

DECLARATION OF RESTRICTIONS

AND

FOR

WATERS EDGE PHASE II

THIS DECLARATION of Restrictions and Protective Covenants (hereinafter referred to as "Declaration"), is made this 7th day of February, 2002, by SMIGIEL PARTNERS IV, LTD. a Florida Limited Partnership, (hereinafter referred to as "Declarant"), which declares that the real property which is more particularly described on Exhibit "A" attached hereto and hereinafter referred to as the "Project", is and shall be held, transferred, sold, leased, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") set forth below.

Declarant desires to develop the subject real property as part of a planned development to be known as Waters Edge Phase II.

Declarant has incorporated or will incorporate under the laws of the State of Florida, a non-profit corporation call Waters Edge Phase II Homeowners Association of Vero Beach, Inc. (the "Association") for the purpose of exercising the functions as provided for herein.

The Association is not a condominium association and therefore shall not be affected by the provisions of Chapter 718, Florida Statutes. Further, the expressed intent of this Declaration is that the substantive rights hereunder shall not be retroactively affected by legislation subsequent to the date of execution.

ARTICLE I

DEFINITIONS

The following words when used in the Declaration (unless the context shall prohibit) shall have the following meanings:

"Articles" shall mean the Articles of Incorporation of the Association which have been filed in the office of the Secretary of the State of Florida, a copy of which is attached hereto as Exhibit " B ", as such Articles may be amended from time to time.

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- (a) "Assessment(s)" shall mean those payments due pursuant to Article V, whether General or Special (as hereinafter defined), or a combination thereof.
- (b) "Association" shall mean and refer to WATERS EDGE PHASE II HOMEOWNERS ASSOCIATION OF VERO BEACH, INC., a Florida not-for-profit corporation, its successors and assigns.
- (c) "Board" shall mean the Board of Directors of the Association.
- (d) "Bylaws" shall mean the Bylaws of the Association, which have been adopted by the Board of Directors, a copy of which is attached hereto as Exhibit " C ", as such Bylaws may be amended from time to time.
- (e) "Common Areas" shall mean and refer to the real property depicted in Exhibit " D " attached hereto and incorporated herein by reference, and any other interest in real property acquired by the Association and deemed Common Area either in this Declaration or in the instrument of conveyance, together with any improvements on such tracts including without limitation all structures, recreational facilities, offstreet parking areas, private streets, sidewalks, street lights, and entrance features, but excluding any public utility installations thereon.
- (f) "Common Assessment" shall mean the charge against all Owners and their Lots, representing their proportionate share of the routine Common Expenses of the Association.
- (g) "Common Expenses" shall mean the actual and estimated costs and expenses of the services that the Association is required and authorized to provide hereunder. Common Expenses shall include, but not be limited to, utilities, cable television taxes, the deductible for any insurance policy carried by the Association, assessments, operation, maintenance, repairs, improvements and alterations.
- (h) "Community Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Project. Such standard may be more specifically determined by the Board of Directors of the Association or a committee thereof.

- (i) "Declarant" shall mean and refer to the Declarant, SMIGIEL PARTNERS IV, LTD., or its respective successors and assigns, if such successor or assignee acquires the undeveloped portion of the Project from the Declarant and is designated as such by the respective entity. The Declarant may make partial or multiple assignments of its rights under this Declaration. Upon execution and recording of such assignment, all such assignees shall be deemed to be the Declarant as to those rights, which may have been assigned to them.
- (j) "General Assessments" shall mean and refer to Assessments levied to fund expenses applicable to all Members of the Association.
- (k) "Institutional Lender" shall mean and refer to any person or entity (i) holding a mortgage encumbering a Lot, a dwelling unit, or any portion of the property encumbered by this Declaration, which (ii) in the ordinary course of business makes purchases, guarantees or insures mortgage loans, which (iii) is not owned or controlled by the Owner of the Lot encumbered, and which (iv) notifies the Association of same by written notice sent, certified mail, return receipt requested, to the Association's office. An Institutional Lender may include, but is not limited to, a federal or state chartered bank or savings and loan association, an insurance company, a real estate or mortgage investment trust, a pension or profit sharing plan, a mortgage company; the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, including the Veterans Administration and the Federal Housing Administration of the U.S. Department of Housing and Urban Development, or any other similar type of lender generally recognized as an institutional type lender. For definitional purposes only, an Institutional Lender shall also mean the holder of any mortgage executed by or in favor of Declarant, whether or not such holder would otherwise be considered an Institutional Lender.
- (l) "Lot" shall mean and refer to any separate parcel of real property located in the Project and intended for residential use, together with any improvements thereon in the Project and any Lot and any improvements thereon shown upon any re-subdivision of any plat of the Project or any portion thereof.
- (m) "Owner" or "Member" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including the Declarant.

- (n) "Project" shall mean and refer to all such real properties which are a part of the Plat titled "Waters Edge Phase II Plat" as recorded in Plat Book 116, Page 67, of the Official Public Records of Indian River County, Florida, and which shall be known as Waters Edge Phase II, and any additions thereto (which additional properties may or may not be contiguous to the real property described in Article II herein), as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.
- (o) "Special Assessment" shall mean and refer to Assessments levied in accordance with Article V, Section 4 of this Declaration.
- (p) "Surface Water or Storm Water Management System" shall mean 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, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.
- (q) "Water Management District Permit" shall mean and refer to St. Johns River Water Management District Surface Water Management Permit No. 40-061-51633-2 dated 8/29/00, which is applicable to the Project.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Legal Description. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Indian River County, Florida and is more particularly described in the attached Exhibit "A".

Section 2. Declarant's Right to Add Additional Property to or Withdraw Property. Declarant shall have the right, in its sole discretion, to add additional property to the scheme of this Declaration. Declarant shall also have the right, in its sole discretion, to withdraw property from the scheme of this Declaration. The addition or withdrawal by Declarant shall not require the consent or joinder of the Association, or any Owner or mortgagee of any of the Lots. Upon addition of any property to the scheme of this Declaration, the owners of such additional property shall be and become subject to this Declaration, including assessment by the Association for their pro rata share of the Association expenses. The addition of lands as aforesaid shall be made and evidenced by

filing in the Public Records of Indian River County, Florida, a supplemental declaration with respect to the lands to be added. This Article II shall not be amended without the prior written consent of the Declarant, as long as the Declarant owns any portion of the Project.

ARTICLE III

WATERS EDGE PHASE II HOMEOWNERS ASSOCIATION OF VERO BEACH, INC.

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot in the Project shall be a Member of the Association. Members shall be entitled to one vote for each Lot in which they hold the interests required for membership. Notwithstanding anything to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of said Association.

Section 2. Co-Ownership of Lots. When more than one person or entity holds an interest or interests in any Lot (a "Co-Owner"), all such Co-Owners shall be Members, but in no event shall more than one vote be cast with respect to any such Lot and only one such Co-Owner shall be entitled to exercise the vote to which the Lot is entitled. All Co-Owners of each Lot shall designate in writing to the Secretary of the Association the name of the Co-Owner to so vote the interest of their Lot. The vote for each Lot shall be exercised as a single vote or not at all, fractional votes are prohibited. Where no voting Co-Owner is designated, the owner(s) of the Lot shall not be entitled to vote until one individual is designated by all Co-Owners to vote the interest of the Lot. The nonvoting Co-Owner(s) shall be jointly and severally responsible for all of the obligations imposed upon the Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established herein, or in the Bylaws, shall be binding on all Co-Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration, and in the Articles and Bylaws. If a Lot is owned by a corporation or other entity, the person entitled to vote for the Lot shall be designated by a certificate signed by an appropriate officer or agent of the entity and filed with the Secretary of the Association.

Section 3. Change in Membership. Change of membership in the Association shall be established by recording in the Public Records of Indian River County, Florida, a deed or other instrument conveying record fee simple title to any Lot. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall be terminated.

Membership in the Association by each Owner shall be compulsory and shall continue until such time as that Owner transfers or conveys of record an interest in the Lot, at which time the membership shall automatically be conferred upon the transferee. Notice of any such transfer or conveyance of an interest in any Lot shall be provided by the transferee to the Secretary of the Association within ten (10) days of such transfer or conveyance.

Section 4. Declarant Control of Association. The Declarant shall be entitled to one vote for each Lot in which it respectively holds the interest required for membership by Section 1; provided, however, that notwithstanding anything herein to the contrary, the Declarant shall have a total number of votes equal to not less than the number of votes cumulatively held by all other Members, plus one (1), thereby providing Declarant with a majority of the votes of the membership. The Declarant shall have the right to appoint all members to the board of directors of the Association until such time as Declarant shall cease to own and hold title to any portion of the real property described in any of the exhibits attached hereto, including Lots on any additional property which may have been brought under the provisions hereof by recorded supplemental declarations, as set forth in Article II hereof, or until June 15th 2006, whichever occurs first (hereinafter referred to as "Stated Period". It is the intent of this section that the Declarant have exclusive and total control of the Association during the stated period. During the stated period, any action which requires the affirmative vote of the Owners may be taken upon a majority vote of the membership, regardless of contrary provisions of this Declaration which require a greater affirmative vote of the membership such as two-thirds (2/3) or otherwise. Thereafter, Declarant shall have the right to appoint one member to the board of directors so long as the Declarant owns any of the real property contained within the Project. Further, the Declarant shall have the right to disapprove the actions of the Board of Directors and any committee or Association Board as provided in the Bylaws. The Declarant may waive its right to elect one or more directors by written notice to the Association, and thereafter such directors shall be elected by the Members in the manner provided in the Bylaws.

When the Declarant no longer owns any real property within the Project, all of the directors shall be elected by the Members in the manner provided in the Bylaws. Within 120 days after the date the Declarant no longer holds title to any of the real property or should elect to waive its right to appoint a director, Declarant shall call a meeting, as provided in the Bylaws for Special Meetings, to advise the membership of the termination of control of the Association and to provide for the turnover of control of the board of directors to the Owners.

Section 5. Merger or Consolidation. Upon a merger or consolidation of any association referred to herein with any other association, the Project, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the Project rights and obligations of another

association may, by operation of law, be added to the Project, rights and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Project together with the covenants and restrictions established upon any other property as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by the Declaration.

Section 6. Termination of the Association. In the event the Association is terminated or shall no longer continue to exist for any reason whatsoever, or in the event of dissolution of the Association, for whatever reason other than merger or consolidation as provided for herein, any Owner may petition the Circuit Court of the Nineteenth Judicial Circuit of the State of Florida for the appointment of a Receiver to manage the affairs of the Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association, the Project, and Common Area.

Section 7. Common Areas.

A. Ownership. On or before conveyance by Declarant of the first Lot which it owns in the Project (or sooner at the Declarant's option), the Declarant or its successors and assigns shall convey and transfer the record fee simple title to the Common Areas to the Association and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record.

B. Maintenance. Commencing with the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Areas and any improvements or personal property in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Areas, if any, and any improvements and any personal property thereon accruing from and after the date these covenants are recorded. Taxes, if any, shall be prorated between Declarant and the Association as of the date of such recordation. The Association shall at all times maintain in good repair, and shall replace as scheduled any and all improvements situated on the Common Areas (upon completion of construction by Declarant), including, but not limited to, all recreational facilities, landscaping, paving, drainage structures, street lighting fixtures, signs, irrigation systems, sidewalks, and other structures, except public utilities, all such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the board members. In addition, the Association shall maintain Common Areas to the edge of the pavement of any collector or arterial street that is adjacent to the Project or public land or roads. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the

illumination of such lights. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article V hereof. Such assessments shall be against all Lots as set forth in Article V, Section 1; provided, however, that the cost of any maintenance, repair or replacement caused by the negligent conduct of a Member or by the failure of a Member to comply with the lawfully adopted rules and regulations of the Association shall be levied as a special assessment against such Member. No Owner may waive or otherwise escape liability for the assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas.

C. Declarant's Right to Common Areas. Declarant shall have the right from time to time to enter upon the Common Areas for the purpose of construction upon adjacent real properties and for the purpose of construction of any facilities on the Common Areas that Declarant elects to build.

D. Street Lighting. The Association shall have the obligation for maintenance of any street lighting facilities from the date of recording this Declaration or from the date of installation of the street lighting, whichever occurs first. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. In the event the Declarant, in its sole discretion, elects to install such street lighting, Declarant shall be entitled to all rebates or refunds of the installation charges and the Association hereby assigns such rebates or refunds to Declarant and the Association shall forthwith pay same to the Declarant.

E. Surface Water or Storm Water Management System. The Association shall provide for the complete maintenance, operation and repair, as required, of the Surface Water or Storm Water Drainage System (as more particularly described and depicted on the Plat of "Waters Edge Phase II Plat", as recorded in Plat Book 16, at Page 07, of the Official Public Records of Indian River County, Florida, a copy of which is marked as Exhibit "E" attached hereto and incorporated herein by reference and as may be amended from time to time respectively by replat of the Plat of Waters Edge Phase II Plat. Maintenance of the surface water or storm water management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District.

Section 8. Lot Maintenance: Lawn and Exterior Maintenance. The Association may, at its option, provide maintenance of all lawn areas located within the Project, including the Lots. Lot irrigation systems, except the individual Lot irrigation system

pumps, shut off valves and timers, shall be maintained by the Association. The Association may assess individual Lot Owners for the expenses related to their Lot's irrigation system. The obligations of the Association as described herein shall extend only to the landscaping as originally installed by the Declarant, or it's in kind replacement. Each individual Lot Owner shall provide exterior maintenance for their building as follows: paint, repair, replace and care for garage doors, fences and exterior building surfaces. In addition, each individual Lot Owner shall maintain and repair his front residence door, windows, screening, driveway, entrance walk, patio deck, light fixtures, mail box, swimming pool, pool deck, roof, gutters and downspouts; provided, however, that the Association reserves the right to maintain such areas if, in its sole discretion, the Association deems it desirable. If requested by an Owner, the Association may, at is option, provide exterior maintenance on Owner installed improvements including landscaping, fences, sprinkler systems, swimming pools and pool decks, and levy upon the Owner on whose lot such work is performed a special assessment equal to the cost of such additional work. The Board of Directors of the Association shall estimate the cost of any such exterior maintenance for each year and shall fix the assessments for each year, but said Board shall, thereafter, make such adjustment with the Owners as is necessary to reflect the actual cost of such exterior maintenance. Such assessments for exterior maintenance shall be against all Lots as set forth in Article V hereof (except for the exterior maintenance of an Owner's improvements specifically requested by an Owner); provided, however, that the cost of any exterior maintenance caused by the negligent conduct of an Owner or by the failure of such Owner to comply with the lawfully adopted rules and regulations of the Association, shall be levied as a special assessment against such Owner. In addition, an Owner may be specially assessed for any damage or injury caused by the negligent conduct of such Owner to any easement areas granted to provide access to perform the exterior maintenance. Nothing contained herein shall obligate the Association to make repairs or replacements of improvements damaged by fire, windstorm, hail or other casualty; such repairs or replacements shall be made by the Owner of the Lot which suffers damage. The Association shall not be obligated to repair any mechanical equipment (e.g., air conditioning unit) which is part of any residence located on any Lot, nor shall it be responsible for any repairs which could be made pursuant to the terms of any warranty covering a residence.

Section 9. Powers. In addition to the powers provided in its Articles of Incorporation, the Association, through the action of its Board of Directors, shall have the power, but not the obligation, to acquire, by purchase, lease or otherwise, one or more dwelling units for occupancy by its employees or independent contractors, and to enter into an agreement or agreements from time to time with one or more persons, firms or corporations for management services.

Section 10. Rules and Regulations. The Association, through its Board of

Directors, may make and enforce reasonable rules and regulations governing the use of the Project, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines, which shall be levied as a Special Assessment as provided in Article V, Section 4, of this Declaration, and suspension of the right to vote and the right to use the recreational facilities. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association. In addition, the Association, through the Board, may, by contract or other agreement, enforce court orders or permit Indian River County to enforce ordinances on the Project for the benefit of the Association and its Members.

ARTICLE IV

ARCHITECTURAL CONTROL BOARD

It is the intent of the Declarant to create a general plan and uniform scheme of development of the Project to promote a residential community of high quality and harmonious Improvements and to maintain the values thereof. Declarant does hereby establish an Architectural Control Board whose procedures and powers shall be as set forth in this Article.

Section 1. Architectural Control Board. The Architectural Control Board ("ACB") shall be a standing committee of the Association. The Architectural Control Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Section and other provisions of this Declaration. The initial rules and regulations of the Architectural Control Board are set forth on Exhibit "F", attached hereto and made a part hereof, and any amendment or modification of such rules and regulations shall not be deemed an amendment to this Declaration and need not be recorded in the Public Records. The initial Architectural Control Board shall be composed of two members as appointed by the Declarant. When all residential dwelling units proposed to be constructed within the Project have been conveyed to Owners, the ACB shall be increased to three members and such members shall be designated by the Directors of the Association. In the event of death, disability or resignation of any member of the ACB, the remaining Members shall have full authority to designate a successor. The members of the ACB need not be members of the Association and shall not be entitled to any compensation for services performed pursuant to this Section. A majority of the ACB

may take any action the ACB is empowered to take, may designate a representative to act for the ACB, and may employ personnel and consultants to act for it. The Members of the ACB appointed by the Declarant may be removed and replaced by the Declarant at any time without cause.

Section 2. Owner to Obtain Approval. No Owner shall make, install, place, or remove any building, fence, screen enclosure, porch, wall, patio area, pool, spa, landscaping or any other alteration, addition, improvement, or change of any kind or nature to, in or upon any portion of the Common Areas or the Owner's Lot, unless the Owner first obtains the written approval of the Association for same, except that such approval shall not be required for any maintenance or repair which does not result in a material change in any improvement including the color of same.

Section 3. Association Consent. Any request by an Owner for approval by the ACB to any addition, alteration, improvement, or change shall be in writing and shall be accompanied by plans and specifications or other details as the ACB may deem reasonably necessary in connection with its determination as to whether or not it will approve same. Approval of any request shall not be unreasonably withheld, and shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable developments of any Lot but may be withheld due to aesthetic considerations. Notwithstanding the foregoing, the ACB may withhold approval for upgraded landscaping to be installed by an Owner within that portion of his Lot to be maintained by the Association solely due to maintenance and related considerations, and the ACB may withhold approval for construction of swimming pools due to nuisance and related considerations (such as the likelihood of interference with other residents of the Project during construction). The ACB shall notify the Owner of its approval or disapproval by written notice within thirty (30) days after request for such consent is made in writing to the ACB, and in the event the ACB fails to disapprove any request within such thirty (30) day period, the consent shall be deemed approved and upon request the ACB shall give written notice of such approval. In consenting to any plans or specifications, the ACB may condition such consent upon changes being made. If the ACB consents to any plan and specifications, the Owner may proceed to make the alteration, addition, improvement, or change in strict conformance with the plans and specifications approved by the ACB, and subject to any conditions of the ACB's approval.

Section 4. No Liability. The ACB shall not be liable to any Owner in connection with the approval or disapproval of any alteration, addition, improvement, or change. Furthermore, any approval of any plans or specifications by the ACB shall not be deemed to be a determination that such plans or specifications are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the ACB, or are

in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and the ACB shall not be liable for any deficiency, or any injury resulting from any deficiency, in such plans and specifications.

Section 5. Remedy for Violations. In the event this section is violated in that any alteration, addition, improvement, or change is made without first obtaining the approval of the ACB, or is not made in strict conformance with any approval granted by the ACB, the Association shall specifically have the right to demand that an Owner stop, remove and/or alter any alteration, addition, improvement or change in a manner which complies with the requirements of the ACB, and the Association may pursue injunctive relief or any other legal or equitable remedy available to the Association in order to accomplish such purposes. The foregoing shall be in addition to any other remedy set forth herein for violations of this Declaration.

Section 6. Compensation of Members and Consultants. Any necessary consultants hired by the ACB and approved by the Board of Directors of the Association may receive compensation for services rendered. The members of the ACB and any necessary consultants hired by the ACB and approved by the Board of Directors of the Association may receive reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 7. Declarant's Exemption. Notwithstanding anything to the contrary herein, the Declarant shall be exempt from the provisions of this Article. The Declarant shall not be required to obtain ACB approval for any construction or changes in construction which the Declarant may elect to make to any property owned by the Declarant within the Project, including any improvements made or to be made to the Common Properties.

ARTICLE V

ASSOCIATION

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for the Assessments. The Declarant, for each Lot owned by it within the Project, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual, General Assessments for general expenses as

outlined in Section 2 hereof; such assessments to be fixed, established and collected from time to time as hereinafter provided. The General and Special Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made and shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Assessments shall be assessed against the Lots upon the transfer of ownership from the Declarant.

The full Assessment as to each Lot shall commence on the first day of the full calendar month after transfer of ownership from the Declarant occurs.

Section 2. **Purpose of Assessments.** The General Assessments levied by the Association shall be used exclusively for the general expenses of the Association. General expenses are any and all charges for the maintenance of the Common Areas and exterior maintenance (except that specifically requested by an Owner) as provided in Article III, and expenses related with operating the Association for the Members of the Association and their families residing with them, and their guests and tenants, including, but no limited to: (1) expenses of administration, maintenance, repair or replacement of the Common Areas; (2) reasonable reserves deemed necessary by the Board of Directors for repair, replacement or addition to the Common Area; and, expenses agreed upon as General Expenses by the Association. By a majority vote of the Board of Directors, the Board shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met.

Section 3. **Date of Commencement of General Assessments; Due Dates.** The General Assessments shall commence on the first day of the month next following the recordation of this Declaration. Thereafter, the Board of Directors shall fix the date of commencement and amount of the Assessment against each Lot at least thirty (30) days in advance of the commencement period. The General Assessments shall be payable in advance in quarterly installments, or as otherwise determined by the Board of Directors of the Association.

The amount of the General Assessment may be changed at any time by the Board from that originally adopted or that which is adopted in the future. The Assessment shall be for the calendar year, but the amount of the General Assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year.

Section 4. **Special Assessments.** A Special Assessment may be levied against one or more Lots for the following:

(a) Special services to a specific unit or units which services are requested by the Owner(s) thereof pursuant to Section 6 of Article III.

(b) Charges for expenses of the Association which are not general expenses but which are attributable to a specific unit or units and which are designated as a special charge.

(c) Reimbursement for damages caused by an Owner, Owners, their family members, guests, invitees or tenants.

(d) Capital improvements relating to the Common Area.

(e) Late charges, user fees, fines and penalties.

(f) Any other charge which is not a general expense.

(g) Any general expense, which exceeds the amount budgeted, or any emergency expense which exceeds the amount of any reserves or other Association funds.

The Board of Directors shall fix the amount and due date of any Special Assessment by resolution, which resolution shall also set forth the Lot or Lots subject to such Assessment.

Section 5. Trust Funds. The portion of all General Assessments collected by the Association as reserves for future expenses, and the entire amount of all Special Assessments collected for capital improvements shall be held by the Association in trust for the owners of all Lots, as their interest may appear.

Section 6. Declarant Payment of Assessments. Notwithstanding any provision that may be contained to the contrary in this instrument, for so long as Declarant is the owner of any Lot, the Declarant shall not be liable for Assessments against such Lot, provided that Declarant shall be responsible for all Association expenses in excess of the Assessments received from other Owners (such amounts received from other Owners shall include, but shall not be limited to, working capital contributions paid by such other Owner), and other income received by the Association. In no event shall Declarant be required to fund reserves allocated to any Lot owned by the Declarant. Declarant may, at any time, commence paying such Assessments as to all Lots that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association.

Section 7. Working Capital Fund. Declarant shall establish a Working Capital Fund for the initial months of operation of the Association, which shall be collected by the Declarant from each Lot purchaser at the time of conveyance of each Lot to such purchaser in an amount equal to two (2) months of the annual assessment for each Lot. Each Lot's share of the Working Capital Fund shall be collected and transferred to the Association at the time of closing of the sale of each Lot. The purpose of this fund is to assure that the Association's board of directors will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the board of directors. Amounts paid into the fund are not to be considered as advance payment of regular assessments.

Section 8. Roster; Notice; Certificate. A roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand at any time, furnish to any Owner liable for an Assessment a certificate in writing signed by an officer or agent of the Association, setting forth whether such Assessment has been paid as to the Lot owned by the Owner making request therefore. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid.

Section 9. Collection of Assessment; Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of the Association.

If any Assessment is not paid within ten (10) days after the due date, the Association shall have the right to charge the default Owner a late fee of ten percent (10%) of the amount of the Assessment, or Twenty-five and No/100 Dollars (\$25.00), whichever is greater, plus interest at the then highest rate of interest allowable by law from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due ten (10) days after written demand by the Association. If any Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand by the Association, the Association upon written notice to the defaulting Owner shall have the right to accelerate and require such defaulting Owner to pay Assessments to the Association for the next twelve (12) month period, based upon the then existing amount and frequency of Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the regular Assessments, for all special Assessments, and/or for all other Assessments payable to the Association. If the Assessments and any late fees and interest are not paid on the date when due, then such Assessments and any late fees and interest shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided,

thereupon become a continuing lien on the property which shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns.

Any individual who acquires title to a Lot upon the death of an Owner or by operation of law shall be personally liable for unpaid Assessments and late fees with respect to such Lot. In any voluntary conveyance, the Grantee shall be jointly and severally liable with the Grantor for all unpaid Assessments made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefore.

The Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the property on which the Assessment and late fees are unpaid, or may foreclose the lien against the property on which the Assessment and late fee are unpaid, in like manner as a foreclosure of a mortgage on real property, or pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such Assessment and late fee, attorney's fees and costs of preparing and filing the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment and late fee as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorney's fees in connection with any appeal of any such action.

It shall be the legal duty and responsibility of the Association to enforce payment of the Assessments and late fees hereunder.

Section 10. Subordination of the Lien to Mortgages. The lien of the Assessment provided for in this Article IV shall be subordinate to the lien of any institutional first mortgage recorded prior to the recordation of a claim of lien for unpaid Assessments. An institutional first mortgage and/or lender is defined as a state or federal bank or savings and loan association, an insurance company, trust company, savings bank, credit union, real estate or mortgage investment trust, mortgage broker, mortgage banker, private mortgage insurance company, the United States Veterans' Administration, United States Federal Housing Administration or a lender generally recognized in the community as an institutional lender. Any assignee of a mortgage originated by an institutional lender shall be deemed an institutional lender for the purposes of said mortgage. The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and any similar institutions created in the future shall be deemed institutional lenders, regardless of where any mortgage held by any of them originated. A mortgage in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser, or mortgagee shall hold title subject to the liability and lien of any Assessment becoming due after such

foreclosure or conveyance in lieu of foreclosure. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section 10, shall be deemed to be an Assessment divided equally among, payable by, and assesses against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

Section 11. Exempt Property. The Board of Directors shall have the right to exempt property subject to this Declaration from the Assessments, charges and liens created herein if such property is used (and as long as it is used) for any of the following purposes:

- A. Any easement or other interest therein dedicated and accepted by a public authority and devoted to public use or Saint Johns Water Management District.
- B. All Common Areas as defined in Article I hereof.
- C. All real property exempt from ad valorem taxation by the laws of the State of Florida, to the extent agreed to by the Association.

Section 12. Surface Water / Storm Water and Lake Assessments. Without limitation on the generality of the foregoing, and in addition to the other purposes for which assessments shall be used, the Association shall be responsible for and the assessments levied by the Association shall be used for the maintenance, operation, and repair of the Surface Water Management System, all ditches, culverts, drains, pipes, conduits, ponds, and other facilities located on or benefiting the Property for the purpose of conveying, transmitting, draining, retaining, and storing storm water runoff from the property, including with limitation, any and all of such items used or useful in connection with the operation and maintenance of the Appurtenant Easements. Such maintenance, operation, and repair shall include the exercise of practices which allow the Surface Water Management System to collect, convey, channel, hold, inhibit, or divert the movement of storm water as permitted by the St. Johns River Water Management District. The Association shall maintain, operate and repair the Surface Water Management System in accordance with the provisions of all applicable governmental requirements, including, without limitation, the terms and conditions set forth in the Development Order and in the Water Management District Permit, which provides for a maintenance and monitoring program which shall be performed by the Association. The Association and its agents, employees, and independent contractors shall have the right of ingress and egress to and from the Surface Water Management System for the purpose of complying with the terms and conditions of the Water Management District Permit and all applicable governmental regulations and

requirements governing the use, maintenance, operation and repair of the Surface Water Management System.

ARTICLE VI

EASEMENTS

Section 1. Member's Easements. Each Member of the Association and each tenant, agent and invitee of such Member shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the walkways, driveways and roads from time to time laid out on the Common Areas, for use in common with all such Members, their tenants, agents and invitees. The portion of the Common Areas not used, from time to time, for walkways and/or driveways shall be for the common use and enjoyment of the Members of the Association and each Member shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts and for the use of same in such manner as may be regulated by the Association. The foregoing easements are subject to the following:

- (a) The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with any restrictions on the various plats of the Project from time to time recorded.
- (b) The right of the Association to suspend the voting rights and right to use the Common Areas and facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its lawfully adopted and published rules and regulations.
- (c) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon.

The right of an Owner to the use and enjoyment of the Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him, subject to regulations from time to time adopted by the Association in its lawfully adopted and published rules and regulations.

Section 2. Easements Appurtenant. The easements provided in Section 1

shall be appurtenant to and shall pass with the title to each Lot.

Section 3. Utility Easements. Public utilities may be installed underground in the Common Areas when necessary for the service of the Project or additional lands for which Declarant holds an option to purchase, but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 4. Public Easements. Fire fighters, police, health, sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

Section 5. Additional Easement. The Declarant (during any period in which the Declarant has any ownership interest in the Project) and the Association shall each have the right to grant such additional electric, telephone, gas, sprinkler, irrigation, cable television or other easements, and to relocate any existing easement in any portion of the Project and to grant access easements and to relocate any existing access easements in any portion of the Project as the Declarant or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Project, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Lots for dwelling purposes.

Section 6. Association Easement. A. For the purpose solely of performing its obligations under the provisions of this Declaration, the Association, through its duly authorized agents, employees or independent contractors, shall have the rights, after reasonable Notice to Owner, to enter upon any Lot at reasonable hours of any day except Sunday. In the event of an emergency, such right of entry shall exist without notice on any day, including Sunday. Each Owner hereby grants to the Association, its duly authorized agents, employees or independent contractors such easements for ingress and egress, across the Lots and through improvements constructed upon the Lots, as may be reasonably necessary to effect and perform the exterior maintenance aforementioned. In addition, the owner of the adjoining property (not within the Project) may grant the Association, its duly authorized agents, employees or independent contractors, such easements for ingress and egress across its properties to effect and perform its duties. In such event, the Association shall indemnify the adjoining property owner for any damage or injury to the easement areas caused by the use thereof or access to perform the exterior maintenance.

B. The Association shall have a perpetual non-exclusive

easement over all areas of the surface water or storm water management system for access to operate, maintain, or repair the system. By this easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the surface water or storm water management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or storm water management system as required by St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or storm water management system. No person shall alter the drainage flow of the surface water or storm water management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

Section 7. Construction Easement. Each Lot and the Common Area is hereby subjected to a permanent easement appurtenant to any adjoining Lot to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining Lot, including roof structures which overhang and encroach upon the servient Lot or Common Area; provided that the construction of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to construct improvements, and to maintain, repair and restore any improvements located on the dominant tenement, provided, however that such entry shall be allowed only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvements, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this Section. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement or Declarant notwithstanding any lapse of time since such improvement, material or other obstacle was placed in or over the easement area. In the event an Owner fails to move such improvement, material or obstacle, then the Association may remove same and the expense of such removal shall be charged to the Owner as an assessment.

Section 8. Swale Maintenance. The Declarant has constructed a Drainage Swale upon each Lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. Each lot owner, including builders, shall be responsible for the maintenance, operation and repair of the swales on the lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other storm water management capabilities as permitted by the St. Johns River Water

Management District. Filing, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the Drainage Swale shall be authorized and any damage to any Drainage Swale, whether caused by natural or human-induced [phenomena, shall be repaired and the Drainage Swale returned to its former condition as soon as possible by the Owner(s) of the Lot(s) upon which the Drainage Swale is located.

Section 9. Easements of Record. In addition to the easements reserved herein, easements for drainage, installation and maintenance of utilities and for ingress and egress are shown on the recorded plat(s) of the Project.

Section 10. Execution. If and to the extent that the creation of any of the easements described in this Article requires the joinder of Owners, the Declarant, or the Association, by their duly authorized officers may, as the agent or the attorney-in-fact for the Owners, execute, acknowledge and deliver such instruments and the Owners, by the acceptance of deeds to their Lots, irrevocably nominate, constitute and appoint the Declarant and the Association, through their duly authorized officers, as their proper legal attorney-in-fact for such purpose. Said appointments are coupled with an interest and are therefore irrevocable. Any such instrument executed pursuant to this Article shall recite that it is made pursuant to this Article.

Section 11. Survival. Any easements and rights granted pursuant to this Section shall survive any termination of this Declaration.

ARTICLE VII

GENERAL RESTRICTIVE COVENANTS

Section 1. Applicability. The provisions of Article VII shall be applicable to all Lots situated within the Project.

Section 2. Land Use. No Lot shall be used except for residential purposes. Temporary uses for model homes, parking lots, construction trailer, construction storage areas and/or sales offices shall be permitted for the Declarant.

Section 3. Change in Buildings. No Owner shall make or permit any structural modification or alteration of any building except with the prior written consent of the Architectural Control Board or its successor, and such consent may be withheld if, in the sole discretion of the party denying the same, it appears that such structural modification or alteration would adversely affect or in any manner endanger other dwelling units. No

building shall be demolished or removed without the prior written consent of both the board of Directors of the Association and Owner(s) of the immediately adjoining building(s). In the event any building is demolished or removed, if replaced said building shall be replaced with a unit of similar size and type within twelve (12) months. In the event the building is not replaced, then the Lot shall be sodded and maintained as a landscaped Lot.

Section 4. Building Location. Buildings shall be located in conformance with the Zoning Code of Indian River County, Florida and any specific zoning approvals there under, or as originally constructed on a Lot by Declarant or their respective successor or assignee. Whenever a variance or special exception as to building location or other item has been granted by the authority designated to do so under the Zoning Code, said variance or special exception is hereby adopted as an amendment to this Section and any future variance of special exception as to building location or other item shall constitute an amendment of this Section.

Section 5. Landscaping of Easements. In addition to the easements reserved herein, easements for drainage, installation and maintenance of utilities and for ingress and egress are shown on the recorded plat(s) of the Project. Within these easements no structure, planting or other material may be placed or permitted to remain that will interfere with vehicular traffic or prevent maintenance of utilities. Public utility companies servicing the Project and the Association, and their successors and assigns, shall have a perpetual easement for the installation and maintenance of water lines, sprinkler lines, sanitary sewers, storm drains, gas lines, electric and telephone lines, cables and conduits, including television cables and conduits and such other installations as may be required or necessary to provide maintenance and utility services to the Lots and/or the Common Areas under and through the utility easements as shown on the plat(s) and under and through such portions of the rear of each Lot beyond the building, as such buildings may from time to time be located. Any damage caused to pavement, driveways, drainage structures, sidewalks, other structures, or landscaping in the installation and maintenance of such utilities shall be promptly restored and repaired by the utility whose installation or maintenance caused the damage. All utilities within the sub- divisions, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground, provided, however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

Section 6: Nuisances. No noxious or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or any other Lot Owner. In the event of any question as to what may be or become a nuisance, such question shall be submitted to the Association for a decision in writing, which decision shall be final. In addition, no weeds,

underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot. Owner is responsible to operate the Lot irrigation system in order to maintain the landscaping. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the Owner shall fail or refuse piles or other unsightly growths or objects, then the Association may enter upon said premises and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. All garbage or trash containers must be underground or placed in walled-in areas so that they shall not be visible from the adjoining Project. Provided, however, any portion of the Project not yet developed by Declarant, shall be maintained in a clean condition but shall not be expected to be maintained in a manicured condition.

Section 7. Temporary Structures. No structure of a temporary character, or trailer, tent, mobile home or recreational vehicle shall be permitted on any Lot either temporarily or permanently, except that the Declarant may park a trailer on the Project during periods of construction or as a sales center.

Section 8. Signs. Except for one sign of not more than one (1) square foot used to indicate the name of the resident, no "for rent", "for sale" or other sign of any kind shall be displayed to the public view on the Project, without the prior consent of the Board of Directors of the Association; provided that the Declarant, so long as it has not sold all of its Lots in the Project, shall retain the right to disapprove any signs displayed to the public view. Notwithstanding the foregoing, this Section shall not apply to the Declarant for as long as it holds title to any portion of the Project.

Section 9. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Project nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Project. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

Section 10. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lots except that dogs, cats, or other household pets may be kept, but no more than a total of two (2); provided, however, those pets which are permitted to roam free within an enclosed fenced Lot, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance of inconvenience to the Owners of other Units or the Owner of any property located adjacent to the Project, may be expelled and removed from the Project by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall be confined to a leash whenever they are outside a Lot.

Section 11. Visibility at Intersections. No obstruction to visibility at street intersections shall be permitted.

Section 12. Commercial Trucks, Trailers, Campers and Boats. No trucks or commercial vehicles, campers, mobile homes, motor homes, boats, house trailers, boat trailers, or trailers of every other description shall be permitted to be parked or to be stored at any place on any Lot, except only during the periods of approved construction on said Lot, and except that they may be stored within garages. The term "commercial vehicle" shall include all automobiles, trucks and vehicular equipment, including station wagons, which bear signs or shall have printed on same some reference to any commercial undertaking or enterprise, or vehicles of more than six and one-half feet (6 1/2') in height. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services.

Section 13. Fences. No fence, wall or other structure shall be erected in the front yard, back yard, or side yard except as originally installed by Declarant or its assignee, or approved by the Architectural Control Board.

Section 14. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Lot except in a walled in area; provided, however, that the requirements from time to time of Indian River County for disposal or collection shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 15. Drying Areas. No clothing, laundry or wash shall be aired or dried on any exterior (outside) portion of any Lot.

Section 16. Gas Containers. No gas tank, gas container, or gas cylinder (except those placed by the Declarant or approved by the Architectural Control Board in connection with the installation of swimming pools and/or barbecues) shall be permitted to be placed on or about the outside of any house or any ancillary building, and all such items (except those placed by the Declarant in connection with the installation of swimming pools and/or barbecues) shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative safety wall approved by the Architectural Control Board.

Section 17. Communication Equipment. Except as may be installed by the Declarant or as may be permitted by the Architectural Control Board, no antennas, satellite dishes, aerials, or lines, wires or other devices for communication or transmission of current

shall be placed on any portion of the Project. In no event, however, shall lines or wires for communication or the transmission of current be constructed, placed or permitted to be placed within the Common Areas unless the same shall be installed by the Association for the common use of all Members, and shall be protected cables, and any of said lines or wires which are not located in buildings shall be constructed or placed and maintained underground. Any line or wire installations permitted by the Architectural Control Board pursuant to this Section shall be protected cable and shall only be installed underground.

Section 18. Drainage. No change in any drainage pattern of any Lot, after issuance of a certificate of occupancy for the dwelling thereon, or of any portion of the Project, after all contemplated improvements have been completed, shall be made which will cause undue hardship to an adjoining Lot or adjoining property with respect to natural runoff of rain water.

Section 19. Leasing. No lease may be made for less than a six (6) month period, nor shall a Lot be leased more than two (2) times during any twelve (12) month period. Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing on his Lot, and for all guests, and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, of the Articles, or the Bylaws, by any resident of any Lot, or any guest or invitee of an Owner or any resident of a Lot, shall also be deemed to a violation by the Owner, and the Owner shall be subject to the same liability as if such violation was that of the Owner.

With respect to any tenant or any person present on any Lot or any portion to the Project other than an Owner and the members of his immediate family permanently residing with him on the Lot, if such person materially violates any provision of this Declaration, the Articles or Bylaws, or if such person is the source of annoyance to the residents of the Project, or willfully damages or destroys any Common Areas or personal property of the Association, then upon written notice by the Association, such person shall be required to immediately leave the Project and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Project and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

Section 20. Rules and Regulations. The Board may from time to time adopt and amend previously adopted rules and regulations governing the operation, use, maintenance, management and control of the Project.

Section 21. Lake Maintenance Easements

- 1) No boats shall remain within the Lake Maintenance Easements.
- 2) No docks, decks, or any type of construction shall be permitted within the Lake Maintenance Easements.
- 3) No motorized boats or any type, including jet skis or similar watercrafts, shall be permitted on Tract A. Only wind or manually powered watercraft shall be allowed on Tract A.
- 4) No vegetation, including trees, limbs, bushes, shrubs, grass, shall be removed or cleared from the Lake Maintenance Easement without the prior approval of the Architectural Control Committee.
- 5) The Lake Maintenance Easement shall be maintained in full sod and/or natural vegetation to the water's edge and shall be kept neatly maintained. No sand beaches above the water line shall be permitted.
- 6) No fences, hedges, dog houses, sheds, or structures of any kind, vehicles, or boats, shall be placed or maintained within the 18' Lake Maintenance Easement. Any pre-existing structures shall be removed by the adjacent property owner.
- 7) No wildlife or waterfowl shall be imported into the lake. Any domestic waterfowl shall be removed by the Association.
- 8) No fish shall be introduced into the lake unless approved by the Architectural Control Committee and on an approved list by St. Johns River Water Management District of Florida Game and Fresh Water Fish Commission.
- 9) No vegetation shall be introduced into the lake unless approved by the Architectural Control Committee and on the approval list of the St. Johns River Water Management District.
- 10) No guests shall be permitted upon or within the Lake Maintenance Easements unless accompanied by the property owner who has legal access permitted under these restrictions.
- 11) The Architectural Control Committee shall have the responsibility of maintaining a health ecosystem and an aesthetically attractive environment and shall determine when and where new trees and vegetation shall be placed in the Lake Maintenance Easement.

ARTICLE VIII

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire an extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Areas, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage, a Two Million Dollar (\$2,000,000.00) limit per occurrence, if reasonably available, and a Five Hundred Thousand Dollar (\$500,000.00) minimum property damage limit.

Premiums for all insurance on the Common Areas shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

Cost of insurance coverage obtained by the Association for the Common Areas shall be included in the General Assessment, as provided in Article V.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefited parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Florida which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Areas shall be for the benefit of the Owners and their Mortgagees as their interests may appear.

(c) Exclusive authority to adjust losses under policies in force on the Project obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchases by Individual Owners, occupants, or their mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Indian River County, Florida, area.

(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

i. waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

ii. waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;

iii. that no policy may be canceled, invalidated or suspended on account of any one or more individual Owners;

iv. that no policy may be canceled, invalidated or suspended on account of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

v. that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

vi. that no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

(g) The Association's Board of Directors may, in their discretion, obtain such other types of insurance for the Association as they deem necessary.

In addition to the other insurance required by this section, the Board of Directors shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on Directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Directors' best business judgment but may not be less than three (3) months assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon as provided for in Section 1 of this Article IX. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction, and the Owner shall pay the costs of any repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and the Owner shall continue to maintain the Lot in a neat and attractive condition.

Section 3. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as herein- after provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Areas or, in the event no repairs or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in the capital reserves account. This is a covenant for the benefit of any mortgage of a Lot and may be enforced by such mortgagee.

(b) If it is determined, that the damage or destruction to the Common Areas for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in subsection (a) above.

Section 4. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Project covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements within the Project. Repair or reconstruction, as used in this paragraph, mean repairing or restoring the Project to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless at least seventy-five percent (75%) of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost or repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Areas damage or destruction shall be repaired or reconstructed.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Areas for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners on the same basis as provided for assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE IX

SALES ACTIVITY AND DECLARANT'S RIGHTS

Notwithstanding any provision herein to the contrary, until the Declarant has

Waters Edge Phase II Homeowners Documents

completed, sold and conveyed all of the Lots within the Project, neither the Owners, nor the Association, nor their use of the Common Areas shall interfere with the completion of the contemplated improvements and the sale of Lots and any other sales activity of the Declarant, whether related to the Project or other developments of the Declarant. The Declarant (or their duly authorized agents or assigns subject to such regulations as may be promulgated by Declarant), may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale including, but not limited to, the maintenance of sales offices, construction trailers, model homes, and/or parking lots for the showing of the property, and the display of signs, billboards, flags, placards and visual promotional materials. The Declarant shall have the right to use unimproved Lots for temporary parking, if any, for prospective purchasers and such other parties as Declarant determines. Each Lot and the Common Area is hereby subjected to an easement for the purposes set forth herein.

ARTICLE X

MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages covering a Lot or any portion of property encumbered thereof in the Project.

Section 1. Rights of Institutional Mortgagees to Pay Assessments and Receive Reimbursement. Any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Lot or property encumbered by its mortgage. Further, any Institutional Mortgagees shall have the right, but not the obligation, and, at its sole option, to pay insurance premiums or fidelity bond premiums or the required items of operation expenses on behalf of the Association where the same are overdue and where lapse in policies or services may occur. Any Institutional Mortgagees paying overdue operating expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus interest at the highest rate permitted by law and any costs of collection including, but not limited to, legal fees, and the Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement.

Section 2. Declarant's Guaranteed Assessment Not the Obligation of Institutional Mortgagees. Notwithstanding anything to the contrary herein contained, it is specifically understood and declared and each Owner by the acceptance of a deed or other instrument of conveyance of a Lot or property within the Project shall be deemed to have acknowledged and agreed that no Institutional Mortgagee (other than the Declarant) or any successors or assigns of such Institutional Mortgagee, or any person acquiring title to any part of the subject property by reason of the foreclosure by an Institutional Mortgagee or deed taken in lieu of such foreclosure shall be deemed to have made, assumed or otherwise undertaken any covenants or obligations of Declarant: (i) to guarantee the level and/or duration of any Assessments; or (ii) to pay the difference between the actual operating expenses and the Assessments, if any, assessed against the Lots and the Owners thereof as may be provided for herein; provided, however, that an Institutional Mortgagee may, at its option, determine to continue the obligation of Declarant to guarantee the amount of the Assessments as herein provided.

Section 3. Conditions of Insurance. The Institutional Mortgagee holding the highest dollar indebtedness encumbering any portion of the Project ("Lead Mortgagee") shall have the right, for so long as it holds such highest dollar indebtedness, to approve the form of such insurance policies, the amount thereof, the company or companies which shall be the insurers under such policies, and the insurance agent or agents.

Section 4. Cancellation or Modification of Insurance. All insurance policies purchased by the Association shall provide that they may not be cancelled (including for the nonpayment of premiums) or substantially modified without at least ten (10) days prior written notice to the Association and to each first mortgage holder named in the mortgage clause.

Section 5. Condemnation. In the event the Association receives any award or payment arising from the taking of any Association Property or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Association and approved by Owners owning at least two-thirds (2/3) of the Project, and the remaining balance thereof, if any, shall then be distributed pro rata to Owners and mortgagees of the Project as their respective interest may appear.

Section 6. Plans and Specifications. Any material or substantive change in new plans and specifications approved by the Board from the plans and specifications of previously constructed property within the Project shall require the written approval of Institutional Mortgagees holding mortgages encumbering at least two-thirds

(2/3) of the Project so encumbered.

Section 7. Easement. An easement for ingress and egress in favor of Institutional Mortgagee and their agents over and across the Association Common Areas, any private roadways and other property.

Section 8. Enforcement and Other Common Areas. The covenants and restrictions herein contained may be enforced by the Declarant (so long as the Declarant holds and equitable or legal interest in the Project and/or any Lot), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Project in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder.

Section 9. Right of Declarant. For the purposes of this Declaration, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct improvements upon the Project or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Project as a result of the foreclosure of any mortgage encumbering any portion of the Project securing any loan to Declarant or acquires title thereof by deed in lieu of foreclosure.

Section 10. Amendment. Declarant may, without the consent of the Owners, file any amendment which may be required by an Institutional Mortgagee for the purpose of satisfying its planned unit development criteria or such criteria as may be established by such mortgagee's secondary mortgage market purchasers, including without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, provided, however, that any such Declarant filed amendments must be in accordance with any applicable rules, regulations and other requirements promulgated by the United States Department of Housing and Urban Development.

Section 11. Amendment and Modification. No amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of any Institutional Mortgagee without the specific written approval of such Institutional Mortgagee affected thereby.

Section 12. Rights of Mortgagees.

A. Right to Notice. The Association shall make available to Institutional Mortgagee for inspection upon request, during normal business hours or under reasonable circumstances, the books, records and financial statements of the Association. In addition,

evidence of insurance shall be issued to Institutional Mortgagee upon written request to the Association.

B. **Right of Listed Mortgagee.** An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the unit number), therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(1) Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

(2) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(3) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(4) Any proposed action which would require the consent of mortgagees holding a mortgage encumbering the Project.

Section 13. Right of Listed Mortgagee to Receive Financial Statement.

Any Institutional Mortgagee shall, upon written request made to the Association, be entitled to financial statements for the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

The Association shall use the cash basis method of accounting and shall maintain accounting records in accordance with good accounting practices, which shall be open to inspection by Institutional Mortgagees or their respective authorized representatives at reasonable times.

Section 14. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first

mortgagees or Owners give their consent, the Association shall not:

(1) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Project shall not be deemed a transfer);

(2) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(3) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Areas;

(4) Fail to maintain fire and extended coverage insurance, as required by this Declaration; or

(5) Use hazard insurance proceeds for any Common Areas losses for other than the repair, replacement, or reconstruction of such improvements to the Project.

The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Members where a larger percentage vote is otherwise required for any of the actions contained in this Section.

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

Section 15. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 16. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

Section 17. Applicability of Article XI. Nothing contained in this Article

shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Florida law for any of the acts set out in this Article.

Section 18. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Duration. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulation, burdens and liens contained herein shall run with and bind the subject real property and inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded amongst the Public Records of Indian River County, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such thirty (30) year term or any such ten (10) year extension an instrument signed by the then Owners of two-thirds (2/3) of the Lots and Institutional Mortgagees holding mortgages encumbering two-thirds (2/3) of all the subject Lots and real property encumbered by mortgages held by Institutional Mortgagees, has been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part, upon which event this Declaration shall be terminated upon the expiration of the then expiring term or extension term.

Section 2. Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. A. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants and failure by the Declarant, the Association or any Owner to enforce any covenant or restriction

herein contained shall in no event be deemed a waiver of the right to do so thereafter. These covenants may also be enforced by the Architectural Control Board. The Association is hereby empowered to adopt reasonable rules and regulations for the imposition of fines to be levied against any Owner for failure to comply with the terms of this Declaration or rules and regulations of the Association. Any rule or regulation subjecting any Owner to fines shall include provisions for notice, hearing, appeal and fines. Fines shall constitute an assessment due to the Association and upon failure to pay such fine within the period prescribed by the Association shall become a charge and continuing lien upon the Owner's Lot.

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

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Amendment. A. Prior to the closing of the first Unit, Declarant may amend this Declaration. After such closing, the Declarant may amend this Declaration so long as it still owns property described in Exhibit "A" for development as part of the Project and so long as the amendment has no material and adverse effect upon any right of any Owner, as determined by Declarant, in its sole discretion; thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes of the Association, including seventy-five percent (75%) of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Public Records of Indian River County, Florida. No amendment shall discriminate against any Owner or class or group of Owners, unless the Owners so affected join in the execution of the amendment. No amendment shall change the number of votes of any Owner or increase any Owner's proportionate share of the common expense, unless the Owners and Institutional Lenders of such Lots so affected by such amendment join in the execution of the amendment. No amendment may prejudice or impair the priorities of Institutional Lenders granted hereunder unless all Institutional Lenders join in the execution of the amendment. No amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Declarant, unless Declarant joins in the execution of the amendment.

B. Any amendment to the this Declaration which alter any provision relating to the surface water or storm water management system, beyond maintenance in its original condition, including the water management portions of the common areas, shall have the prior approval of the St. Johns River Water Management District.

Section 6. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Board of Directors. In the case of such a vote, and notwithstanding anything contained in this Declaration or the Articles of Incorporation or Bylaws of the Association to the contrary, a Board member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Members representing seventy-five percent (75%) of the total vote of the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 7. Effective Date. This Declaration shall become effective upon its recordation in the Indian River County Public Records.

EXECUTED the date first above written.

Signed, sealed and delivered
in the presence of:

SMIGIEL PARTNERS IV, LTD.
a Florida Limited Partnership

Eila M. Green
Print Name: Eila M. Green

BY: *[Signature]*
Gary Smigiel, L. C., its General Partner

[Signature]
Print Name: JOHNA GREENE

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 7th of Feb, 2002 by
Gary Smigiel, L. C. General Partner of Smigiel Partners IV, Ltd. a Florida Limited
Partnership, who is personally known to me or who has produced _____
as identification, and who did take an oath.

[Signature]
NOTARY PUBLIC
Print Name: STEPHANIE WINSTON

My commission expires:



Stephanie Winston
MY COMMISSION # CC981981 EXPIRES
January 15, 2005
BONDED THRU TROY FAIR INSURANCE, INC.

15
Prepared By And
Record & Return To:
ALAN L. GABRIEL, Esq.
2455 E. Sunrise Blvd.
Suite Penthouse East
Fort Lauderdale, Florida 33304

IN THE RECORDS OF
JEFFREY K. BARTON
CLERK CIRCUIT COURT
INDIAN RIVER CO., FLA.

**FIRST AMENDMENT
TO THE
DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS
FOR
WATERS EDGE PHASE II**

The following constitutes a FIRST AMENDMENT to that certain Declaration of Restrictions and Protective Covenants for Waters Edge Phase II, hereinafter referred to as the "Declaration", executed on February 7, 2002 by Smigiel Partners IV, LTD., a Florida Limited Partnership, hereinafter referred to as "Declarant", and recorded on February 20, 2002, in O.R. Book 1467, Page 2950, of the Public Records of Indian River County, Florida. To the extent of any conflict between the terms and provisions of this First Amendment and the Declaration, the terms and provisions of this First Amendment shall prevail. This document shall be referred to as the "First Amendment".

WHEREAS, Declarant reserved the right, pursuant to Article XI, Section 5, of the Declaration, to amend the Declaration "so long as it still owns property described in Exhibit "A" (to the Declaration) for development as part of the Project and so long as the amendment has no material and adverse effect upon any right of any Owner, as determined by Declarant, in its sole discretion"; and

WHEREAS, Declarant desires to make certain amendments to language contained at Section 12 of Article VII (entitled General Restrictive Covenants) of the Declaration, this Section dealing with various types of vehicles and boats; and

WHEREAS, Declarant still owns property described in Exhibit "A" to the Declaration for development as part of the Project; and the Declarant has determined that this desired amendment will have no material and adverse effect upon any right of any Owner;

Lori J. Schwab
Witness
Lori J. Schwab
Print Name

STATE OF FLORIDA:

COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this 29 day of May, 2002, by Gary Smigiel as President of GARY SMIGIEL L.C., the General Partner of SMIGIEL PARTNERS IV, LTD., a Florida Limited Partnership, who is personally known to me or who has produced _____ as identification.

[Signature]
NOTARY PUBLIC
Print Name: STEPHANIE WINSTON

My commission expires: 1/15/05



Stephanie Winston
MY COMMISSION # CC981981 EXPIRES
January 15, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

5833Waters Edge II Dec.Amend

EXHIBIT "A"

LEGAL DESCRIPTION

ALL OF TRACT 10 AND TRACT 15, SECTION 21, TOWNSHIP 33 SOUTH, RANGE 39
FAST, IN PLAT BOOK 2, PAGE 25, SAID LAND NOW LYING AND BEING IN INDIAN
RIVER COUNTY, FLORIDA.

LESS THAT CERTAIN PARCEL OF LAND DESCRIBED BY DEED RECORDED IN
O.R.B. 137, PAGE 203, AND LESS THOSE 2 PARCELS OF LAND DESCRIBED BY
DEED RECORDED IN O.R.B. 634, PAGE 1243, ALL AS RECORDED IN SAID INDIAN
RIVER COUNTY.

CONTAINING 79.006 ACRES ±



Lawson, Noble & Webb, Inc. LB #6674

ENGINEERS • PLANNERS • SURVEYORS

590 NW Peacock Boulevard, Suite 9, Port St. Lucie, Florida 34986
 (561) 878-1700 • fax: (561) 878-1802 • email: lnw-psl@lnw-inc.com

West Palm Beach • Port St. Lucie

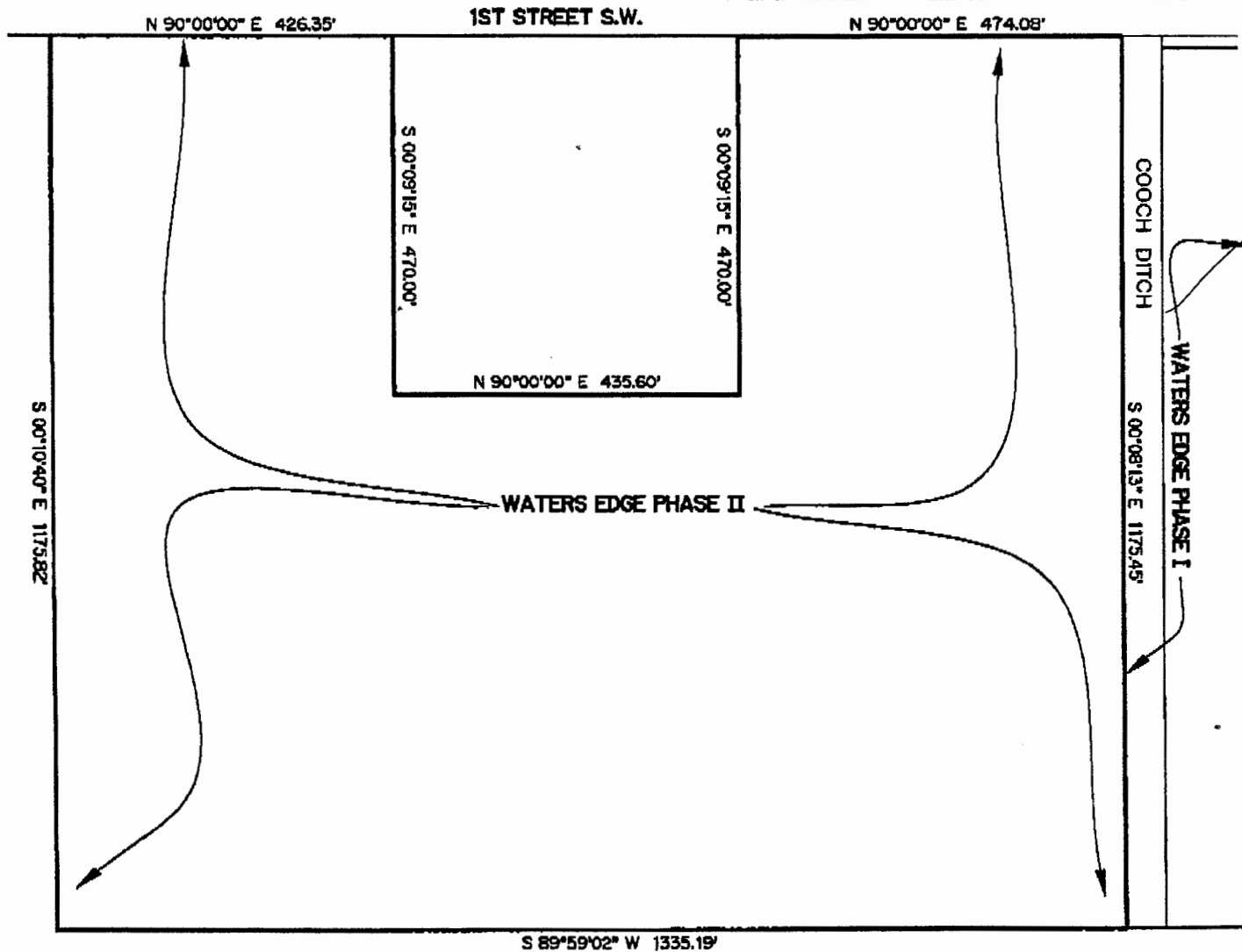
**EXHIBIT "A"
 SKETCH AND LEGAL DESCRIPTION**

LEGAL DESCRIPTION:

ALL OF TRACT 3 (LESS THE SOUTH 125 FEET AS CANAL; AND ALSO LESS THE NORTH 30 FEET); ALL IN SECTION 22, TOWNSHIP 33 SOUTH, RANGE 39 EAST, ACCORDING TO THE LAST GENERAL PLAT OF INDIAN RIVER FARMS COMPANY FILED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF ST. LUCIE COUNTY, FLORIDA IN PLAT BOOK 2, PAGE 25; SAID LAND NOW LYING AND BEING IN INDIAN RIVER COUNTY, FLORIDA. LESS AND EXCEPT THAT PART OF TRACT 3 DEEDED TO THOMAS MARK DELLERMAN AND CYNTHIA LYNN DELLERMAN, HIS WIFE, AS RECORDED IN OFFICIAL RECORD BOOK 798, PAGE 2978, PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA.



SCALE: 1"=200'



I:\Data\400-499\B453\CAD\B453E\h\lbt.dwg 02/04/2002 02:07:40 PM EST

JOB No. B453	BY: GRB	CHECKED: MTK	F.B. N/A PG. N/A	DATE: 11-6-00
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State of Florida



Department of State

I certify from the records of this office that WATERS EDGE PHASE II HOMEOWNERS ASSOCIATION OF VERO BEACH, INC. is a corporation organized under the laws of the State of Florida, filed on February 7, 2002.

The document number of this corporation is N02000000900.

I further certify that said corporation has paid all fees due this office through December 31, 2002, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

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



CR2EO22 (1-99)

Katherine Harris

Katherine Harris
Secretary of State

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of WATERS EDGE PHASE II HOMEOWNERS ASSOCIATION OF VERO BEACH, INC., a Florida corporation, filed on February 7, 2002, as shown by the records of this office.

The document number of this corporation is N02000000900.

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



CR2EO22 (1-99)

Katherine Harris

Katherine Harris
Secretary of State