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Aurora Oaks – Declaration

OR Book/Page: 5401 / 6824

AURORA OAKS SUBDIVISION**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS Declaration, made as of the date hereinafter set forth by **TFM ENTERPRISES, INC.**, a Florida Corporation, hereinafter referred to as "Declarant" or as "Developer".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the unincorporated area, County of Brevard, State of Florida, which is more particularly described in Exhibit "A" Aurora Oaks Legal Description. hereof and which is platted as

AURORA OAKS

according to the Plat thereof recorded in Plat Book 52 Page(s) 57 Public Records of Brevard County, Florida.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall accrue to the benefit of each owner thereof.

DEFINITIONS

"Association" and "Homeowners Association" shall both mean and refer to "AURORA OAKS HOMEOWNERS ASSOCIATION, INC.", a not-for-profit corporation organized under the laws of the State of Florida, its successors and assigns, and the terms may be used interchangeable from time to time herein.

"Architectural Control Review Committee", "Committee" and "ACRC" shall all mean the governing body established by this Declaration to ensure the architectural beauty, good design and good and proper land use practices within Subdivision.

"Builder" shall mean an Owner of one or more developed but unimproved Lots purchased for the purpose of the construction of a single family residential dwelling unit for sale, and who holds a license for such construction.

"Common Property(s)" for the purposes of this Declaration shall mean those portions of the Subdivision named as Tracts on the plat of AURORA OAKS SUBDIVISION as recorded in the Public Records of Brevard County, Florida, which are intended for the common use and benefit of all Owners of the Association. Additional parcels may be added to the Common Property in the future.

"Declarant" and "Developer" shall mean and refer to TFM ENTERPRISES, INC., its successors and assigns.

"Declaration" shall mean and be defined as this properly executed Declaration Of Covenants, Conditions And Restrictions and any Amendments hereto as are from time to time recorded among the public records of Brevard County.

"Government Authority" shall mean any governmental authority whether Federal, State or Local with the statutory authority granted to regulate within the Subdivision, including but not limited to "Brevard

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 38	#Names: 2	
Trust: 19.50	Rec: 305.00	Serv: 0.00
Deed: 0.00		Excise: 0.00
Mtg: 0.00		Int Tax: 0.00

County" or "County", "City of Melbourne" or "City", "St Johns Water Management District" or "SJWMD", "United States Fish and Wildlife Service" or "USFWS".

"Landscape Buffer" shall mean all subdivision walls, fences, gates, Natural Preserve Areas and landscaping erected or as designated on the plat by the developer, his successor(s) in interest or the Association, (including the improvements thereto).

"Lot", whether or not capitalized, shall mean each Lot platted as such in the Subdivision, the total number of which may increase if subsequent phases are platted and added to the Subdivision.

"Owner(s)" shall mean each person, persons or entity who owns record title to a Lot, excluding those having such title merely as security for performance of an obligation as described in Chapter 697, Florida Statutes.

"Plat" shall mean and be defined as the plat of AURORA OAKS as recorded the Public Records of Brevard County, Florida.

"Subdivision" or "Subject Property" shall mean that property platted as AURORA OAKS SUBDIVISION, the legal description of which is attached hereto as **Exhibit "A" Aurora Oaks Legal Description**.

"Surface Water Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C. Surface Water Management System shall mean and be further defined as all land, easements and other facilities and appurtenances which together constitute and compromise the master surface water management and drainage systems of the Subdivision as reflected on the plans therefore on file with and approved by the County and St. Johns Water Management District, which are conveyed by the Developers to the Association as Common Property, or otherwise dedicated to the Association as Common Property pursuant to the Plat.

Surface Water System shall also include all lands included within and comprised of additional contiguous phases as described in additional plats as recorded in the public Records of Brevard County, Florida, If any.

ARTICLE I

MEMBERSHIP AND VOTING RIGHT IN THE ASSOCIATION

1.1 General Purposes of Association.

The Association is organized for the purpose of providing common services to the Owners; owning and maintaining landscaping and lighting on the Common Property; maintaining the drainage easements, Conservation Easement Areas (if any), Common Property, Surface Water Management Systems; providing enforcement of theses covenants and restrictions; and engaging in activities for the mutual benefit of the Owners. In order to pay for theses services, the Association will charge assessments against the Lots and their Owners. A Lot may be subject to lien for any unpaid assessments, but additionally each Owner is personally obligated for assessments coming due during the time such Owner owns the Lot. The functions of the Association shall be performed by Association's Board of Directors "Board". Provisions relating to the Association and the Board of Directors are also contained in the Articles of Incorporation and By-Laws of the Association.



1.2 Lot Owner Membership.

Every Owner of a platted Lot shall be a member of the Association upon acquiring title to the Lot. There shall be a one-time initiation fee of **\$250.00** per Lot, payable to the Association at the time a Lot is conveyed to its initial Owner. Each subsequent Lot Owner may reimburse the previous owner the initiation fee that was paid at the time of the initial Lot acquisition. However the Association shall not be associated in anyway such reimbursement. A Lot acquired by a Builder from Declarant shall be subject to the initiation fee at that time of acquisition, however the Association may elect delay the collect of said initiation fee until the Lot is transferred to the first Owner. The Association may spend some or all of the initiation fee for inspection of the Lot after completion of the improvements to certify compliance with the terms and provisions of this Declaration as provided in Article III, Section 5 or for ongoing operations or in any other manor deemed appropriate by the Association or the Developer.

Membership shall be appurtenant to and may not be separated from ownership of any Lot. The initiation fee may be increased from year to year after December 31, 2004 in the same manner and amount as annual assessments may be increased pursuant to Article V, Section 5.

1.3 Classification of Membership.

The Homeowners Association shall have two classes of voting membership:

Class A. - Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owner. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Class A members shall also include all owners, with the exception of the Declarant, of Lots in additional phases if additional phases are subjected to these restrictions as elsewhere provided in the Declaration.

Class B. - The Class B members shall be the Declarant or successor developer and shall be entitled to three (3) votes for each Lot owned (to include each owned Lot in additional phases if additional phases are subjected to these restrictions as elsewhere provided in the Declaration). The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) 3 months after 90% of the residential Lots in all phases of the subdivision have been conveyed by the Developer (or successor Developer) to members of the public (excluding conveyances to builders, contractors, or others who purchase a parcel for the purpose of construction improvements thereon, for resale), or
- (b) January 1, 2008
- (c) Notice in writing to the Association by the Declarant of his intent to waive this right to Class B membership.

1.4 Membership Vote.

Voting will be allowed by certified written mailed-in ballot on all issues that require a vote by the full Association. The maximum number of votes that may be cast is the sum of all votes held by qualified Class A members and the Class B member either present in person or by written proxy at the time the vote is taken at a meeting, or by actual recorded ownership of platted Lots if by certified written ballot.

The number of votes needed for a quorum on any vote in person or by certified written ballot of the Association shall be a minimum of 30% of the sum of all the votes held by qualified Class A members and Class B members for any ballot to be valid. All matters to be voted on by the Association shall require a quorum and shall be decided by a majority of those votes cast by owners represented by the quorum. Voting shall also be permitted by general or limited proxy at any meeting of the Association.



1.5 Voting Qualifications.

To be qualified to vote, a Class A member must be current in payment of all assessments and any liens which have been levied against that member or any Lot owned by that member as of the date of the vote. Any person designated in writing by the Declarant shall be qualified to cast the votes for each Lot owned by the Class B member.

ARTICLE II
ARCHITECTURAL AND AESTHETIC REQUIREMENTS

2.1 Architectural Control Review Committee.

(a) There shall exist an Architectural Control Committee (hereinafter referred to as "Committee") which shall consist of One (1) or more members. So long as The Developer owns any Lot (excluding conveyances to builders, contractors, or others who purchase a parcel for the purpose of construction improvements thereon, for resale), control of the Committee and approval of all plans and specifications and other functions herein shall be vested in the Declarant, who shall appoint all Committee Members. Appointive Committee members need not be Owners, and shall serve indefinitely, at Declarant's pleasure.

(b) After Declarant's no longer owns any Lot within the Subdivision (excluding conveyances to builders, contractors, or others who purchase a parcel for the purpose of construction improvements thereon, for resale), a minimum of Five (5) Committee members shall be elected by a majority vote of the Board of Directors of the Association each year at its first organizational meeting after the election of the Board of Directors. Members may include members of the Board of Directors and Association Managers. Three (3) elected Committee members must be Owners, and all members shall serve until their successors are elected at the next annual organizational meeting of the Board of Directors. Committee members may be re-elected.

(c) A quorum of the Committee shall consist of a majority of its members; it shall take the affirmative vote of a majority of the members at the meeting at which a quorum is present to approve or perform any action. The Committee shall keep written records of its actions. The Committee shall meet from time to time as necessary.

(d) Waivers, Exceptions and Variances by Developer. Notwithstanding anything to the contrary set forth herein or which may otherwise be implied from the terms and provisions of this Declaration or the Plat, the Developer specifically reserves exclusively unto itself, for the duration of five (5) years after the recording of this Declaration, the right and privilege (but Developer shall have absolutely no obligation), upon the showing of good cause therefore to:

1. grant waivers with respect to any existing or proposed future deviation from, or violation or infraction of, the building restrictions specified in this Declaration where, in the reasonably exercised good faith judgment and discretion of the Developer, the Developer shall determine or decide that such deviation, violation, or infraction is de minimis, minor, or insignificant, and

2. grant waivers of, exceptions to, or variances from, the building restrictions specified in this Declaration where special conditions and circumstances exist which are peculiar to a particular LOT and not generally applicable to other LOTS (e.g., because of its unusual size, configuration, or location) or where a literal interpretation or application of any such building restriction to a particular LOT would be inappropriate, inequitable, or otherwise work or result in a hardship or deny such LOT and the Owner thereof specific rights which are generally enjoyed by other LOTS and Owners; it being expressly provided, however, that, in all cases, the Developer, in its exercise of such right and privilege shall,



in its reasonably exercised and good faith judgment and discretion determine or decide that its grant of any such waiver, exception, or variance shall not result in, represent, be, or constitute a significant deviation of or derogation from the uniform plan of development for the Subdivision.

2.2 Construction Plan Review.

- (a) No dwelling, building or structure of any kind shall be constructed, erected, or altered on any Lot or in any part of the Subdivision, nor shall any exterior additions, changes or alterations therein be made until the plans and specifications showing the nature, kind, color, shape, height, materials, and location thereof shall have been first submitted to and approved by the Committee. Interior designs and alterations are exempt from Committee approval or review. Developer is exempt from Committee approval or review.
- (b) One set of construction plans and specifications shall be submitted to the Committee showing all intended construction and alterations on the subject Lot, including but not limited to site plan, tree survey, landscape plan, sidewalk construction, exterior elevations, paint colors, shingle samples, exterior materials samples, and other descriptions necessary to describe project. An administrative fee to be set by the Board of Directors but shall not exceed \$50.00 shall be paid to the Association for processing the house plans, payable at the time of submission. Plans and specifications in regards to topography and finished grade elevation must also be submitted for approval by the Committee prior to the commencement of any excavation work or activity which will alter the existing topography of the Lot. The Committee shall notify the Lot Owner, in writing, within thirty (30) days of receipt of all required evidence, of the Committee's approval or disapproval of any project. Said written notice may be signed by any one member of the Committee.
- (c) Builders who have contracted with the Developer to purchase 10 or more Lots may submit plans of their models and landscape designs for general approval by the Committee but shall still notify the Committee in writing as provided herein as to which model, colors, landscaping, etc. are to be used on each specific Lot. The administrative fee may be waived by the Committee for a specific Lot so long as one of the generally approved models and landscape design is being used.
- (d) The plans, specifications, and location of all contemplated construction shall be in accordance with the terms hereof and with all applicable codes and ordinances of the local governing agency issuing permits for construction or land alteration in effect at the time of such proposed construction or alteration. The Committee shall have the right, in its sole discretion based upon these Covenants and Restrictions, to approve or disapprove any Lot improvement, including but not limited to building, fence, wall, screened enclosure, grading, floor elevation, drainage plan, mailbox, solar energy device, posts, antennas, fountains, decorative building features, landscaping plan, landscape device or object, yard decorations, or other improvement, whether as new construction or additions, modifications or alterations to Lots.
- (e) In the event any required approvals are not obtained prior to commencement of improvements, or in the event improvements are made which vary from those approved, it shall be deemed that no approvals were given and that a violation and/or breach of this Declaration has occurred. A fine of \$50.00 per occurrence shall be assessed against the Lot and shall accrue with interest as provided in Article V until the fine is paid and approval is obtained or improvements corrected to comply with an approval given. If after 60 (sixty) days from the date the first fine is assessed and the non-compliance has not been corrected, the Committee may re-assess the \$50.00 fine as a second occurrence of the same violation and may continue to do so every 120 days until the violation has been corrected.



2.3 Clearing.

Prior to any construction the Committee will be furnished a tree survey showing the location and type of all trees 4" or more in caliper at breast height. This survey shall also show types and general location of existing vegetation. A site plan will be provided showing the location of any structures, driveways, and sidewalks to be constructed and which vegetation and trees are proposed to be removed.

It is the intent of the Committee that as much of any existing wooded character of a Lot be retained as reasonably possible. All yard areas of a Lot not left in their natural state shall be sodded, mulched and/or replanted. For any Lot fronting a lake, the Owner of same shall also be responsible for sodding (if not previously sodded by the Developer) and maintaining areas between his property line and the water's edge, if any.

Owners with Lots adjacent to Common Property's are prohibited from making modifications on that common area without the expressed written consent of the Association.

If any unauthorized clearing takes place on any Lot or Common Property, restoration of said Lot or Common Property to their original condition must be made. The restoration plans as to location of plant material, size and type must be submitted to the Committee for approval. If the Owner of any Lot (or his contractors, agent or invitees) that has been cleared without written authorization of the Committee fails to restore said Lot or Common Property damaged by the Owner (or his contractors, agents or invitees) within thirty (30) days of receipt of written notice from the Committee, then the Committee may make such restoration, the cost of which shall be a lien against the Lot and a debt of Owner which may be enforced in the same manner as enforcement of Assessments as set forth herein.

The Declarant as long as he owns any Lot or prior to turn over of the Common Property to the Association shall be explicitly permitted to make whatever clearing or other modifications deemed appropriate by the Declarant to any Common Property or any Lot owned by the Declarant.

Large Specimen Trees that have been saved by the Developer on any Lot shall be cared for in a manner that will preserve the tree and ensure the tree's long term survival and growth. All construction and improvements shall be located as far as reasonably possible away from the tree avoiding where reasonably possible any damage or disturbance to the roots of the tree. Near tree grading shall be done by hand and any filling around a tree should be avoided where possible or otherwise kept to the minimum. Barriers shall be erected around the tree and root structure during construction.

OWNERS OR THE ASSOCIATION SHALL NOT REMOVE ANY LIVE LARGE SPECIMIN TREES THAT WERE PRESERVED BY THE DEVELOPER OR THAT HAVE BEEN NOTED ON THE CONSTRUCTION PLANS. AS LONG AS THE PRESERVED TREE IS LIVING IT SHALL NOT BE REMOVED. IN THE EVENT ONE OF THESE PRESERVED TREES HAS DIED, BEFORE REMOVAL, THE ASSOCIATION MUST CONFIRM THAT THE PRESERVED TREE IS DEAD AND APPROVE IN WRITING THE REMOVAL OF THE DEAD TREE. IF REQUIRED BY BREVARD COUNTY, THE OWNER MUST FIRST OBTAIN APPROVAL FROM THE BREVARD COUNTY NATURAL RESOURCES OFFICE TO REMOVE ANY SPECIMIN TREE PRESERVED BY THE DEVELOPER. A removed dead tree must be replaced with a live oak tree with at least a 3" caliper measured at 4' above the ground.

Notwithstanding anything herein to the contrary, the Landscape Buffer Area, the rear 15' of lots 1-10, as described on the Plat as "Landscape Buffer" shall be left in its natural state without any clearing activity unless allowed by the County.

2.4 Grading, Drainage, Sidewalk and Floor Elevations.

(a) Each Lot shall be filled and graded to elevations as defined in this document and as designed by Construction Engineering Group, inc. and as approved by Brevard County. Drainage of each Lot



shall be accomplished by grading Lots so runoff from one Lot does not drain onto another Lot. Grading of each Lot shall comply with the grading plan approved by Brevard County as shown in the Lot Grading Plan on file with the ACRC.

- (b) Sidewalks for each Lot shall be constructed at the time of home construction and shall be graded so as not to impound water in the Lot or on the sidewalk as it shall be slanted toward the street to assure proper drainage. The property line side of the sidewalk shall be two inches higher than the back of curb elevation and blend in smoothly with the finished sodded yard of each Lot. Sidewalks shall be constructed on each Lot in accordance with the plans and specifications found in the Sidewalk Plan on file with the ACRC.
- (c) Finish floor elevations shall be a minimum of 12 inches and a maximum of 20 inches above the centerline of the road as measured from the center of the Lot or greater if required by the Brevard County or other government agency.

2.5 Landscaping.

- (a) All landscaping must conform to all codes and requirements of the local governing agencies. A typical or several master landscape plan(s) may be submitted to the committee for approval by Builders in accordance with Sections 2 and 3. This plan may be altered to accommodate existing vegetation on individual Lots. All areas of the yard of each Lot not left in this natural vegetated condition shall be replanted with trees, shrubs and flowers, or sodded including all easements and right of ways directly in front and rear of all Lots.
- (b) No existing living tree three 3" or more inches in caliper, measured at breast height, shall be removed from a Lot unless said tree is diseased or interferes with erecting or placing the house or other permanent structures on said Lot and grading for proper drainage.
- (c) A minimum of Four (4) trees, which must be live or laurel oak, are required to be planted for each residence. Two (2) of those trees must be planted in the front setback area of each residence. These trees shall be a minimum of 8' in height, have a drip line of a minimum of 4', and be a minimum of 2" in diameter measured 4' above the finished grade. The trees shall remain perpetually on each Lot. Notwithstanding the foregoing, trees must conform to any stricter standards required by any applicable governmental entity. In the event any of the trees die either by disease or neglect, they shall be replanted with the same or other approved type of tree to comply with these minimum requirements. Upon notification by the Association and/or the local governing agency, each homeowner shall have thirty (30) days to replant/replace said trees required under these restrictions. In the event that a Lot has existing large trees the Owner may appropriately adjust the location of the required trees elsewhere on the Lot. The addition of Four (4) new trees shall be required on all Lots. Owners shall be required to apply appropriate amounts and types of fertilizer to any newly planted tree at least 3 times a year for the first 3 years after it has been planted. Thereafter the application of appropriate amounts of fertilizer is highly recommended but not required.
- (d) Shrubs: The following minimum number of shrubs shall be added as part of the landscaping for each new residence. The shrubs shall be arranged around the house (front sides and back) in a manner as to be most aesthetically pleasing, with a reasonable variety of different types of shrubs.
 - 20 (Twenty) 3 gallon shrubs
 - 15 (Fifteen) 1 gallon shrubs
 - 12 (Twelve) 1 gallon Perennials**Additional landscaping beyond this minimum is highly encouraged.**
- (e) All Lots shall be fully sodded with St. Augustine Floratam sod. Sod in Common Property may be St. Augustine Floratam or Bahia.



- (f) Irrigation System: Each Lot shall have a fully functional automatic irrigation system for the Lot with 100% coverage. All Irrigation System spray devices, Spray heads, rotary heads and the like that are installed in any grass area shall be installed with a "funny pipe" flexible pipe connection to the main PVC Irrigation water transmission pipes so as to reduce the incidence of breakage by mowers.
- (g) Each Lot shall be entirely sodded including all easements, right-of-ways and common areas directly in the front and rear of all Lots. All Lots that have Lot frontage on a lake must be sodded and maintained down to the waterline.
- (h) All Landscape areas on any Lot together with areas around/under all Trees (a minimum area of a 2' radius outward from any tree trunk) shall have a minimum of 1" thick wood mulch bed at all times. Along with a minimum 4" mulch bed must be installed and maintained between the grass and the wall of all house or other structures. Owners shall be required to maintain the mulch in these areas, replenishing it at least annually and shall keep them free of weeds and encroaching grass. Other bedding materials may be approved by the Committee.
- (i) No artificial Vegetation shall be permitted on any Lot.
- (j) No landscaping, landscaping bed, or other improvement can be installed in any manor which will inhibit the ingress and egress by a 42" wide mower to any area of the yard.
- 2.6 Roof, Shingle Material and Exterior Elevations.
No primary portion of a straight gable or hip roofs may be build with a pitch lower than 5/12. All roofs shall be pitched except for those areas over porches and patios.
The Committee must approve the type, color, and style of all shingle and roof covering materials. Shingles must be fungus-resistant 240 lb. architectural grade dimensional shingles, or higher quality. The Committee may reject any exterior elevation based on the roof line, shingle type or exterior elevation appearance that in its judgment is not within character in keeping up with the standards of the subdivision.
- 2.7 Exterior Covering, Siding and Paint.
All siding materials used on the exterior of the buildings or other structures must first receive written approval of the Committee as to type, color, and texture of the material. Only quality materials and finishes are acceptable. There shall be no artificial brick, artificial stone, plywood or other T1-11 type material on the exterior of the buildings or other structures

All paint used on the exterior body of any residence shall be subdued in its tone. Colors should be selected to harmonize with the natural environment of the subdivision and should be soft and unobtrusive. No colors should be loud or bright. No more than one paint color (may be used) for the body of each residence and no more than two accent trim colors. Paint colors and Samples must be submitted for approval prior to being applied on any residence. A written approval listing the manufacturer and paint sample number of all paint colors including body and trim paint must be obtained for each residence from the Committee.
- 2.8 Overhead Garage Doors.
All overhead garage doors shall be decorative in design and should complement the exterior elevation of each individual residence. Under no circumstances may fiberglass or plastic type garage doors be used. Garage doors should remain closed when not in use. All Garage Doors must be painted. Automatic garage door openers are recommended.



2.9 Dwelling Size, Garages:

The ground floor of the main structure exclusive of any open porches, patios (enclosed or otherwise), breeze-ways and garages, shall not be less than 1,400 square feet for a one-story dwelling and not less than 1,250 square feet for the ground floor of a dwelling of one and one-half or two stories. Each residence shall have an enclosed garage for a minimum of two (2) cars. No carports shall be permitted. No garage areas (above the 2 garage minimum herein required) may be converted into living space without the written permission of the Committee.

2.10 Building Location.

No building, other than that allowed by Brevard County Code, shall be located on any Lot nearer than 20 feet to the front Lot line or nearer than 15 feet to any side street line. No building shall be located nearer than 5 feet to an interior Lot, or nearer than 20 feet to the rear Lot line, except for screen porches which shall be set back not less than 10 feet from the rear Lot line. . For the purpose of this covenant, eaves, concrete slabs, steps and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot or easement. If there is any conflict between this covenant and zoning regulations of the proper governing authority said zoning regulations shall apply. No improvement shall exceed 30' in height, as measured from the finished grade on the first floor to the highest point on the roof peak.

2.11 Street Address Numbers and Mailboxes.

All street address numbers shall be installed on each residence and on each mailbox. The location of street address numbers shall be as uniform as possible on each residence, as determined by the Declarant. **All mailboxes and attached street numbers shall be uniform as to type, color and design as per the design and specifications on file with the ACRC.** The location and type of the mailboxes shall be determined by the Declarant. All mail boxes and street numbers are required to be installed by the builder prior to the occupancy of each residence. Owners shall maintain their mailbox in good condition at all times. Placement shall generally be on two property lines in a manner to reduce the visual impact of the Mail Boxes.

2.12 Windows

All windows shall be constructed of vinyl clad wood or factory colored white or bronze aluminum. No substantially reflective or mirrored glass shall be used on any outside window.

2.13 Completion of Construction

All construction and landscaping approved by the Committee shall be completed within eight (8) months from the date of written approval. The Committee may grant a greater period of time to complete said construction or may grant an extension of said eight-month period.

2.14 Exterior lights shall be installed with adequate and proper shielding or otherwise as not to obtrusively Shine or point onto adjacent property.

2.15 Utilities: All utilities shall be underground except for temporary utilities during construction.

2.16 Air Conditioning.

No window or wall air conditioning units shall be permitted in any improvements located within the Subdivision. All air conditioning units shall be placed no further forward than 10 feet behind the front building line of the residence with fence screening so as to make same not visible from the street (including side street in the case of a corner Lot).

2.17 Exculpation:

The Developer, the Association, the Committee, and the individual members, officers, directors, employees, or agents of any of them, shall not, jointly or severally, be liable or accountable in



damages or otherwise to any Owner or other party affected by this Declaration, or to anyone submitting plans or other materials for any required consent or approval hereunder, by reason or on account of any decision, approval, or disapproval required to be made, given, or obtained pursuant to the provisions of this Declaration, or for any mistake in judgment, negligence, or nonfeasance related to or in connection with any such decisions, approval, or disapproval.

Each person who shall submit plans or other materials for consent or approval pursuant to this Declaration, by the submission thereof, and each Owner of any Lot, by acquiring title thereto or an interest therein, shall be deemed to have agreed that he or it shall not be entitled to bring and shall not bring any action, proceeding, or suit against the Developer, the Association, the Committee, or any individual member or members, officer or officers, director or directors, employee or employees, or agent or agents of any of them for the purpose of recovering any such damages or other relief on account of any such decision, approval, or disapproval.

ARTICLES III **GENERAL RESTRICTIONS - USE AND OCCUPANCY**

3.1 **General Prohibition.**

No residential dwelling, garage, outbuilding, structure or appurtenance of any kind, including additions or substantial alterations thereto, shall be erected, placed or maintained on the Lot or any portion thereof that does not conform to the standards, requirements, prohibitions and provisions of this Declaration or applicable governmental regulations, as same may exist or be changed from time to time. All such construction shall be performed, completed, erected, placed and maintained only in accordance with the plans and specifications required herein as approved by the Committee and governmental building code requirements.

3.2 **Only Residential Purposes.**

No Lot shall be used in whole or in part for anything other than residential purposes, except for model residential dwelling units which may be maintained by the builder or Developer only for purposes of the sale of residential dwellings within the subdivision, and except such construction and sales trailers as may be permitted by Developer and any applicable governmental entity. Other than conducting the sale of residential dwellings, no trade, traffic of business of any kind, whether professional, commercial, industrial, manufacturing or other non-residential use shall be engaged in or carried on within the subdivision or any part thereof; nor any other activities which may be or which may become an annoyance or a nuisance to any Lot, Owner or property adjacent to the subdivision. This provision shall not prohibit those minor business-related activities which might occur within the confines of a home on a LOT and do not create any offensive activity, or promote excessive deliveries or public access to the Lot, or which may be promoted for tax benefits or other reasons of convenience. The Association may prohibit any business related activity it deems to be an offensive activity or a violation of this paragraph. An Owner with an in-home business shall notify the Association in writing of the nature of the business.

3.3 **Single-Family Residential Use.**

No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single-family residential dwelling, nor may any dwelling be occupied by more than one family.

3.4 **Subdivision.**

No Lot shall be subdivided or split by any means what so ever into any greater number of residential Lots or into any residential plat or plats of smaller size.



3.5 Occupancy Before Completion.

No building or structure upon the Properties shall be occupied until the same is approved for by such governmental agency which is responsible for regulation of building construction and until it complies with the terms and provisions of these covenants and restrictions. Upon completion, the Committee shall inspect the Lot and improvements and issue the Owner or Builder a certificate of compliance acknowledging that said terms and provisions have been met or itemizing any non-compliance.

3.6 Maintenance and Repair.

All improvements placed or maintained on a Lot shall at all times be maintained in good condition and repair.

3.7 No Temporary Buildings.

No tent, shack, trailer, house trailer, garages, or other space shall at any time be used on any Lot as a residence temporarily or permanently. No building or dwelling of a temporary character shall be permitted, except that: buildings necessary for construction or sales taking place in the Subdivision and not intended to be used for living accommodations may be erected and maintained only during the course of construction and sales and after receipt of written approval from the Declarant. Notwithstanding, upon completion of the house, the occasional one or two night "children's backyard campouts" for a reasonable number of children shall be permitted on a Lot as long as adult supervision is present and noise is minimized.

3.8 Ground Maintenance.

(a) Grass, hedges, shrubs, vines, trees, and mass plantings of any type on each Lot shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines and plants that die shall be promptly removed and replaced.

(b) No weeds, vegetation, rubbish, debris, garbage, objects, waste, or materials of any kind what so ever shall be placed or permitted to accumulate upon any portion of a Lot which would render it unsanitary, unsightly, offensive, or detrimental to the Subdivision or to the occupants of any property in the vicinity.

(c) No building material of any kind or character shall be placed or stored upon any Lot so as to be open to view by the public or neighbors, unless such material will be used in the near future and is used for the construction of buildings or structures upon the Lot on which the material is stored.

(d) All Lot Owners owning Lots adjoining Common Property shall be required to install grass or to landscape to the edge of the water or vegetation located in that Common Property up to the point where it matches with the Sodding done by the Declarant.

(e) MULCH:

- All Landscape areas on any Lot
- Areas around all Trees (a minimum area of a 2' radius outward from any tree trunk)
- a minimum 4" mulch bed between the grass and the wall of all house or other structures

Mulched areas shall have at all times a minimum of 1" thickness of a wood mulch bed which shall be maintained in good condition and shall be refreshed with new mulch at least once a year and shall be kept free of weeds and encroaching grass.

(f) All Plants and Trees shall be trimmed as need in a neat and manicured way and shall be kept free of dead materials.



- (g) Tree Fertilizing: Owners shall be required to apply appropriate amounts and types of fertilizer to any newly planted tree at least 3 times a year for the first 3 years after it has been planted. Thereafter the Annual early spring application of appropriate amounts of fertilizer is required.
- (h) Irrigation: Lot owners shall properly maintain the irrigation system on the Lot and set the watering schedule of days of week, time and duration according to the best management practices as is recommended by Brevard County Extension Service.

3.9 Fences, Walls, Hedges, Mass Planting of Any Type.

- (a) Fences or walls, of any type shall not exceed a height of six (6) feet above the finished floor of the adjacent house which it is located and shall not be constructed, placed or maintained upon any Lot without the written consent and approval of the Committee.
- (b) No hedge or mass planting of any type, exceeding six (6) feet above the finished graded surface of the ground upon which it is located shall be constructed, planted, placed or maintained on any Lot without the written consent and approval of the Committee. No hedge or mass planting of any type, exceeding three (3) feet above the finished graded surface of the ground upon which it is located shall be constructed, planted, placed or maintained between the street and the front setback line of any Lot without the written consent and approval of the Committee.
- (c) No fences, walls, hedges or mass planting of any type shall be built further forward on a Lot than five (5) feet behind the front building line of any residence, and shall not exceed six (6) feet in height, except as otherwise provided herein. All fences built on the street side of any corner Lot shall have a minimum setback requirement equal to the side setback of the residence. As to any Lot which adjoins a Common area: lake, retention area or preserve area no fence or wall or portion thereof with a height greater than three (3') feet may be constructed behind the rear of any residence. All fences must be in conformance with all governmental regulatory codes and setback requirements. No fence shall be constructed without the written approval and consent of the Committee. The Committee may modify these Fence requirements as it deems appropriate, upon written notice to all Owners.
- (d) No fence may be constructed of wire, chain link or cyclone style of fencing on any Lot.
- (e) All fences to be constructed in the Subdivision shall be of uniform design and finish. The type and style shall be decided by the Committee. Prior to construction of a fence or wall on any Lot, the Owner must submit a detailed sketch showing the type and location, and confirming the use of the pre-approved style and color of the proposed fence or wall to the Committee for approval.
- (f) Gates shall be installed in all fenced areas to allow for a minimum 42" wide mower to access the fenced area.
- (g) Any fenced area that shall have a dog or other animal kept within the fenced area shall be clearly marked by the Owner on the Gate(s) as to the presence of dog or other animal potentially loose within the fenced area.

3.10 Animals, Birds and Fowl.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. No kennel or other commercial animal operations shall be maintained on any Lot. No pet shall be allowed to run loose and uncontrolled within the Subdivision. All pets shall be maintained in a quiet and orderly fashion so as not to disturb other Lot Owners. Pet Owners shall comply with all governmental regulations concerning the proper care, maintenance, licensing, and control of their individual pets.



3.11 Laundry.

No clothes, sheets, blankets or other articles shall be hung out to dry in the side or front yards of any Lot except in a service yard or yard enclosed by a lattice, fence, wall or other screening device. Nothing contained in these deed restrictions shall be in conflict with Florida Statutes 163.94 Renewable Energy Sources.

3.12 Exterior Light Fixtures.

No lighting fixture shall be installed or directed that is an annoyance or a nuisance to the residents of adjacent Lot or Lots.

3.14 Parking.

The parking of commercial vehicles, which description shall include trucks (larger than a pick-up truck), tractor-trailers, semi-trailers, and commercial trailers, at any time on driveways, otherwise on said premises, on common areas, or on the public streets of said subdivision, is prohibited except for loading and unloading purposes or when parked entirely within a closed garage permitted to be built under the provisions of these restrictions. Boats, motor homes, watercraft, campers, travel trailers and similar recreational vehicles, ATV's golf carts, bikes, and motorcycles, may only be placed and kept or stored in a closed garage. Temporary outside parking for the purpose of loading and unloading of Boats, motor homes, watercraft, campers, or travel trailers, not to exceed 1 – up to 24 hour period in any 7 day period shall be permitted. The Association may grant periods of up to 72 hours on a case by case basis.

3.15 Drainage Easements, Easements and Common Property.

(a) Easements for installation and maintenance of utilities and drainage facilities are shown on the plat, or are of record, and the same are reserved for such use. Within these easements, or on any Lot, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements, or which may otherwise disturb the surface water or stormwater system. It is important that the banks, swales and drainage areas located within the Subdivision remain undisturbed and properly maintained in order to perform their function. Where any portion of such berms, swales, banks lie within a Lot, the owner of that Lot shall maintain the same continuously and shall not disturb, damage or otherwise interfere with the berm, swale, drainage canal or other portion of said lake, drainage canal or system which is located on or adjoins said Owner's Lot. Lot swales/berms which are required to be located on certain Lots in the Subdivision, pursuant to the Subdivision construction plans and the St. John's River Water Management District permit, shall be constructed, maintained and repaired by the respective Lot Owners in accordance with said plans and permit. The initial construction of the Lot swales/berms shall be completed prior to the issuance of a certificate of occupancy for any residence to be constructed on said Lot; provided, however, initial construction of said berms and swales must be completed no later than the mandatory completion date established pursuant to the St. John's River Water Management District permit, even if a residence has not been constructed on the Lot(s).

(b) All Lot Owners who adjoin a Common Property shall assist the Association in maintaining that Common Property.

(c) No Lot Owner shall disturb or damage any wetland plantings or Common Property. In the event an Owner does damage wetland plants or Common Property, the Owner shall be responsible for the replacement and replanting of all damaged or destroyed plants and restoration of disturbed areas within thirty (30) days of written notification by the Declarant or the Association.



- (d) Prior to the Association's Turnover, in the event that any damage to the drainage system but not limited to, berm, swale, drainage canal, Lake wetland area or otherwise occurs or any particular Lot's required Lot grading plan does not meet the requirements as set forth herein, the Declarant shall have the right but not the obligation to make any required repairs or re-grading the Declarant at the Declarant's sole discretion shall make the repairs and the Association shall be responsible for reimbursing the Declarant all costs (including reasonable attorney fees) and shall be responsible for collecting the costs from the appropriate Lot Owner(s). The Declarant shall be hereby granted the right and necessary easements, without the risk of trespass, to enter onto any Lot to make such repairs.
- (c) Easements for ingress, egress and access are hereby reserved in favor of the Developer and the Association over and across the platted utility and drainage easements encumbering all Lots adjacent to Common Property for the purpose of access to said Common Property for repair and maintenance. The Developer and Association may, without incurring any liability to the Lot Owner for trespass or damages, remove any impediments to these access rights, and may levy a special assessment as provided in Article V for the cost of such removal.

3.16 Excavations.

No excavations for stone, gravel, dirt or earth shall be made on any portion of the Properties; except for the construction of dwellings, walls, foundations, swimming pools, structures and other appurtenances. The plans and specifications for such excavations must be approved by the Committee in writing prior to construction.

3.17 Signs.

Except for signs permitted by the Association's Board of Directors or the Declarant, no sign of any character shall be displayed or placed upon any Lot or living unit except professionally made "for rent" or "for Sale" signs, which signs may refer only to the particular premises on which displayed. Said signs shall not exceed the normal and customary standard size for the local Real Estate Industry, shall not extend more than four (4) feet above the ground, and shall be limited to one (1) sign per Lot and displayed only upon the Lot sought to be rented or sold. All signs must be maintained in good condition. No signs may be attached in any manner to a tree. No "for rent", "for Sale", "open House", "garage Sale" or other similar signs may be placed at the community entrance or along any Public Right of Way bordering the Subdivision.

Notwithstanding anything herein to the contrary, the Declarant and Builder shall be permitted to place within the Subdivision any sign he deems appropriate in connection with the sale of Lots or dwelling units.

3.18 Refuse.

No trash, garbage, rubbish, debris, waste or materials or other refuse shall be deposited or allowed to accumulate or remain on any Lot. Empty trash cans shall be returned to their storage area as soon as reasonably possible after being emptied. Trash and Garbage containers shall be stored in an area that is not seen or otherwise shielded from any Common Road or Common Property.

3.19 Nuisances.

No noxious or offensive trade or activity shall be permitted on any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

3.20 Preservation of Common Property.

No person shall re-construct damage or destroy, clear, open, reduce, remove, alter, modify or install anything or improvement within, over or upon any Common Property, easement or preservation area



without first obtaining written approval from the Committee. No construction or excavation in the proximity of any preservation area, canal, bank slope or swale, shall be permitted which may substantially impair the stability of the character or drainage in said area.

3.21 Wells.

No water wells shall be dug on any Lot or on the Properties, except for purposes of irrigation of landscaping.

3.22 Open Burning.

Open burning to reduce solid waste on any Lot is not permitted.

3.23 Swimming Pools.

A Swimming Pool may be constructed on a Lot within the appropriate setbacks and with the approval of the location and material by the Committee. Access to a pool from the boundaries of the Lot must be controlled from all directions by fencing and the residential structure. If pools are protected by screens, such screens and their structures shall be approved by the Committee. Swimming pools shall be only in ground type and shall be constructed of fiberglass, concrete, or concrete materials. The pool deck shall be no higher than two (2") inches below the grade level of the first floor house pad.

3.24 Right to Inspect.

The Association's Board of Directors may at any reasonable time or times during periods of construction or alteration and within thirty (30) days thereafter enter upon and inspect any Lot and any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of structures thereon are in compliance with the provisions hereof; and neither said Board nor any of its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

3.25 Antennae, Aerials and Satellite Dishes.

The Federal Communications Commission has published rules that govern the right of homeowners to receive programming from direct broadcast satellites (DBS) multi-channel, multi-point distribution (wireless cable) service (MMDS) and television broadcast stations (TVBS). The Association is prohibited from the following:

- (1) Restrictions that impair the installation, maintenance or use of an antennae to receive video programming as well as satellite dishes which are less than thirty-nine (39) inches in diameter.
- (2) Restrictions that unreasonably delay or prevent, or unreasonably increase the cost of, the installation, maintenance or use of such antennae, or which preclude the reception of an acceptable quality signal.

The Association does have the right to regulate the above-described telecommunications equipment with respect to landscaping and safety. When possible, all exterior antennas or aerials shall be placed in the rear yard of the Lot and in such a manner so as to be as unobtrusive as possible, and in no event shall exceed a height greater than ten (10) feet above the highest point of roof. Any earth satellite signal reception equipment shall not be visible from any street and shall be screened from other property within the Subdivision.

Any homeowner who wishes to install an antenna or a satellite dish should submit a sketch showing its location relative to the home to the Committee for approval.



3.26 Games and Play Apparatus.

All games and play apparatus remaining outdoors for more than three days shall be located at the rear or side of the dwelling, so as not to be visible from any street. The Committee may make exceptions and permit basketball backboards or similar play apparatus that is visible from the street. Any permitted basketball standards must be in writing by the Committee and shall be constructed of uniform black enamel pole and white or clear backboard and shall be a minimum of 25' from any paved public street and must be maintained in good like new condition. No basketball games should be played outside past 11:00 pm as to avoid disturbing the neighbors. .

3.27 Oil and Mining Operations.

No oil or gas drilling, oil or gas development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

3.28 Sewage Disposal.

No individual sewage disposal systems shall be permitted on any Lot.

3.29 Tanks.

No permanent above ground oil tanks or bottled gas tanks may be placed on Lots containing residences,.

3.30 Window Treatments

Window treatments shall consist of draperies, blinds, decorative panels, or other tasteful window coverings, and no newspaper, aluminum foil, sheets, or other temporary window treatments are permitted for more than sixty (60) days after the issuance of the Certificate of Occupancy.

ARTICLE IV
PROPERTY RIGHTS AND REQUIREMENTS, COMMON PROPERTY

4.1 Owner's Easements of Enjoyment.

Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Property that shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

The right of the Association to dedicate or transfer all or any parts of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association, provided, no such dedication or transfer shall be effective unless: (i) such dedication or transfer is approved by Declarant, so long as Declarant owns a Lot, or if Declarant no longer owns a Lot, then by a vote of 30% of the Class A Members; and (ii) the approval of such dedication or transfer has been properly recorded.

4.2 Owner's Use of Lot.

An Owner's use of his or her Lot shall be limited to residential purposes, but nothing herein shall be deemed to prevent an Owner from leasing his or her residence to a single family for the purpose of a residence, subject to these covenants and restrictions. All Owners leasing or renting their Lots or Homes shall be required to incorporate the following provision in their lease or rental agreements, substantially in the following form:



The Lease Premises are a part of Subdivision, All people occupying property in AURORA OAKS Subdivision are required to observe the Covenants and Restrictions of the AURORA OAKS HOMEOWNERS ASSOCIATION, INC. Copies of all Covenants and Restrictions are to be obtained from the Landlord. Leases shall be a minimum of one (1) Month.

In addition, all Owners leasing their Lots or Homes are required to provide upon request the Association with a copy of the lease and/or the names and addresses of the Landlord and the Tenant that are contained in the lease or rental agreement.

4.3 Notice of Conveyance.

At any time an Owner conveys his Lot, he and the transferee shall be jointly obligated to notify the Association of the transferee's name, mailing address and date of transfer. A notice will be provided by the Association upon the transfer of any Lot providing the current written status of the Association dues.

4.4 Others' Use.

Any Owner may share his right or enjoyment to the Common Property and facilities with the members of his family, his tenants, or visiting guest so long as same observe and abide by these covenants and restrictions.

4.5 Damage by Lot Owners Including Builders.

The Owner of a Lot including Builders shall be responsible for any expense incurred by the Association or the Developer to repair or replace Common Property vegetation and topography, right-of-ways, swales, drainage facilities and utility lines when such repair or replacement is necessary as a result of the negligent or intentional errors or omissions of the Owner, his family, tenants, guests, agents or invitees. This shall specifically include repairs or replacements resulting from the actions of the owner's contractor in constructing any improvements on the Owner's Lot. Any such expense if not paid upon demand shall be added to the Assessment to which the Owner's Lot is subject and shall be due and payable in the same manner as the Assessments provided in these covenants.

4.6 Motor Boat Use Restriction.

Except for construction or maintenance, only man-powered, wind propelled or electric operated boats may be used on any lakes or retention areas situated in the Subdivision.

4.7 Maintenance of Operation of Surface Water or Stormwater Management System.

The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. John's River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or Stormwater management system shall be as permitted, or if modified as approved by the St. John's River Water Management District.

The St. John's River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Declaration which relate to the maintenance, operation and repair of the surface water or Stormwater management system.

4.8 Maintenance of Drainage Easements.

It shall be the duty of the Association to maintain and operate the drainage system and easements if said duty is not assumed by any governmental agency pursuant to any dedication agreement. Said duty shall include the obligation to cut grass, cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar actions reasonably necessary to maintain reasonable standards of health, safety and appearance and the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface or stormwater management capabilities as



permitted by the St. Johns River Water Management District. Drainage flow shall not be obstructed or diverted from drainage easements. Developer may, but shall not be required to, add drainage for surface water wherever and whenever necessary to maintain reasonable standards of health, safety and appearance; provided, however, any maintenance, clearing, grading or cutting of drainways must be as permitted, or as approved by St. John's River Water Management District and Brevard County pursuant to a permit modification.

Beginning in September 2006 and not less than bi-annually thereafter, the Association shall be required to inspect and measure all drainage systems located within the Subject Property to insure that the drainage systems operate as designed. The Association shall be required to modify the drainage systems should maintenance measures become insufficient to achieve operation of the drainage systems as designed. The Association must apply for and obtain approval from the St. Johns River Water Management District and the County or City for any alternative design prior to installation.

4.9 Maintenance of Tracts.

The Association shall be responsible for the maintenance, operation and repair of all improvements, landscape easements within the ROW and property located in **Tracts A, B, C**. Where an individual Lot owner adjoins one of the above tracts the Owner's responsibilities for the maintenance, operation and repair within these tracts is as called for within this Declaration.

Notwithstanding anything herein set forth to the contrary, however, the Association, subsequent to the conveyance by the Developer as set forth herein, shall assume all common maintenance, common expenses and liabilities associated with the use and Ownership of any such Common Property, as set forth in this Declaration, or for all Common Property as set forth by the Plat within the Aurora Oaks Subdivision.

4.10 Maintenance of Insurance Policy.

The Association shall be responsible for the insurance and maintenance of a general liability insurance policy covering all of the subdivision improvements. This liability policy will cover all of the improvements that are the property of the Association and general liability regarding their use. In addition, (upon the cessation of the Developers right to elect a majority of the Board of Directors) the Association shall maintain an Officers and Directors policy for those members of the Association who are members of the Board of Directors. Such policy shall be reviewed on an annual basis to assure that they meet current governmental rules and standards, and generally acceptable insurance practices. At no time shall coverage be less than a one million-dollar general liability policy. The insurance must be purchased from an insurance company that is certified to be business in the State of Florida and is in good standing with the Department of Insurance.

4.11 Conveyance of Common Property by Developer.

On or before the date of the last conveyance of all Lots within the Subject Property by the Developer to any third party Owner, the Common Property herein described shall be conveyed by the Developer to the Association free and clear of any and all liens, encumbrances, exceptions, or qualifications whatsoever, save and except only for:

- a) real property taxes for the year of such conveyance, if any
- b) title exceptions of records, if any,
- c) the covenants, restrictions, and easements set forth in this Declaration and any amendments hereto, and
- d) Any special covenants, restrictions, and easements which may be contained in the instrument of conveyance pursuant to which title to such Common Property is conveyed by the Developer to the Association.



4.12 Additional Property.

In addition to the Common Property as shown on the Aurora Oaks Subdivision Plat, the Developer, in its sole discretion, shall have the right to convey to the Association and the Association shall be unconditionally obligated to accept, any other portion of the Subject Property owned by the Developer so long as such property is used or useful for any of the objects and purposes for which the Association has been created and established.

Should the Developer so convey any such additional property, the same shall thereupon become and thereafter continue to be Common Property which shall be subject to all covenants, restrictions, and easements set forth in this Declaration with respect to all other Common Property.

4.13 Administration and Care.

The administration, regulation, care, maintenance, repair, restoration, replacement, preservation, and protection of the Common Property shall be the responsibility of the Association.

4.14 Common Property Warranty:

There shall be no additional warranty either inferred or implied on any Common Property improvement than that typical 1 year limited warranty provided to the Developer by the General Contractor(s). On all Common Property improvements, all warranties shall begin from the date when the improvement is completed, as is specified in the Contractors Limited Warranty. The Association shall assume all maintenance responsibilities required to keep any warranty in force.

4.15 Use by Owners:

Subject to any reasonable rules and regulations adopted and promulgated by the Association pursuant to and in accordance with this Declaration, and subject always to any and all easements granted by or reserved to the Developer in this Declaration, each and every Owner shall have the non-exclusive right, privilege, and easement to use and enjoy the Common Property for the purpose or purposes for which the same is conveyed, designated, and intended by the Developer and maintained by the Association, and such non-exclusive right, privilege, and easement shall be an appurtenance to and shall pass with the title to each and every Lot within the Aurora Oaks Subdivision, subject however, at all times to the covenants, restrictions, and easements set forth in this Declaration.

Notwithstanding anything herein set forth to the contrary, however, the Association shall have no right, power, or authority hereunder to suspend or otherwise unreasonably interfere with any Owner's right, privilege, and easement to use the common streets and roads for ingress and egress to and from such Owner's Lot

- a) The right of the Association to limit the number of guests of Owners who may use the Common Property from time to time and to limit the use of the Common Property by persons not in possession of a Lot at a particular time, but owning a sufficient Interest therein for so as to be classified as an Owner and member of the Association.
- b) The right of the Association to establish, promulgates, and enforces reasonable rules and regulations pertaining to and with respect to the use of the Common Property pursuant to this Declaration.
- c) The right of the Association to take such steps as is reasonably necessary to maintain, preserve, and protect the Common Property.



- d) The right of the Association to have unlimited access to the common streets and roads of Aurora Oaks Subdivision subject to all provisions herein.

4.16 Delegation of Use.

Any Owner shall be entitled to and may delegate his right, privilege, and easement to use and enjoy the Common Property to the members of his family, his tenants, guests, or other invitee's; subject, at all times, however, to such reasonable rules and regulations governing such delegation as may be established, promulgated, and enforced by the Association.

In the event and for so long as an Owner shall delegate such right, privilege, and easement for use and enjoyment to tenants who reside on his Lot, the Association shall be entitled, after the adoption and promulgation of appropriate rules and regulations with respect thereto, to limit or restrict the right of the Owner making such delegation to a tenant in the simultaneous exercise of such right, privilege, and easement of and for the use and enjoyment of the Common Property.

4.17 Waiver of Use.

No Owner may exempt himself from personal liability for or exempt his Lot from any ASSESSMENTS duly levied by the Association, or release the Lot owned by him from the liens, charges, encumbrances, and other provisions of this Declaration.

4.18 Exculpation from Liability and Responsibility.

Presently, the Surface Water Management System for Aurora Oaks Subdivision is private not public. They have not been dedicated to or accepted or maintained by any governmental authority, including the Brevard County, City or SJRWMD and there is an expectation that they will remain private. Accordingly, each Owner, by acceptance of a deed or other conveyance to his Lot shall be deemed to have agreed that neither the Developer, the County, nor any other governmental agency shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the surface water management system for Subject Property and each such Owner shall be deemed to have further agreed to look solely and exclusively to the Association with respect to any such liability or responsibility.

4.19 Dedication of Common Property.

Notwithstanding the provisions herein, any, part or all of the Common Property may be dedicated (1) by the Developer, prior to turnover, or (2) by the Owners of all Lots contained within this subdivision, or (3) by the Association, after turnover, to the appropriate governmental agency(s) having jurisdiction over the specific Common Property(S). Upon such dedication, the provisions contained in this section relating to use, maintenance, restrictions, administration, and Assessments will be amended since said Common Property will thereafter be public and not privately owned.

4.20 ACCESS TO COMMON PROPERTY AND UTILITIES:

NOTICE: CERTAIN LOTS AS SHOWN ON THE PLAT HAVE EASEMENTS THAT ALLOW ACCESS TO COMMON PROPERTY OR HAVE UNDERGROUND UTILITIES. OWNERS OF THOSE LOTS ARE HERBY NOTIFIED THAT ACCESS MAY BE REQUIRED FORM TIME TO TIME. SUCH ACCESS MAY RESULT IN THE TEMPORARY REMOVAL OF FENCES AND LANDSCAPING OR PERMANENT REMOVAL OF ANY TREES PLANTED WITHIN THESE EASEMENTS. UPON COMPLETION, CONTRACTORS WILL BE REQUIRED TO REPAIR AND REPLACE ANY REMOVED LANDSCAPING, REPAIR ANY DAMAGE TO SPRINKLERS, SIDEWALKS AND REPLACE THE FENCING. CONCRETE SIDEWALKS SHOULD BE KEPT TO A MINIMUM WITHIN THE EASEMENTS. NO PERMANENT STRUCTURES SHALL BE ALLOWED IN THE EASEMENTS.



LOT 60: HAS EASEMENTS THAT WILL RESTRICT THE SIZE OF THE IMPROVEMENTS BEYOND THE TYPICAL LOT AND SHOULD BE EXAMINED CLOSELY PRIOR TO PURCHASE.

4.21 **LOT 44 SPRINKLER REQUIREMENT:**

The owners of Lot 44 shall be required to provide an independent zone connection from their sprinkler system to provide a source of irrigation water for the landscape island in the roadway in front of Lot 44. The Developer shall provide the sprinklers in the island and shall stub out the pipe under the roadway to Lot 44. The owner of lot 44 shall connect their sprinkler system to this stub out and provide irrigation water as needed by the Association to irrigate the landscape island in the roadway. The Association shall be responsible for the maintenance of the sprinkler system in the landscape island.

ARTICLE V
COVENANT FOR ASSESSMENTS

5.1 **Assessments.**

- (a) All Lots shall be subject to annual and special assessments as herein provided in order to fund the costs of fulfilling the purposes of the Association. In the event of a conveyance, the grantee is jointly and severally liable with the grantor for all assessments outstanding against the grantor and subject Lot, without prejudice to any right the grantee may have to recover from the grantor any amounts paid by the grantee. Each Lot Owner is deemed to covenant and agree by acceptance of a deed to a Lot to pay all assessments and no Lot Owner may waive or avoid responsibility for payment of any assessment by not using his Lot or the Common Property or by disputing the purpose of the assessment or for any other reason; provided however, that no Lot while owned by the Developer shall be subject to either annual or special assessments. The Developer hereby obligates itself to pay any operating expenses that exceed assessments and Working Capital contributions received from the Owners and other income sources of the Association. This obligation shall terminate when Declarant's Class B membership in the Association converts to Class A membership.
- (b) Both annual and special assessments must be fixed at a uniform rate per Lot subject to assessments and may be collected monthly, quarterly or annually as determined by the Board of Directors. As to any individual Lot or Lot Owner who has not paid an assessment when due or is in violation of these Covenants and Restrictions, however, the amount of the assessment outstanding shall be increased by interest, late charges, costs, fines, damages and attorneys fees, as referenced throughout this Declaration.
- (c) Assessments shall also be used for the maintenance and repair of the surface water or storm water management systems including but not limited to work within the retention areas, drainage structures and drainage easements.

5.2 **Annual Assessments.**

The Association shall fix the amount and the due date of the annual assessment. Initially, annual assessments shall be payable in 4 Quarterly installments. Assessments are payable when the Owner takes title and prorated from that date to the end of the quarter. The Title Company shall forward the proceeds of the prorated annual assessment to the Association. After the initial annual assessment, annual assessment's shall be due and payable in advance in monthly, quarterly, semi- annually or in annual payments as determined by the Board of the Association. The Association shall notify the Owners of each Lot, in writing, of the amount, the date on which the assessments are payable, and the place of payment.



5.3 Date of Commencement of Annual Assessments.

The annual assessments for each Lot shall be payable upon conveyance of that Lot to a Class A Member, and at the beginning of each fiscal year of the Association thereafter. Builders may become liable for annual or special assessments prior to receiving conveyance of a Lot, as may be provided by contract between Developer and the Builders.

5.4 Special Assessments.

The Association may levy a special assessment to pay in whole or in part for the cost of any shortfall in the annual budgeted operating revenues, or for any repair or replacement of an existing capital improvement, or for the construction/acquisition of a new capital improvement, with if approved by the Board of Directors unless the cost of such repair/replacement/acquisition/construction is major. "Major" as referenced herein shall be defined to mean that the amount of the proposed special assessment per Owner, plus any other special assessments levied during that same fiscal year exceeds 50% of the then current year's annual assessment. Major capital improvements shall require the special assessment to be approved by a majority of a minimum of 30% of the membership. The Association may also levy special assessments without limitation or the concurrence of any Owner to pay for the cost of maintenance or enforcement of these covenants and restrictions with regard to specific Lots; any such assessment shall be levied against the Owner of such Lot. Special assessments shall be payable at such time and place determined by the Association and stated in the assessment notice.

5.5 Maximum Annual Assessment.

Initially, the annual assessment shall be \$800.00 per Lot, for 2004.

- (a) The annual assessment shall be set by the Association and may be increased each year by up to ten (10%) percent above the maximum allowable assessment for the previous year without a vote of Owners. "Maximum allowable assessments" as referred to herein shall be calculated by assuming a cumulative 10% increase per year from and after the year 2004.
- (b) The maximum annual assessment may be increased by more than said ten (10%) percent only by a majority vote of those needed for a quorum of 30% of all members who are voting. The vote should be by certified written ballot mailed to each owner 30 days after their receipt of written notification that a vote will be taken on the proposed increase in assessment.

ARTICLE VI
ENFORCEMENT PROVISIONS

6.1 Creation of Lien for Assessments.

- (a) Assessments, including any increases in same due to interest, late charges, costs, fines, damages and attorney fees, shall be a charge upon each Lot and a continuing lien thereon until paid. The lien will become effective from the after recording a Claim of Lien in the Public Records of Brevard County, Florida, stating the Lot description, the name of the record Owner, the amount due, and the due date. The lien will remain in effect until all sums due to the Association have been fully paid and the Association is hereby authorized to take any and all actions provided in law or equity to collect such sums. Any payment received by the Association from that payer shall first be applied to any interest accrued, any outstanding penalties and costs, reasonable attorney's fees incurred in collection, and then to the outstanding assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.



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- (b) All Lots shall be sold subject to the terms and provisions of the continuing lien described in this paragraph. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed Certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

6.2 Effect of Non-Payment of Assessment: Remedies of the Association.

Any assessment not paid within 30 days after the due date shall accrue an administrative late charge of \$25.00 or 5% of the amount due, whichever is greater, plus interest beginning 30 days from the due date at the rate of 12% per annum until paid. The Association may bring an action against the Owner of the Lot personally for payment of the assessment and may enforce its lien for the assessment by foreclosure or any other means available under the law. The Association may waive payment of late charges and interest on any assessment, but may not waive payment of the assessment. In an action to enforce collection of any assessments, the prevailing party shall be entitled to recover reasonable attorney's fees and costs on appeal.

6.3 Violation and Enforcement of Restriction and Covenants.

- (a) The Association and each Lot owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the rights to do so thereafter. In any action for enforcement brought hereunder, the prevailing party shall be entitled to reasonable attorney's fees including attorney's fees through appellate proceedings.
- (b) Upon learning of a violation, the Association shall issue the Owner a written notice either by certified return receipt mail or posting on the property requesting the Owner to cure the violation and advising the Owner that a fine will begin to accrue if the violation is not cured within 30 days of receipt of the notice and that the Owner's Lot may be subject to a lien for such fine together with any costs expended by the Association for notice, investigation, attorney's fees and costs, and curative actions, the Association may take, including but not limited to demolition and/or storage costs for any construction or items placed on a Lot in violation of this Declaration.
- (c) Should the violation not be cured within said 30 days receipt of said written notice, a fine shall automatically begin to accrue and continue until the violation is cured. The amount of the fine at the time of filing this Declaration is \$50.00 per day, but said amount may be increased from time to time by the Board of Directors without vote of the Association or amendment of this Declaration.
- (d) The Association shall have the authority but is not obligated to cure any violation through whatever action it deems reasonable and the expenses thereof shall be chargeable to the Owner of the Lot or Lots on which or in connection with the violation has occurred. Said expense shall be payable forthwith and upon demand. In the event the Association has expended funds in connection with curing such violation, then and in such event the funds so expended shall become an assessment upon the Lot or Lots enforceable as provided herein for unpaid assessments.

6.4 Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any recorded mortgage. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish



the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Failure to pay Assessments does not constitute default under the terms of a federally insured mortgage. Nothing contained herein shall require mortgagees to collect Assessments.

ARTICLE VII
RIGHTS RESERVED BY DEVELOPER

7.1 Eminent Domain.

If all or part of any Common Property, private right-of-way, or private easement for access, is taken by eminent domain, Developer shall be entitled to the proceeds therefore and no claim shall be made by the Association or any Owner other than Developer for any portion of any award.

7.2 Easements for Utilities.

The Developer reserves a perpetual easement on, over and under all easements within the Subdivision and Common Property shown on the subdivision plat for construction and maintenance of electric and telephone poles, wires, cables, conduits, water mains, drainage lines or drainage ditches, sewers, irrigation lines, roadways, natural gas, cable television, and other conveniences or utilities. To the extent permitted by law, the Developer may grant an exclusive easement over each Lot for the installation and maintenance of radio and television cables within the Subdivision. The Owners of Lots subject to the easements reserved in this paragraph shall acquire no right or interest in utility or cable television equipment placed on, over or under the portions of the Subdivision which are subject to said easements.

All easements reserved by Developer are and shall remain private easements and the sole and exclusive property of the Developer, to be held or else conveyed in Developer's discretion to utility companies, the Association, or appropriate government agency.

7.3 Drainage.

Drainage flow shall not be obstructed or diverted from drainage easements. Developer may but shall not be required to cut drain ways for surface water drainage and other utility repairs wherever and whenever necessary to maintain reasonable standards of health, safety and appearance; provided, however, any maintenance, clearing, grading or cutting of drain ways must be permitted or as approved by the St. John's River Water Management District and Brevard County pursuant to a permit modification. Except as provided in this Section, existing drainage shall not be altered so as to divert the flow of water onto an adjacent Lot or into sanitary sewer lines.

7.4 Maintenance Easement.

The Developer and the Association reserves an easement within all designated drainage and utility easements in, on, over, and upon each Lot for the sole purpose of preserving, maintaining or improving the Common Property.

7.5 Construction and Sales Easements.

There is hereby created, declared, granted, and reserved for the benefit of the Developer, together with the right to grant, assign, and transfer the same to the Developer's sales agents and sales representatives, Real Estate Broker, or any Real Estate Sales Agents as engaged by the Developer, as well as to builders or building contractors approved by Developer for the construction of residences within the Subdivision an easement for construction activities upon Subject Property and an easement for sales activities and signs on Subject Property and for the



maintenance on Subject Property from time to time of a Sales and Administrative Center in which and from which the Developer and its authorized sales agents and sales representatives and approved builders and building contractors may engage in exhibit, sales, and administrative activities of a commercial nature on a temporary basis during the period of the development of and construction within the Subdivision. The location of such Sales and Administrative Center within the Subdivision may be changed from time to time by the Developer, in its sole and absolute discretion.

7.6 Emergency Access and Drainage Easement:

There is hereby created, declared, granted, and reserved for the benefit of the County or City, a perpetual non-exclusive easement over and upon the streets and roads, and all drainage easements comprising and appurtenant to the Surface Water Management System for the purpose of undertaking emergency maintenance and repairs to the Surface Water Management System in the event that inadequate maintenance or repair of the Surface Water Management System shall create a hazard to the public health, safety, or general welfare. To the extent that the County or City shall, in fact, undertake any such emergency maintenance and repairs to the Surface Water Management System because of the inadequate maintenance and repair thereof by the Association, the County or City shall have a lien upon the Common Property as security for the payment by the Association of those costs and expenses reasonably incurred by the County or City in connection therewith. It is expressly provided, however, that the creation, declaration, and reservation of such Emergency Access and Drainage Easement shall not be deemed to impose upon the County or City any obligation, burden, responsibility, or liability to enter upon the Subject Property or any portion thereof to take any action to maintain or to repair the Surface Water Management System or any portion or portions thereof.

7.7 Easements Generally:

The Developer, on behalf of itself and for the benefit, where so stated, of the County, the City, the Association, all Owners, and other specified parties, and also for the benefit of all real property from time to time included within the Subject Property, hereby creates, declares, and reserves the following easements upon those affected portions of the Subject Property hereinafter Specified, to wit:

7.8 Public Utility Easements:

There are hereby created, declared, granted, and reserved for the benefit of the Developer, the City, the Association, all Owners and any public or private providers of utility services to the Subject Property and their respective successors and assigns a non-exclusive easement for utility purposes over, under, within, and upon the rights-of-way, sidewalk, public utility, and upon all other utility easements and easement areas shown on the Plat or otherwise reserved, declared, or created pursuant to this Declaration for the purposes of constructing, installing, inspecting, maintaining, repairing, and replacing from time to time any and all utility lines, systems, and facilities from time to time located therein or thereon. The utilities contemplated to be served by such utility easements shall include, without limitation, those providing electric power, sanitary sewer services, natural gas, telephone, potable water, cable television, and electronic security services.

7.9 Drainage and Retention Easements

There is hereby created, declared, and reserved for the benefit of the Developer, the Association, and all Owners a perpetual non-exclusive easement for storm water collection, retention, detention, and drainage over, upon, and within the rights-of-way of all streets and roads and all other drainage and retention easements and public utility and drainage easements as shown on the Plat or otherwise reserved, declared, or created pursuant to this Declaration, together with an easement and license to enter upon such easements and easement areas for the purposes of



constructing, installing, inspecting, maintaining, repairing, and replacing any and all storm water drainage systems, improvements, and facilities from time to time located therein or thereon.

Additionally, the Developer, for the benefit of itself, the Association, and all Owners hereby reserves easements over any and all other portions of the Subject Property as may be reasonably required from time to time in order to provide storm water drainage to all or any portions of the Subject Property; provided, however, that any such additional drainage easements shall not unreasonably interfere with the use and enjoyment by any Owners of the particular LOTS affected thereby or any Improvements from time to time placed, located, constructed, erected, or installed thereon.

The easements hereinabove created, declared, and reserved contemplate the construction of all storm water drainage improvements and facilities shown on the plans for the Surface Water Management System for Subdivision as approved by the County and the St. Johns River Water Management District, as modified, and any replacement or substitute permits issued by the St. Johns River Water Management District, and such additional or supplemental facilities as may reasonably be required to provide adequate storm water drainage and surface water management to all portions of the Subject Property.

7.10 Common Property Easement:

There is hereby created, declared, granted, and reserved for the benefit of the Developer, the Association, and each Owner a non-exclusive easement upon and the right and privilege of using any or all of the Common Property including, without limitation, the streets and roads for ingress, and egress, and for the passive recreation, health, safety, and welfare of the residents of and visitors to Subject Property.

The easement and right to use and enjoy the Common Property, however, shall be subject to regulation by the Association.

7.11 Association Easement:

There is hereby created, declared, and granted to the Association, such easements over and upon all or any portion of the Subject Property, as may be reasonably necessary to permit the Association to carry out and discharge its duties, obligations, and responsibilities under and pursuant to this Declaration and the Articles, By-Laws, And Rules And Regulations of the Association.

Such Association Easement shall be in addition to the Drainage Easements hereinabove granted to the Association pursuant to this Declaration for the purpose of constructing, installing, inspecting, maintaining, repairing, and replacing any and all portions of and facilities comprising the Surface Water Management System for Subdivision.

7.12 Future Easements:

There is hereby reserved to the Developer and its successors and assigns, together with the right to grant and transfer the same, the right, power, and privilege to at any time hereafter, grant to itself, the Association, the County, or any other parties such other further and additional easements as may be reasonably necessary or desirable, in the sole opinion and within the sole discretion of the Developer, for the future orderly development of Subdivision in accordance with the objects and purposes set forth in this Declaration.

It is expressly provided, however, that NO such further or additional easements shall be granted or created over and upon any Lot pursuant to the provisions of this Section if any such easement shall unreasonably interfere with the presently contemplated or future use and development of a particular Lot as a single family residential home.



The easements contemplated by this Section may include, without limitation, such easements as may be required for utility, drainage, road right-of-way or other purposes reasonably related to the orderly development of the Subdivision. Such further or additional easements may be hereafter created, granted, or reserved by the Developer without the necessity for the consent or joinder of the Owner of the particular portion of the Subject Property over which any such further or additional easement is granted or required.

7.13 Developer Rights Regarding Temporary Structures, Etc.

Developer reserves the right to erect and maintain temporary dwelling, models houses, and/or other structures upon Lots owned by Developer, Builder or Developer's assignee and to erect and maintain such commercial and display signs and devices as Developer, in its sole discretion, deems advisable.

Developer reserves the right to do all acts necessary in connection with the construction of such improvements on the Lots. Nothing contained in these covenants and restrictions shall be construed to restrict the foregoing rights of the Developer.

7.14 Further Restrictions, Conditions and Dedications.

Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on any Lot in the Subdivision owned by Developer and on the Common Property, so long as the easements granted by Developer shall not materially or adversely affect any improvements or unreasonably interfere with use of the Common Property.

ARTICLE VIII
GENERAL PROVISIONS

8.1 Severability and Interpretation.

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way effect any other provisions hereof, which shall remain in full force and effect. Should any conflict in interpretation arise between the provisions of this Declaration and of the Articles of Incorporation, the provisions of this Declaration shall prevail.

8.2 Duration.

The covenants, restrictions, and easements set forth in this Declaration shall continue and be binding upon the Developer and the Association and upon each Owner and all Owners from time to time of any portion of the Subject Property and their respective successors and assigns and all other PERSONS, parties, or legal entities having or claiming any right, title, or interest in the Subject Property, by, through, or under any of them, for a period of sixty (60) years from the date this Declaration is recorded among the Public Records of the County, after which time this Declaration and the covenants, restrictions, and easements set forth herein, as the same shall have been changed, amended, or modified from time to time, shall be automatically extended for successive periods of ten (10) years unless an instrument of termination executed by the Association upon the affirmative written consent or the vote of not less than ninety percent (90%) of the total voting power of the members of the Association (certified as provided in the section titled "Amendment by Association" of this Declaration), with the consent and joinder of the County, shall be recorded among the Public Records of the County at least one year prior to the end of the initial term or any subsequent extension term of this Declaration.

Each of the easements herein declared to be created, granted, or reserved shall continue to be binding upon the Developer and the Association and upon each Owner and all Owners from time to time of any portion of the Subject Property and their respective successors and assigns and all persons, parties, and legal entities claiming by, through, or under any of them in perpetuity, unless any such easement shall have been changed, amended, modified, released, or terminated by the



execution and recordation among the Public Records of the County of a written instrument or Court order, as the case may be, which, in either case, is otherwise legally sufficient in all respects to effect such change, amendment, modification, release or termination of any such easement.

8.3 Amendment by Developer:

(a) Subject to the provisions of this Declaration until December 31, 2010, the covenants, restrictions, and easements set forth in this Declaration may be changed, amended, or modified from time to time, including the addition of additional property, by the Developer in its sole, but reasonable discretion, and without requiring the joinder or consent of any person or party whomsoever, including the Association or any Owner or Owners.

(b) Amendment of Association

Subject to the provisions of this Declaration, the terms and provisions of and the covenants, restrictions, and easements set forth in this Declaration may be changed, amended, or modified at any time and from time to time by the Association upon the affirmative written consent or the vote of not less than two thirds (2/3) of the total voting power of the members of the Association; provided, however, that until December 31, 2010, no such change, amendment, or modification by the Association shall be effective without the Developer's express written joinder and consent.

(c) Manifestation of Requisite Consent:

In the case of any change, amendment, or modification of this Declaration by the Association which requires the affirmative written consent or vote of members of the Association as hereinabove provided in Section titled "Amendment by Association" the acquisition of the requisite written consent or vote of members shall be manifested on the face of the amending instrument in a certificate duly executed and sworn to before a Notary Public by the President and Secretary of the Association affirmatively stating that such requisite affirmative written consent or vote has, in fact, been acquired or obtained prior to the recordation of such amending instrument among the Public Records of the County. Such certificate shall be and constitute conclusive evidence of the satisfaction of the provisions of this Declaration with respect to the change, amendment, or modification of this Declaration effected by the amending instrument of which such certificate is made a part.

(d) Effectiveness of Amendments:

All changes, amendments, or modifications of this Declaration shall be manifested in a written amending instrument duly executed by the Developer or the Association, or both, as may from time to time be required pursuant to the provisions of this Section, and shall be duly recorded among the Public Records of the County. Such change, amendment, or modification of this Declaration shall be effective as of the date of such recordation or such later date as may be specified in the amending instrument itself.

(e) Limitations to Amendments:

Notwithstanding anything to the contrary set forth in this Declaration, the rights of the Developer and the Association to change, amend, or modify the terms and provisions of and the covenants, restrictions, and easements set forth in this Declaration shall at all times be subject to and limited and restricted as follows, to wit:

1. This Declaration may not be changed, amended, or modified in such manner as to terminate or eliminate any easements granted or reserved herein to the Developer, the Association, the County, the St. Johns River Water Management District or to the County, respectively, without the prior written approval of the Developer, the Association, the County as the case may be, and any attempt to do so shall be void and of no force and effect.



2. This Declaration may not be changed, amended, or modified in any fashion which will result in or facilitate the dissolution of the Association or the abandonment or termination of the obligation of the Association to maintain the Common Property, including specifically the Surface Water Management System, and/or the obligation of the Association to establish, make, levy, enforce, and collect Assessments for such purposes, unless said Common Property(s) are dedicated to a governmental authority who may assume said responsibilities.
 3. This Declaration may not be changed, amended, or modified in any fashion which would affect the Surface Water Management System or its maintenance by the Association, without the prior written consent and approval of the St. Johns River Water Management District.
 4. This Declaration may not be changed, amended, or modified in such fashion as to change, amend, modify, eliminate, or delete the provisions of this Section of this Declaration without the prior written consent and joinder of the Developer, in any case, and to the extent of any proposed change, amendment, or modification which shall affect the rights of the County, the St. Johns River Water Management District, hereunder, the same shall require the written consent and joinder of the County, the St. Johns River Water Management District, as the case may be.
- 8.4 Federal Housing Administration (FHA) or Veterans Administration (VA) Approvals.
So long as there is a Class B membership the following actions shall require the prior approval of the FHA or VA agencies: annexation of additional properties outside the boundaries of the Subdivision, dedication of Common Property to other than the Association, encumbrance of a Common Property, or amendment of this Declaration of the Articles of Incorporation of the association, provided such approval is not unreasonably withheld by the FHA or VA.
- 8.5 Mortgage or Conveyance of Common Property:
In addition to any approvals required of the St. John's River Water Management District, the FHA or VA, any mortgage or conveyance of a Common Property or any portion thereof shall require the approval of at least two-thirds of the Lot Owners excluding the Developer.
- 8.6 Constructive Notice and Acceptance.
Every Person, corporation, partnership, limited partnership, trust, association, or other legal entity, who or which shall hereafter have, claim, own, or acquire any right, title, interest, or estate in or to any portion of the Subject Property, whether or not such interest is reflected upon the Public Records of Brevard County, Florida, shall be conclusively deemed to have consented and agreed to each and every covenant, restriction, and easement contained or by reference incorporated in this Declaration (including those matters set forth in the Committee as amended from time to time), and any published Rules And Regulations of the Association controlling the use of all residential Lots and Common Property, whether or not any reference to this Declaration is contained in the document or instrument pursuant to which such Person, corporation, partnership, limited partnership, trust, association, or other legal entity shall have acquired such right, title, interest, or estate in the Subject Property or any portion thereof.
- 8.7 Personal Covenants.
To the extent that the acceptance or conveyance of a Lot creates a personal covenant between the Owner of such Lot and the Developer, the Association, or any other Owner or Owners, such personal covenant shall terminate and be of no further force or effect from or after the date when a Person or entity ceases to be an Owner, except to the extent that this Declaration may provide



otherwise with respect to the personal obligation of such Owner for the payment of Assessments for which provision is expressly made in this Declaration.

8.8 Governing Law.

This Declaration and the interpretation and enforcements of the same shall be governed by and construed in accordance with the laws of the State of Florida.

8.9 Construction

The provisions of this Declaration shall be the liberally construed so as to effectuate and carry out the objects and purposes specified in this Declaration.

8.10 Article and Section Headings.

Article and Section headings contained in the Declaration are for convenience and reference only and in no way define, describe, extend, or limit the intent, scope, or content of the particular Sections in which they are contained or to which they refer and, accordingly, the same shall not be considered or referred to in resolving questions of interpretation or construction.

8.11 Singular Includes Plural. Etc.

Whenever the context of this Declaration requires the same, the singular shall include the plural and the plural the singular and the masculine shall include the feminine and the neuter.

8.12 Time of Essence.

Time is of the essence for this Declaration and in the performance of all covenants, restrictions, and easements set forth herein. Whenever a date or the expiration of any time period specified herein shall fall on a Saturday, Sunday, or legal holiday, the date shall be extended to the next succeeding business day which is not a Saturday, Sunday, or legal holiday.

8.13 Notice.

Any notice required or permitted to be given pursuant to the provisions of this Declaration, the Articles, or the By-Laws shall be in writing and may be delivered as follows:

8.14 Notice to Owner.

Notice to an Owner shall be deemed to have been properly delivered when delivered to the Owner's Lot, whether said Owner personally receives said notice or not (providing Owner resides on said Lot), or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the, mail within the County shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-owners, any such notice may be delivered or sent to anyone of the co-owners on behalf of all co-owners and shall be deemed to be and constitute delivery on all such co-owners.

8.15 Notice to Association.

Any notice required or permitted to be given to the Association shall be in writing and shall be deemed to have been properly delivered forty-eight (48) hours after the time when such notice is placed in the first class certified United States mail, postage prepaid, and with return receipt requested, within the County to the address furnished by the Association or to the address of the principal place of business of the Association.

8.16 Notice to the Developer.

Any notice required or permitted to be given to the Developer shall be in writing and shall be deemed to have been properly delivered forty-eight (48) hours after the time when such notice is placed in the first class certified United States mail, postage prepaid, and with return receipt requested, within the



County to the address furnished by the Developer to the Association or to the address of the principal place of business of the Association.

8.17 Affidavit.

The affidavit of an officer or authorized agent of the Association declaring under penalty or perjury that a notice has been served to any member at the address shown on the records of the Association, or otherwise in accordance with of the By-Laws, shall be deemed conclusive proof of the delivery of such notice, whether or not such notice is actually received.

8.18 Development and Construction by Developer.

Nothing set forth in this Declaration shall be deemed, either expressly or impliedly, to limit the right of the Developer to change, alter, or amend its development plan or plans for the Subject Property, or to construct such Improvements as the Developer deems advisable prior to the completion of the development of all of the Subject Property. Developer reserves the right to alter its development and construction plans and designs as it deems appropriate from time to time; subject, however, to all applicable Governmental Regulations, including, without limitation, those of the County.

8.19 Assignment of Developer's Rights and Interests.

The rights and interests of the Developer under this Declaration may be transferred and assigned by the Developer to any successor or successors to all or part of the Developer's interest in the Subject Property by an express transfer, conveyance, or assignment incorporated into any recorded deed or other instrument, as the case may be, transferring, conveying, or assigning such rights and interests to such successor.

8.20 Conflicts.

In the event of any conflict between the Articles and the By-Laws and this Declaration, this Declaration, the Articles, and the By-Laws, in that order, shall control.

8.21 Authority of Association and Delegation.

Nothing contained in this Declaration shall be deemed to prohibit the Board from delegating to anyone 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.

8.22 Effect of Invalidation.

If in the course of an attempt to enforce this Declaration, any particular provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

8.23 No Warranties.

This Declaration is made for the objects and purposes set forth in of this Declaration and the Developer makes no warranties or representations, express or implied as to the binding effect or enforceability of all or any portion of the terms and provisions of or the covenants, restrictions, and easements set forth in this Declaration, or as to the compliance of any of the same with public laws, ordinances, and regulations applicable thereto.

8.24 Developer Not Liable for Actions of Builder:

HOLD HARMLESS CLAUSE To be provided by Attorney

8.25 Turnover of the Association.

At such time that the Developer shall no longer have the right to appoint a majority of the Board of Directors, as set forth in the Bylaws, the Developer shall call a General Membership Meeting of



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the Association to elect the new Board of Directors.

All common property shall be in good working order and/or condition at time of turnover. Normal wear and tear is expected. Maintenance of all Common Property is a responsibility of the Association. The Developer shall not be liable to make any repairs to any Common Property for any damage caused by others, those known or unknown, Including Owners, Builders or their Subcontractors.

Notice to All Owners: The condition of the Public Street and Roads is the responsibility of Brevard County and any required repairs or cosmetic damage shall not be the responsibly of the Developer unless caused by the Developer.

The Books and Records of the Association shall be in a clean, neat and orderly condition ant time of Turnover.



CFN 2004407215

OR Book/Page: 5401 / 6855

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused these presents to be executed in its name by its duly authorized officer, as of the 28th day of DECEMBER, 2004.

Signed, sealed and delivered
in the presence of:

TFM Enterprises, Inc.

Mary Ann Every
Witness

BY: [Signature]
Timothy F. McWilliams, President

Witness
[Signature]

STATE OF FLORIDA
County OF BREVARD

I HEREBY CERTIFY that on this day, before me an officer duly authorized in the State and in the County aforesaid to take acknowledgments, personally appeared Timothy F. McWilliams, as President of TFM Enterprises, inc., a Florida Corporation, to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same. The said person was not under oath.

WITNESS my hand and official seal this 28th day of December, 2004

Mary Ann Every
Notary



CFN 2004407215
OR Book/Page: 5401 / 6856

EXHIBIT "A"
AURORA OAKS
LEGAL DESCRIPTION

DESCRIPTION:

A PARCEL OF LAND LYING IN THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 27 SOUTH, RANGE 36 EAST, BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE SOUTHWEST CORNER OF SECTION 14, TOWNSHIP 27 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA; THENCE N89°31'00"E ALONG THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 14 A DISTANCE OF 1741.21 FEET; THENCE N00°47'30"E A DISTANCE OF 1320.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N00°47'30"E A DISTANCE OF 223.46 FEET; THENCE N36°39'03"E A DISTANCE OF 144.81 FEET TO THE SOUTH BANK OF HOPKINS DITCH AS DEPICTED ON THE PLAT OF INDIAN RIVER GROVES & GARDENS AS RECORDED IN PLAT BOOK 6, PAGE 86 OF THE PUBLIC RECORDS OF BREVARD COUNTY; THENCE N75°26'55"E ALONG SAID SOUTH BANK AND THE NORTH LINE OF LOT 73, SAID PLAT OF INDIAN RIVER GROVES AND GARDENS A DISTANCE OF 1259.90 FEET; THENCE S00°55'14"W, ALONG THE EAST LINE OF SAID LOT 73 A DISTANCE OF 650.90 FEET; THENCE N89°41'00"W, ALONG THE SOUTH LINE OF SAID LOT 73 AND THE NORTH RIGHT-OF-WAY LINE OF AN UNNAMED STREET OCCUPIED BY DITCH, 402.06 FEET; THENCE S89°31'00"W PARALLEL WITH THE SOUTH LINE OF SAID SECTION 14 A DISTANCE OF 896.64 FEET TO THE POINT OF BEGINNING, CONTAINING 14.28 ACRES, MORE OR LESS.



CFN 2004407215

OR Book/Page: 5401 / 6857

JOINDER OF MORTGAGEE

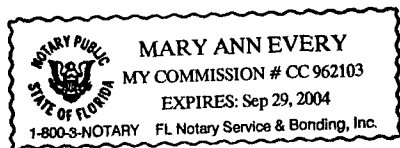
The undersigned, **Ora Lee Palmer**, as owner and holder of a certain mortgage (the "Mortgage") dated May 7, 2003, made by TFM Enterprises, Inc., a Florida Corporation to and in favor of Ora Lee Palmer, (the "Mortgagee"), of record in Official Records Book 4910, Page 3026, Public Records of Brevard County, Florida, hereby joins in the execution of the foregoing Declaration of Covenants and Restrictions for Aurora Oaks, and hereby subordinates the lien of said Mortgage to the terms, conditions and restrictions contained therein.

Executed this 29th day of JAN., 2004.

By: *Ora Lee Palmer*
Ora Lee Palmer

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me, the undersigned authority duly authorized in the State and County aforesaid to administer oaths and to take acknowledgments, this 29th day of JAN, 2004, by ORA LEE PALMER, who [] is personally known to me or [☒] produced MILITARY ID as identification.



Mary Ann Every
NOTARY PUBLIC
My Commission Expires:



CFN 2004407215
OR Book/Page: 5401 / 6858

PREPARED BY AND RETURN TO:
Tim McWilliams
517 A N Harbor City Blvd.
Melbourne FL 32935
321 751 1999

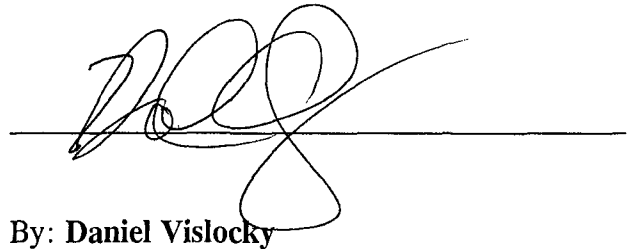


CFN 2004407215
OR Book/Page: 5401 / 6859

JOINDER OF MORTGAGEE

The undersigned, **Daniel Vislocky**, as owner and holder of a certain mortgage, (the "Mortgage") dated June 28, 2003, made by TFM Enterprises, Inc. , a Florida Corporation to and in favor of **Daniel Vislocky** (the "Mortgagee"), of record in Official Records Book 4924, Page 302, Public Records of Brevard County, Florida, hereby joins in the execution of the foregoing Declaration of Covenants and Restrictions for Aurora Oaks, and hereby subordinates the lien of said Mortgage to the terms, conditions and restrictions contained therein.

Executed this 2nd day of Feb, 2004.


By: **Daniel Vislocky**

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me, the undersigned authority duly authorized in the State and County aforesaid to administer oaths and to take acknowledgments, this 2 day of Feb, 2004, by Daniel Vislocky, who [] is personally known to me or [] produced FIDL as identification.


NOTARY PUBLIC
My Commission Expires:



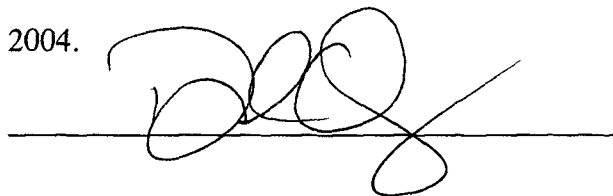
Marie J. O'Neal
MY COMMISSION # 00044418 EXPIRES
July 23, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

PREPARED BY AND RETURN TO:
Tim McWilliams
517 A N Harbor City Blvd.
Melbourne FL 32935
321 751 1999

JOINDER OF MORTGAGEE

The undersigned, **DANIEL VISLOCKY, PAUL ALEXY and JOYCE ALEXY**, as owners and holders of a certain mortgage, (the "Mortgage") dated Feb 2-04, made by TFM Enterprises, Inc. , a Florida Corporation to and in favor of **DANIEL VISLOCKY, PAUL ALEXY and JOYCE ALEXY** (the "Mortgagee"), of record in Official Records Book 5187, Page 2540 Public Records of Brevard County, Florida, hereby joins in the execution of the foregoing Declaration of Covenants and Restrictions for Aurora Oaks, and hereby subordinates the lien of said Mortgage to the terms, conditions and restrictions contained therein.

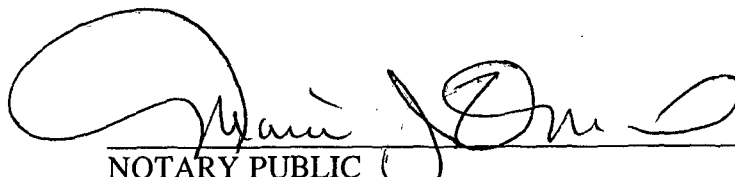
Executed this 2 day of Feb, 2004.



By: **DANIEL VISLOCKY**

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me, the undersigned authority duly authorized in the State and County aforesaid to administer oaths and to take acknowledgments, this 2 day of Feb, 2004, by Daniel Vislocky, who [] is personally known to me or [] produced FDL as identification.



NOTARY PUBLIC
My Commission Expires:



CFN 2004407215
OR Book/Page: **5401 / 6860**



Marie J. O'Neal
MY COMMISSION # DD044418 EXPIRES
July 23, 2005
BONDED THRU TROY FAIN INSURANCE, INC

PREPARED BY AND RETURN TO:
Tim McWilliams
517 A N Harbor City Blvd.
Melbourne FL 32935
321 751 1999

Paul Alexy

By: **PAUL ALEXY**

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me, the undersigned authority duly authorized in the State and County aforesaid to administer oaths and to take acknowledgments, this 2 day of FEB, 2004, by Paul Alexy, who [] is personally known to me or [] produced FLDL as identification.

Marie J. O'Neal

NOTARY PUBLIC

My Commission Expires:



Marie J. O'Neal
MY COMMISSION # DD044418 EXPIRES
July 23, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

Joyce Alexy

By: **JOYCE ALEXY**

STATE OF FLORIDA)
)
COUNTY OF BREVARD)



CFN 2004407215

OR Book/Page: **5401 / 6861**

The foregoing instrument was acknowledged before me, the undersigned authority duly authorized in the State and County aforesaid to administer oaths and to take acknowledgments, this 2 day of February, 2004, by Joyce Alexy, who [] is personally known to me or [] produced FLDL A42042543-9620 as identification.



Kelly Fallen
MY COMMISSION # DD096843 EXPIRES
March 3, 2006
BONDED THRU TROY FAIN INSURANCE, INC.

Kelly Fallen

NOTARY PUBLIC

My Commission Expires: