Exterior Lighting. A minimum exterior lighting plan must be included with the building plans for any new UNIT submitted for approval pursuant to Paragraph 5.28 below. Any exterior lighting shall be maintained in good condition at all times.

5.27 Mail Boxes. All mail boxes within the SUBJECT PROPERTY must be built to specifications approved by the ASSOCIATION.

5.28 Architectural Control for Exterior Changes.

5.28.1 OWNER to Obtain Approval. No OWNER shall make, install, place, or remove any building, fence, wall, patio area, pool, spa, landscaping, or any other alteration, addition, improvement, or change of any kind or nature to, in or upon any portion of the COMMON AREAS, the OWNER's LOT, or the exterior of the OWNER's UNIT, unless the OWNER first obtains the written approval of the ASSOCIATION to same, except that such approval shall not be required for any maintenance or repair which does not result in a material change in any improvement including the color of same. In connection with the approval to be obtained hereunder, the ASSOCIATION may adopt architectural guidelines from time to time as to the improvements permitted upon the SUBJECT PROPERTY.

5.28.2 ASSOCIATION's Consent. Any request by an OWNER for approval by the ASSOCIATION to any addition, alteration, improvement, or change shall be in writing and shall be accompanied by plans and specifications or other details as the ASSOCIATION may deem reasonably necessary in connection with its determination as to whether or not it will approve same. The ASSOCIATION shall have the right to charge a reasonable fee in connection with the approval of any request to pay for the cost of any architect, engineer or consultant hired by the ASSOCIATION to review any plans or specifications. Approval of any request shall not be unreasonably withheld, and shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable improvement of any LOT or UNIT, but may be withheld due to aesthetic considerations. The ASSOCIATION shall notify the OWNER of its approval or disapproval by written notice within 30 days after request for such consent is made in writing to the ASSOCIATION, and in the event the

ASSOCIATION fails to disapprove any request within such 30 day period, the consent shall be deemed approved and upon request the ASSOCIATION shall give written notice of such approval. In consenting to any plans or specifications, the ASSOCIATION may condition such consent upon changes being made. If the ASSOCIATION consents to any plans and specifications, the OWNER may proceed to make the alteration, addition, improvement, or change in strict conformance with the plans and specifications approved by the ASSOCIATION, and subject to any conditions of the ASSOCIATION's approval.

5.28.3 No Liability. The ASSOCIATION shall not be liable to any OWNER in connection with the exercise or non-exercise of architectural control hereunder, or the approval or disapproval of any alteration, addition, improvement, or change. Furthermore, any approval of any plans or specifications by the ASSOCIATION shall not be deemed to be a determination that such plans or specifications are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the ASSOCIATION, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and the ASSOCIATION shall not be liable for any deficiency, or any injury resulting from any deficiency, in such plans and specifications.

5.28.4 Remedy for Violations. In the event this section is violated in that any alteration, addition, improvement, or change is made without first obtaining the approval of the ASSOCIATION, or is not made in strict conformance with any approval granted by the ASSOCIATION, the ASSOCIATION shall specifically have the right to injunctive relief to require the OWNER to stop, remove and/or alter any alteration, addition, improvement, or change in a manner which complies with the requirements of the ASSOCIATION, or the ASSOCIATION may pursue any other remedy available to it. In connection therewith, the ASSOCIATION 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. Any action to enforce this Section must be commenced within 1 year after the date of the violation. 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 ASSOCIATION shall have the exclusive authority to enforce the provisions of this paragraph.

5.28.5 Architectural Control Vested in DECLARANT. Notwithstanding the foregoing, so long as DECLARANT owns any LOT, architectural control shall be vested in DECLARANT and not the ASSOCIATION, and during such period all references contained in this subparagraph to the ASSOCIATION shall be deemed to refer to DECLARANT, provided however that at any time DECLARANT may assign its right of architectural control to the ASSOCIATION by a written assignment.

5.29 Rules and Regulations. The ASSOCIATION may adopt additional reasonable rules and regulations relating to the use and maintenance of the SUBJECT PROPERTY, and rules and regulations relating to the recreational facilities within the SUBJECT PROPERTY may be posted at such recreational facilities. Copies of such rules and regulations and amendments shall be furnished by the ASSOCIATION to any OWNER upon request.

5.30 Waiver. The ASSOCIATION 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 LOT where, in the discretion of the BOARD, circumstances exist which justify such 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 ASSOCIATION, 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. Notwithstanding the foregoing, so long as DECLARANT owns any LOT, if any waiver or deviation of any restriction requires the consent of the ASSOCIATION, such consent shall be obtained from DECLARANT, and not from the ASSOCIATION, unless DECLARANT voluntarily relinquishes this right at an earlier date.

OFF. REC'D DECLARATION - 13 PAGE  
2716 2031

5.31 Exceptions. The foregoing use and maintenance restrictions shall not apply to DECLARANT, or to any portion of the SUBJECT PROPERTY while owned by DECLARANT, or to any undeveloped PROPERTY, 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 of any new UNITS, by DECLARANT or by the developer of any portion of the SUBJECT PROPERTY. Specifically, and without limitation, DECLARANT and any developer(s) of any portion of the SUBJECT PROPERTY shall have the right to: (i) construct any buildings or improvements within the SUBJECT PROPERTY, and make any additions, alterations, improvements, or changes thereto; (ii) maintain customary and usual sales, general office and construction operations on any PROPERTY; (iii) place, erect or construct portable, temporary or accessory buildings or structures upon any PROPERTY for sales, construction, storage or other purposes; (iv) temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in connection with the development or construction of any PROPERTY; (v) post, display, inscribe or affix to the exterior of a UNIT or upon any PROPERTY, signs and other materials used in developing, constructing, selling or promoting any PROPERTY; (vi) excavate fill from any lakes within and/or contiguous to the SUBJECT PROPERTY by dredge or dragline, store fill on the SUBJECT PROPERTY, and sell excess fill from the SUBJECT PROPERTY; and (vii) grow plants and trees upon the SUBJECT PROPERTY for later use and sell excess plants and trees.

6. ASSESSMENT FOR COMMON EXPENSES.

6.01 Each OWNER of a LOT shall be responsible for the payment to the ASSOCIATION of ASSESSMENTS for COMMON EXPENSES for each LOT 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 owned by the prior OWNER, except for any ASSESSMENTS owed by DECLARANT, and except as provided in Paragraph 7.01.6 of this DECLARATION.

6.02 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 by the ASSOCIATION during the fiscal year. The BOARD shall then establish the ASSESSMENT for COMMON EXPENSES for each LOT, which shall be equal and shall be determined by dividing the total amount to be assessed for COMMON EXPENSES by the number of LOTS 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 ASSESSMENTS for COMMON EXPENSES, the BOARD may make special ASSESSMENTS for COMMON EXPENSES, which shall be levied in the same manner as hereinbefore provided for regular ASSESSMENTS, and shall be payable in the manner determined by the BOARD, as stated in the notice of any special ASSESSMENTS 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.

6.03 In addition to ASSESSMENTS for COMMON EXPENSES, the first OWNER acquiring title from DECLARANT to a UNIT 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.

6.04 Notwithstanding the foregoing, until such time as DECLARANT no longer owns any LOT, 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 UNITS owned by DECLARANT, but in lieu thereof, DECLARANT shall be responsible for all COMMON EXPENSES in excess of the ASSESSMENTS for COMMON EXPENSES receivable from the other OWNERS (including working capital contributions), and other income received by the ASSOCIATION. During such period when DECLARANT is not liable for ASSESSMENTS for COMMON EXPENSES for UNITS 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. In any event, DECLARANT shall not be required to fund reserves allocated to any unbuild UNITS or any UNITS owned by DECLARANT.

## 7. DEFAULT.

### 7.01 Monetary Defaults and Collection of Assessments.

7.01.1 Late Fees and Interest. If any ASSESSMENT is not paid within ten (10) days after the due date, the ASSOCIATION shall have the right to charge the defaulting OWNER a late fee of ten (10%) percent of the amount of the ASSESSMENT, or Ten (\$10.00) 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.

7.01.2 Acceleration of ASSESSMENTS. If any OWNER is in default in the payment of any ASSESSMENT owed to the ASSOCIATION for more than thirty (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. 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.

7.01.3 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.

7.01.4 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, 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

DECLARATION - 15

OFF. REC.:

2716

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2033

ASSOCIATION'S lien if the BOARD deems a settlement or compromise to be in the best interest of the ASSOCIATION.

7.01.5 Rental and Receiver. If a OWNER remains in possession of his UNIT and the claim of lien of the ASSOCIATION against his UNIT 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.

7.01.6 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.

7.01.7 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.

7.01.8 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.

7.01.9 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.

7.02 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:

7.02.1 Impose a fine against the OWNER or tenant as provided in Paragraph 7.03; and/or

7.02.2 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

7.02.3 Commence an action to recover damages; and/or

7.02.4 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, 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.

7.03 Fines. The amount of any fine shall be determined by the BOARD, and shall not exceed one-third of one month's ASSESSMENT for COMMON EXPENSES for the first offense, two-thirds of one month's ASSESSMENT for COMMON EXPENSES for a second similar offense, and one month's ASSESSMENT for COMMON EXPENSES for a third or a subsequent similar offense. Any fine shall be imposed by written notice to the OWNER or tenant, signed by an officer of the ASSOCIATION, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the OWNER or tenant has the right to contest the fine by delivering written notice to the ASSOCIATION within 10 days after receipt of the notice imposing the fine. If the OWNER or tenant timely and properly objects to the fine, the BOARD shall conduct a hearing within 30 days after receipt of the OWNER's or tenant's objection, and shall give the OWNER or tenant not less than 10 days written notice of the hearing date. At the hearing, the BOARD shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and that the fine imposed is appropriate. The OWNER or tenant shall have the right to attend the hearing and to produce evidence on his behalf. At the hearing the BOARD shall ratify, reduce or eliminate the fine and shall give the OWNER or tenant written notice of its decision. Any fine shall be due and payable within 10 days after written notice of the imposition of the fine, or if a hearing is timely requested within 10 days after written notice of the BOARD's 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. If any fine is levied against a tenant and is not paid within 10 days after same is due, the ASSOCIATION shall have the right to evict the tenant pursuant to Paragraph 7.06.

7.04 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, but only 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.

7.05 Responsibility of an OWNER for Occupants, Tenants, Guests, and Invitees. 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.

7.06 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.

7.07 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.

7.08 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.

7.09 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.

8. 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

DECLARATION - 18

OFF. REC.

2716

PAGE:

2036

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.

#### 9. AMENDMENT

9.01 This DECLARATION may be amended upon the approval of not less than 2/3 of the OWNERS. 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 contiguous 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 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.

9.02 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.

9.03 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.

#### 10. SPECIAL PROVISIONS REGARDING INSTITUTIONAL LENDERS.

10.01 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:

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

10.01.2 Any sixty (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;

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

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

DECLARATION - 19

OFF. REC:

2716

PAGE:

2037



10.02 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 thirty (30) days after the holder receives such request, and if such response is not timely received by the ASSOCIATION, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by all of the directors of the ASSOCIATION, which affidavit, where necessary may be recorded in the public records of the county 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.

10.03 Payment of Taxes and Insurance. Any INSTITUTIONAL LENDER may pay any taxes or assessments which are in default, or any overdue insurance premiums, 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.

11. CABLE TELEVISION. The ASSOCIATION shall be authorized to enter into a contract with a cable television company to provide cable T.V. services to all of the LOTS, and in connection therewith, to make the fees for such cable services a part of the COMMON EXPENSES.

12. MISCELLANEOUS.

12.01 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.

12.02 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.

12.03 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.

12.04 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.

12.05 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

DECLARATION - 20

OFF. REC.

2716

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2038

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.

12.06 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.

12.07 Inapplicability of Condominium Act. It is acknowledged that the 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.

12.08 Actions Against DECLARANT. The ASSOCIATION shall not institute any legal proceedings against DECLARANT without the consent of 75% of the votes of the OWNERS.

13. MANDATORY CLUB AGREEMENT. It is acknowledged that the SUBJECT PROPERTY is subject to a Mandatory Club Membership Agreement, a copy of which is attached hereto as Exhibit "D".

IN WITNESS WHEREOF, DECLARANT has executed this DECLARATION this 23rd day of July, 1986.

WITNESSES:

*[Signature]*  
*[Signature]*

McWILLIAMS DEVELOPMENT CO., INC., a Florida corporation

By:

*[Signature]*  
its president

STATE OF FLORIDA )  
COUNTY OF BREVARD ) SS:

The foregoing instrument was acknowledged before me this 23rd day of July, 1986, by David T. McWilliams, President of McWilliams Development Co., Inc., a Florida corporation, on behalf of the corporation.

*[Signature]*  
Notary Public, State of Florida at Large

My commission expires:

(Notary Seal)

Notary Public, State of Florida at Large  
My Commission Expires 12/31/1988

THIS INSTRUMENT PREPARED BY:

ERIC A. SIMON, ESQ.  
SIMON & MOSKOWITZ, P.A.  
Spectrum Building - Suite 303  
4901 N.W. 17th Way  
Fort Lauderdale, Florida 33309  
(305) 491-8202

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DECLARATION - 21

OFF. REC.

PAGE

2716

2039



EXHIBIT "A"

All of the Plat of Windward Cove according to the Plat thereof recorded in Plat Book 32, at Page 91, of the Public Records of Brevard County, Florida.

# State of Florida



Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of

WINDWARD COVE HOMEOWNERS ASSOCIATION, INC.

a corporation organized under the Laws of the State of Florida, filed on FEBRUARY 20, 1986.

The document number of this corporation is N13492.

A NON PROFIT CORPORATION

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the 20th day of February 1986.



George Firestone  
Secretary of State

CR2E022 (10-85)

CR2E040 (4-84)

EXHIBIT "B" TO DECLARATION

OFF. REC.

2716

PAGE

2041

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Exhibit "B" to Declaration of  
Covenants and Restrictions of  
Windward Cove

FILED

FEB 20 11 09 AM '04

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION  
OF  
WINDWARD COVE HOMEOWNERS ASSOCIATION, INC.  
a Florida corporation not-for-profit

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

McWilliams Development Company, Inc., a Florida corporation ("DECLARANT"), owns certain property in Brevard County, Florida (the "SUBJECT PROPERTY"), and intends to execute and record a Declaration of Covenants and Restrictions of Windward Cove (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 Brevard 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 I - NAME

The name of the corporation is Windward Cove Homeowners Association, Inc., a Florida corporation not-for-profit, hereinafter referred to as the "ASSOCIATION."

ARTICLE II - PURPOSE

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

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

ARTICLE III - POWERS AND DUTIES

The ASSOCIATION shall have the following powers and duties:

1. All of the common law and statutory powers of a corporation not-for-profit under the laws of the State of Florida.
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:
  - a. To own, purchase, sell, mortgage, encumber, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.
  - b. 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.

ARTICLES - 1

OFF. REC.  
2716

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2042



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

d. 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.

e. 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.

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

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

h. To obtain insurance as provided by the DECLARATION.

i. 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.

j. To sue and be sued.

k. To operate and maintain the surface water management system for the SUBJECT PROPERTY as permitted by the controlling governmental authority, including all lakes, retention areas, culverts and related appurtenances, as may be applicable.

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

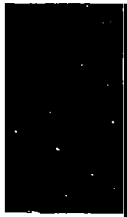
ARTICLE IV - MEMBERS

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.

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.

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.

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



ARTICLE V - TERM OF EXISTENCE

The ASSOCIATION shall have perpetual existence.

ARTICLE VI - INCORPORATOR

The name and street address of the incorporator is: McWilliams Development Company, Inc., a Florida corporation, Suite 101, 1790 North A1A, Satellite Beach, Florida 32937.

ARTICLE VII - DIRECTORS

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.

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.

3. The DECLARANT shall have the right to appoint all of the directors until DECLARANT has conveyed 75% of the LOTS within the SUBJECT PROPERTY, or until 5 years after the DECLARATION is recorded in the public records in the county in which the SUBJECT PROPERTY is located, whichever occurs first, and thereafter shall have the right to appoint one director 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 PROPERTY, all of the directors shall be elected by the members in the manner provided in the BYLAWS.

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.

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

- DAVID T. McWILLIAMS, Suite 101, 1790 North A1A, Satellite Beach, FL 32937.
- TIM McWILLIAMS, Suite 101, 1790 North A1A, Satellite Beach, FL 32937.
- JOEL S. MOSS, 2007 South Melbourne Court, Melbourne, FL 32901.

ARTICLE VIII - 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 . . . . . DAVID T. McWILLIAMS
- Vice President . . . . . JOEL S. MOSS
- Vice President/Secretary/Treasurer . . . . . TIM McWILLIAMS

ARTICLE IX - INDEMNIFICATION

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.

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.

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.

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.

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 X - 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 XI - AMENDMENTS

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

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.

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.

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.

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

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.

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 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.

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 PROPERTY, without the written approval of all of the OWNERS so discriminated against or affected.

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 XII - 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 XIII

##### INITIAL REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of the ASSOCIATION shall be at Suite 101, 1790 North A1A, Satellite Beach, Florida 32937. The initial registered agent of the ASSOCIATION at that address is McWilliams Development Company, Inc., a Florida corporation.

WHEREFORE, the incorporator, and the initial registered agent, have executed these ARTICLES on this 12 day of FEBRUARY, 1986.

McWILLIAMS DEVELOPMENT \* INC., a Florida corporation  
Incorporator and Registered Agent

By: [Signature]  
its President

STATE OF FLORIDA )  
                          ) SS:  
COUNTY OF BREVARD )

The foregoing instrument was acknowledged before me this 12 day of February, 1986, by David T. Williams President of McWILLIAMS DEVELOPMENT \* INC., a Florida corporation, as Incorporator and as Registered Agent.

[Signature]  
NOTARY PUBLIC, State of Florida at Large  
(Notary Seal)

My commission expires:

Notary Public, State of Florida at Large  
My Commission Expires October 29, 1989  
Bonded thru Huckleberry, Sibley & Harvey Insurance and Bonds, Inc.

\*COMPANY,

FILED  
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SHERIFF'S OFFICE  
BREVARD COUNTY, FLORIDA

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Exhibit "C" to Declaration of  
Covenants and Restrictions of  
Windward Cove

BYLAWS

OF

WINDWARD COVE HOMEOWNERS ASSOCIATION, INC.  
a Florida corporation not-for-profit

1. GENERAL PROVISIONS.

1.01 Identity. These are the BYLAWS of Windward Cove Homeowners Association, Inc., a Florida corporation not-for-profit, 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.

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

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

1.04 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.

1.05 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, upon request, during normal business hours or under other reasonable circumstances. 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.

1.06 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.

2.01 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).

2.02 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.



**2.03 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 and shall file a copy of the mortgage and underlying promissory note with the ASSOCIATION. 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

**3.01 Voting Rights.** There shall be one vote for each LOT. In the event any LOT is owned by more than one person, or is owned by a person other than an individual, the vote for such LOT shall be cast as set forth below, and votes shall not be divisible. In the event any member owns more than one LOT, the member shall be entitled to one vote for each such LOT.

**3.02 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.

#### 3.03 Determination as to Voting Rights.

**3.03.01** 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.

**3.03.02** 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.

**3.04 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. 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

**4.01 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.

4.02 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.

4.03 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 entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting, by or at the direction of the president, the secretary or the officer or persons calling the meeting. 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 3.03.02 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.

4.04 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.

4.05 Annual Meeting. The annual meeting for the purpose of electing directors and transacting any other business shall be held at eight o'clock p.m. on the second Tuesday in February of each year, or at such other time in the months of January or February of each year as shall be selected 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.

4.06 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.

4.07 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.

4.08 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.

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

- 4.09.01 Determination of chairman of the meeting;
- 4.09.02 Calling of the role and certifying of proxies;
- 4.09.03 Proof of notice of meeting or waiver of notice;
- 4.09.04 Reading and disposal of any unapproved minutes;
- 4.09.05 Election of inspectors of election;
- 4.09.06 Determination of number of directors;
- 4.09.07 Election of directors;
- 4.09.08 Reports of directors, officers or committees;
- 4.09.09 Unfinished business;
- 4.09.10 New business; and
- 4.09.11 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, at any reasonable time. 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 3.03.02 of these BYLAWS.

5. DIRECTORS

5.01 Membership.

5.01.01 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.

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



5.02.01 Within sixty days after the members other than the DECLARANT are entitled to elect any directors, as provided in the ARTICLES, or within sixty (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 thirty (30) days nor more than forty (40) 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 four (4) months after the date of the special meeting, and upon such election the next annual meeting of the members shall not be held.

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

5.02.03 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.

5.02.04 The election of directors by the members shall be by ballot (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.

5.03 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.

5.04 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.

5.05 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.

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

5.07 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. 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

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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.

5.08 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.

5.09 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:

- 5.11.01 Calling of role;
- 5.11.02 Proof of due notice of meeting;
- 5.11.03 Reading and disposal of any unapproved minutes;
- 5.11.04 Reports of officers and committees;
- 5.11.05 Election of officers;
- 5.11.06 Unfinished business;
- 5.11.07 New business; and
- 5.11.08 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 at any reasonable time. 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:

5.15.01 Any director other than a director appointed by the DECLARANT may be removed by majority vote of the remaining directors, if such director (a) has been absent for the last three consecutive BOARD meetings, and/or adjournments and continuances of such meetings; or (b) is an OWNER and has been delinquent for more than thirty (30) days after written notice in the payment of ASSESSMENTS or other moneys owed to the ASSOCIATION.

5.15.02 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.

5.16.01 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.

5.16.02 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 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.

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2716

BYLAWS - 7

PAGE:

2054

## 6. OFFICERS.

6.01 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 pre-emptively 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.

6.02 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.

6.03 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.

6.04 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.

6.05 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.

6.06 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.

6.07 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.

6.08 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.

7.01 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.

7.02 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.

7.03 Application of Payments and Commingling of Funds. All sums collected by the ASSOCIATION from ASSESSMENTS may be commingled in a single fund or divided into more than one fund, as determined by the BOARD.

7.04 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 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.

7.05 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

8.01 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:

9.01 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.

9.02 Initiation. A resolution to amend these BYLAWS may be proposed either by any director, or by or at the direction of ten (10%) percent or more of the members of the ASSOCIATION.

9.03 Adoption of Amendments.

9.03.1 A resolution for the adoption of the proposed amendment shall be adopted either: (a) by unanimous vote of all of the directors; or (b) by not less than a majority of the votes of the entire membership of the ASSOCIATION. Any amendment approved by the members may provide that the BOARD may not further amend, modify or repeal such amendment.

9.03.2 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.



9.04 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.

9.05 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.

9.06 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 PROPERTY is located.

10. MISCELLANEOUS.

10.01 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.

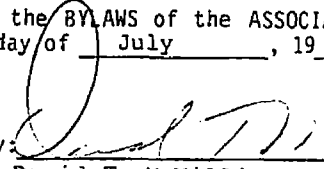
10.02 Partial Invalidity. Should any of the provisions hereof be void or become unenforceable at law or in equity, the remaining provisions shall, nevertheless, be and remain in full force and effect.

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

10.04 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.

10.05 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.

The foregoing was adopted as the BYLAWS of the ASSOCIATION at the First Meeting of the BOARD on the 23<sup>rd</sup> day of July, 1986.

By:   
David T. McWilliams, President

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2716

BYLAWS - 10

(PAGE)

2057

EXHIBIT "D" TO DECLARATION  
OF COVENANTS AND RESTRICTIONS

WINDWARD COVE

MANDATORY CLUB MEMBERSHIP AGREEMENT

THIS AGREEMENT is made this 23rd day of July, 1986, between DAVID T. McWILLIAMS, Trustee ("CLUB OWNER"), McWILLIAMS DEVELOPMENT CO., INC., a Florida corporation ("DEVELOPER"), and WINDWARD COVE HOMEOWNERS ASSOCIATION, INC., a Florida corporation not-for-profit ("ASSOCIATION").

P R E A M B L E :

CLUB OWNER owns the property described in Exhibit "A" attached hereto, and has or will construct upon such property a racquetball and health facility, which may include tennis courts, which facility is hereinafter referred to as the "CLUB."

DEVELOPER owns the property described in Exhibit "B" attached hereto, and is developing thereon a residential community known as WINDWARD COVE. Hereafter, the term "WINDWARD COVE" will mean and refer to the property described in Exhibit "B" hereto.

ASSOCIATION has been formed to maintain the common areas and various improvements within WINDWARD COVE. It is contemplated that pursuant to a Declaration of Covenants and Restrictions, all of the homeowners within WINDWARD COVE will be members of ASSOCIATION, and will be required to pay assessments to ASSOCIATION to pay for the common expenses incurred by ASSOCIATION in connection with its duties and obligations.

The parties desire to effectuate an agreement pursuant to which all of the homeowners within WINDWARD COVE will be required to be members of the CLUB during the term of this Agreement, and will be required to pay membership dues which will be collected by ASSOCIATION and remitted to CLUB OWNER.

As used in this Agreement, the term "OWNER" shall refer to the OWNER of a dwelling within WINDWARD COVE, and the term "UNIT" shall refer a residential dwelling within WINDWARD COVE.

NOW, THEREFORE, the parties agree as follows:

1. MEMBERSHIP. The parties agree that all OWNERS of UNITS within WINDWARD COVE will be members of the CLUB on a mandatory membership basis during the term of this Agreement. Each OWNER will automatically become a member of the CLUB as of the date the OWNER acquires record title to his UNIT, and his membership will continue as long as he holds title to his UNIT, subject to the terms and conditions of this Agreement.

2. TYPE OF MEMBERSHIP. The type of membership which each OWNER will be entitled and required to maintain pursuant to this Agreement will be that type of family membership offered by CLUB OWNER from time to time to the public, and will be at all times subject to all of the rules and regulations of the CLUB existing from time to time, except as otherwise specifically provided in this Agreement.

3. MEMBERSHIP FEES.

3.01 The membership fee for each OWNER during the initial term of this Agreement shall be equal 80% of the annual standard family membership fee established by CLUB OWNER, and for each renewal term shall be such amount as may be agreed upon by the parties, but in any event will not exceed 90% of such annual standard family membership. Such membership fee shall be established for the initial term of this Agreement on the commencement date,

as hereinafter defined, and shall be further established for each renewal term on the first day of the renewal term, if this Agreement is subsequently renewed.

3.02 The membership fee for each OWNER shall be paid monthly, in advance, and shall be due and payable on the commencement date of this Agreement and on the first day of each calendar month thereafter during the term of this Agreement.

3.03 All membership fees payable by the OWNERS shall be collected by ASSOCIATION and remitted to CLUB OWNER for each UNIT within 10 days after same are due. In collecting the membership fees from the OWNERS, ASSOCIATION shall separately assess for same so that the parties will know which OWNERS, if any, have not paid their membership fees, and if any OWNER has not paid his membership fee, ASSOCIATION shall so inform CLUB OWNER. ASSOCIATION agrees to use its best efforts to collect all membership fees. If ASSOCIATION fails or refuses to collect all of the membership fees payable by the OWNERS and remit the fees to CLUB OWNER as required herein, then upon written notice to ASSOCIATION and the OWNERS, CLUB OWNER shall have the right to collect the membership fees directly from the OWNERS, but in that event the membership fee payable by each OWNER shall be increased by 10% to cover the extra administration costs of collecting the fees.

3.04 Monetary Defaults and Collection of Membership Fees.

3.04.1 Late Fees and Interest. If any membership fee is not paid within 10 days after the due date, the CLUB OWNER shall have the right to charge the defaulting OWNER a late fee of 10% percent of the amount of the membership fee, or \$10.00, 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 membership fee, then the membership fee shall be due 10 days after written demand by the CLUB OWNER.

3.04.2 Acceleration of Membership Fees. if any OWNER is in default in the payment of any membership fee owed to the CLUB OWNER for more than 30 days after written demand by the CLUB OWNER, the CLUB OWNER upon written notice to the defaulting OWNER shall have the right to accelerate and require such defaulting OWNER to pay to the CLUB OWNER membership fees for the remainder of the term of this Agreement, based upon the then existing amount and frequency of membership fees.

3.04.3 Lien for Membership Fees. The CLUB OWNER has a lien on each UNIT for unpaid membership fees owed to the CLUB OWNER by the OWNER of such UNIT, and for late fees and interest, and for reasonable attorneys' fees incurred by the CLUB OWNER incident to the collection of the membership fee or enforcement of the lien, and all sums advanced and paid by the CLUB OWNER for taxes and payment on account of superior mortgages, liens or encumbrances in order to preserve and protect the CLUB OWNER's lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the UNIT is located, stating the description of the UNIT, 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 membership fees or other monies owed to the CLUB OWNER 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. Upon payment in full of all sums secured by the lien, the person making the payment is entitled to a satisfaction of the lien.

3.04.4 Collection and Foreclosure. The CLUB OWNER may bring an action in its name to foreclose a lien for membership fees in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid membership fees without waiving any claim of lien, and the applicable OWNER shall be liable to the CLUB OWNER for all costs and expenses incurred by the CLUB OWNER in connection with the collection of any unpaid membership fees, and the filing, enforcement, and/or foreclosure of the CLUB OWNER's lien, including reasonable attorneys' fees, and all sums paid by the CLUB OWNER for taxes and on account of any other mortgage, lien, or encumbrance in order to preserve and protect the CLUB OWNER's lien.

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

3.04.6 Subordination of Lien. Where any person or entity obtains title to a UNIT pursuant to the foreclosure of a first mortgage of record, or where the holder of a first mortgage accepts a deed to a UNIT 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 membership fees or for other monies owed to the CLUB OWNER which are chargeable to the former OWNER of the UNIT 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 new OWNER, from and after the time of acquiring such title, shall be liable for payment of all future membership fees and such other expenses as may be assessed to the OWNER's UNIT. Any person who acquires a UNIT, 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 membership fees and other monies due and owing by the former OWNER to the CLUB OWNER, and shall not be entitled to use the CLUB until such time as all unpaid membership fees and other monies have been paid in full.

3.04.7 Assignment of Claim and Lien Rights. The CLUB OWNER shall have the right to assign its claim and lien rights for the recovery of any unpaid membership fees and any other monies owed to the CLUB OWNER, to any third party.

3.04.8 Unpaid Membership Fees Certificate. Within 15 days after written request by any OWNER or any lender holding or making a mortgage encumbering any UNIT, the CLUB OWNER shall provide the OWNER or lender a written certificate as to whether or not the OWNER of the UNIT is in default with respect to the payment of membership fees, and any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any UNIT shall be protected thereby.

3.04.9 Application of Payments. Any payments made to the CLUB OWNER by any OWNER shall first be applied towards any sums advanced and paid by the CLUB OWNER for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the CLUB OWNER in order to preserve and protect its lien, next toward reasonable attorneys' fees incurred by the CLUB OWNER incidental to the collection of membership fees and other monies owed to the CLUB OWNER by the OWNER and/or for the enforcement of its lien; next towards interest on any membership fees or other monies due to the CLUB OWNER, as provided herein, and next towards any unpaid membership fees owed to the CLUB OWNER, in the inverse order that such membership fees were due.

3.04.10 Multiple Memberships. It is the intent of this Agreement that one membership shall be maintained at all times for each UNIT. Accordingly, if any person or entity owns more than one UNIT, such person or entity shall be required to maintain one membership for each UNIT owned.

3.04.11 Multiple OWNERS of UNITS. If any UNIT is owned by more than one person, the membership for such UNIT shall be issued in the name of only one of the OWNERS, as determined by written notice submitted to CLUB OWNER and signed by all of the OWNERS. If any UNIT is owned by a partnership, corporation or other entity, the membership for such UNIT shall be issued in the name of only one person, to be determined by written notice supplied to CLUB OWNER by the entity. Any such membership may be transferred to another OWNER or principal upon written notice to CLUB OWNER signed by all of the OWNERS or an authorized signator of the owning entity. Notwithstanding the foregoing, all of the OWNERS of any UNIT shall be jointly and severally liable for the membership fee appurtenant to their UNIT.

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2716

-3-

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2060

3.04.12 Guest Privileges. In consideration for the requirement that the OWNERS maintain memberships in the CLUB, any OWNER who leases his UNIT may assign his membership to his tenant, during the period that the tenant occupies the UNIT. The OWNER shall give written notice of such assignment to CLUB OWNER.

3.04.13 Transfers of Memberships. The membership of an OWNER will be deemed appurtenant to his UNIT, and if any OWNER conveys his UNIT, his membership will automatically be transferred to the subsequent OWNER of the UNIT, provided however that CLUB OWNER will not be obligated to recognize any such transfer of membership until it has been informed of same, and until a copy of the recorded deed conveying title to the UNIT to the new OWNER has been delivered to CLUB OWNER.

#### 4. TERM OF AGREEMENT.

4.01 Initial Term and Commencement Date. The commencement date of this Agreement shall be the first day of the month after the improvements to be made to the CLUB are completed, and the CLUB is open for business to the public, and ASSOCIATION has been given written notice of same. The initial term of this Agreement shall be for 1 year, commencing on the commencement date, and terminating 12 full calendar months thereafter. CLUB OWNER may, and at the request of ASSOCIATION shall, record a written memorandum as to the commencement date in the Public Records of Brevard County, Florida, and ASSOCIATION agrees to join in the execution of such memorandum. Notwithstanding anything contained herein to the contrary, in the event the commencement date has not occurred within four years after the date of this Agreement, then at any time thereafter either party shall have the right to terminate this Agreement upon written notice to the other.

4.02 Renewal Terms. This Agreement may be renewed for subsequent 1-year terms by written agreement between ASSOCIATION and CLUB OWNER. However, ASSOCIATION shall not enter into any agreement to renew without the approval of a majority of the OWNERS.

4.03 Termination. This Agreement shall be terminated upon the expiration of the initial term or any renewal term, unless subsequently renewed as hereinabove set forth.

5. OBLIGATION OF CLUB OWNER. CLUB OWNER shall be the sole judge of, and shall have sole discretion as to, the nature, size, content, style, amounts, plans and specifications, and maintenance of all improvements, equipment and personalty located on or within the CLUB from time to time. CLUB OWNER reserves the right, at its own cost and expense, to construct and place additional improvements, equipment and personalty within the CLUB, and to remove any improvements, equipment and personalty within the CLUB from time to time. In the event the CLUB OWNER fails to build the improvements within the CLUB, the sole remedy of ASSOCIATION and the UNIT OWNERS shall be to terminate this Agreement as provided in Paragraph 4.01, and the CLUB OWNER shall have no liability in connection with such failure.

6. OWNERS AS PARTIES. Any person or entity who becomes an OWNER of a UNIT within WINDWARD COVE shall, upon the recording of the deed or other instrument conveying the title to such person or entity, automatically become a party to this Agreement as if such person or entity had originally executed same, and all such persons or entities shall be bound by all of the terms and conditions hereof, provided however that upon the transfer of title to a UNIT, the former OWNER shall have no further rights hereunder. Notwithstanding the foregoing hereunder, the parties acknowledge and agree that DEVELOPER shall not be required to pay any membership fees so long as it holds title to any UNIT, but upon transfer of the title to any UNIT by DEVELOPER the new OWNER shall thereupon automatically become a party to this Agreement and, if this Agreement has commenced prior to such transfer, shall upon such transfer be obligated to pay a prorated portion of the then current monthly membership fee, and thereafter on the first day of each month during the term of this Agreement shall pay the full monthly membership fee.

7. COVENANT RUNNING WITH THE LAND. This Agreement shall be binding upon the parties hereto, and the OWNERS of UNITS, and their successor and assigns,

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2716

-4-

PAGE

2061

and all persons claiming by, through or under them, and this Agreement shall be deemed to be a covenant running with the land as to the property described in Exhibit "B" attached hereto.

8. ATTORNEYS' FEES. DEVELOPER shall be entitled to all costs and attorneys' fees incurred by it in connection with the collection of any monies due it from any OWNER pursuant to this Agreement, or in connection with the enforcement of this Agreement by properties, whether such costs and attorneys' fees are incurred in legal proceedings or otherwise.

9. AMENDMENT. No amendment or modification to this agreement shall be effective unless same is in writing and until such amendment or modification is recorded in the Public Records of Brevard County, Florida. Notwithstanding the foregoing, DEVELOPER shall not be required to join in any amendment or modification after DEVELOPER no longer appoints a majority of the directors of ASSOCIATION, and no OWNER shall be required to join in any amendment to this Agreement.

10. INVALIDITY. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of the remaining portions hereof.

11. GENDER. Where the contract so requires, the use of any gender shall be deemed to include all genders, and the use of the plural shall include the singular, and the singular shall include the plural.

12. NOTICES. All notices required or permitted hereunder shall be given by certified mail, return receipt requested, and shall be effective upon mailing, provided however that notice by any other means shall be effective upon delivery.

13. LIST OF OWNERS. Within 10 days of written demand to ASSOCIATION by CLUB OWNER, ASSOCIATION shall provide CLUB OWNER with the names and addresses of all OWNERS within WINDWARD COVE.

IN WITNESS WHEREOF, the parties have executed this Agreement.

WITNESSES:  
[Signature]  
Herbert D. Johnson

[Signature]  
Herbert D. Johnson

[Signature]  
Luis A. Aguina

[Signature]  
DAVID T. McWILLIAMS, Trustee

McWILLIAMS DEVELOPMENT CO., INC.,  
a Florida corporation

By: [Signature]  
David T. McWilliams, its President

WINDWARD COVE HOMEOWNERS  
ASSOCIATION, INC., a Florida  
corporation not-for-profit

By: [Signature]  
David T. McWilliams, its President

STATE OF FLORIDA        )  
                                  ) SS:  
COUNTY OF BREVARD    )

The foregoing instrument was sworn to and acknowledged before me this 23rd day of July, 1986, by DAVID T. McWILLIAMS, Trustee.

[Signature]  
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires:  
Notary Public State of Florida at Large  
My Commission Expires Oct. 3, 1986  
OFF REC

(Notary Seal)

2716

STATE OF FLORIDA )  
COUNTY OF BREVARD ) SS:

The foregoing instrument was sworn to and acknowledged before me this 23rd day of July, 1986, by David T. McWilliams, President of McWILLIAMS DEVELOPMENT CO., INC., a Florida corporation, on behalf of the corporation.

*James A. Harris - Seana*  
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires:  
Notary Public State of Florida at Large  
My Commission expires Oct. 3, 1988

(Notary Seal)  
SMITH & JANSEN  
1000 FIRST NATIONAL BANK BLDG.  
1000 PARKWAY STREET, SE  
TALLAHASSEE, FLORIDA 32301-1000

STATE OF FLORIDA )  
COUNTY OF BREVARD ) SS:

The foregoing instrument was sworn to and acknowledged before me on the day of July, 1986, by WINDWARD COVE HOMEOWNERS ASSOCIATION, a Florida corporation not-for-profit, on behalf of the corporation.

*James A. Harris - Seana*  
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires:  
Notary Public State of Florida at Large  
My Commission expires Oct. 3, 1988

(Notary Seal)

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-6-

PAGE  
2063



Exhibit "A" to Mandatory  
Club Membership AgreementClub Property  
Legal Description

## DESCRIPTION: Parcel 2 By Surveyor

A parcel of land in Section 2, Township 27 South, Range 37 East, Brevard County, Florida. Being more particularly described as follows: Commence at the Southwest corner of said Section 2; thence N 89° 53' 41" E along the south line of said Section 2 a distance of 1619.38 feet to the west right-of-way of South Patrick Drive; thence N 31° 08' 19" W along the said west right-of-way a distance of 1200.00 feet to the Point-of-Beginning of the herein described parcel; thence N 31° 08' 19" W continuing along the said west right-of-way a distance of 617.73 feet to the point-of-curvature of a circular curve concave to the northeast, having a central angle of 17° 19' 43", a radius 2050.00 feet; thence northeasterly along the arc of said circular curve a distance of 620.00 feet to the centerline of a 50 foot wide easement for drainage purposes as described in Official Record Book 2577 Page 2986 of the Public Records of Brevard County, Florida; thence S 68° 00' 00" W along the said centerline a distance of 300.00 feet; thence S 27° 56' 14" E, a distance of 1140.68 feet; thence N 86° 03' 02" E a distance of 300 feet to the Point-of-Beginning. Containing 6.935 acres more or less.

OFF. REC.

2716

PAGE

2064

EXHIBIT "B"

All of the Plat of Windward Cove according to the Plat thereof recorded in Plat Book 32, at Page 91, of the Public Records of Brevard County, Florida.

OFF REC:  
2716

(PAGE)  
2065

