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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BELLA NOTTE AT VIZCAYA PHASE THREE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BELLA NOTTE AT VIZCAYA PHASE THREE is made this 9th day of September, 2002 by **BUTLER RIDGE DEVELOPMENT, INC.**, a Florida corporation (the "**Declarant**"), whose address is 557 North Wymore Road, Suite 102, Maitland, Florida 32751.

RECITALS:

- A. Declarant is the owner of the Properties.
- B. Declarant intends to develop and improve the Properties as a residential community with streets, street lights, recreational areas and facilities, and stormwater drainage and retention areas, and other common areas and improvements for the benefit of the Owners of the Properties.
- C. Declarant desires to provide for the preservation and enhancement of the property values and quality of life in the Properties, the personal and general health, safety and welfare of the Owners, and for the maintenance of streets, street lights, stormwater drainage and retention areas and improvements, recreational areas and facilities and other common areas and improvements located in the Properties, and, to this end, desires to subject the Properties to this Declaration.
- D. In order to provide a means for meeting the purposes and intents herein set forth, Declarant has created a non-profit corporation to which may be conveyed title and delegated and assigned the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and other charges hereinafter created.

DECLARATIONS:

NOW, THEREFORE, Declarant, for itself and its successors and assigns, declares that, the Properties are and shall be held, improved, used, occupied, leased, transferred, mortgaged, sold and

conveyed subject to all of the reservations, covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE 1

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Additional Properties" shall mean and refer to any real property in the vicinity of the Properties, together with any improvements thereon, which is made subject to this Declaration under the provisions of Article II hereof.

(b) "ARB" shall mean and refer to the Architectural Review Board of the Association established for architectural control purposes pursuant to Article VIII of this Declaration.

(c) "Area of Common Responsibility" shall mean and refer to any services, lands or facilities (other than Common Property) which are to be provided, operated, maintained and/or improved by or for the Association at Common Expense and as the result of (i) specific designation of an Area of Common Responsibility by this Declaration, any Supplemental Declaration, or any plat of the Properties, (ii) a contract entered into with a third party by the Association or Declarant, or (iii) decision of the Board.

(d) "Articles" shall mean and refer to the Articles of Incorporation of the Association, a copy of which is attached as Exhibit "B" to this Declaration.

(e) "Association" shall mean and refer to Bella Notte Homeowners Association, Inc., a Florida corporation not-for-profit, or its successors and assigns.

(f) "Board" shall mean and refer to the Board of Directors of the Association.

(g) "Bylaws" shall mean and refer to the Bylaws of the Association, a copy of which is attached as Exhibit "C" to this Declaration.

(h) "Common Expense" shall mean and refer to the liabilities and expenses incurred by the Association in the performance of the duties of the Association, including without limitation, the costs incurred for operation, maintenance and improvement of the Common Property and the Areas of Common Responsibility, the Association's share of the costs incurred for the operation, maintenance and improvement of The Esplanade, and any reserves established by the Board.



(i) "Common Property" shall mean and refer to all those lands, together with any improvements located thereon, and all personal property, from time to time devoted to the use and enjoyment of the Members of the Association and owned, operated and maintained by the Association at Common Expense. "Common Property" includes, without limitation, the Private Roads and any platted parcel which is part of the Properties and which is designated by Declarant on any plat or in any other recorded instrument for ownership and maintenance by the Association which includes, without limitation, Tracts "A," "C" through "K" and "M" shown on the plat of the Properties as well as all drainage, utility, landscape, wall, and construction easement areas whether or not located within such Tracts.

(j) "Conservation Easement" shall mean and refer to that certain Conservation Easement, by and between Butler Ridge Development, Inc. and South Florida Water Management District, to be recorded in the Public Records of Orange County, Florida. The Conservation Easement provides for the preservation of the vegetation within those portions of the Properties containing wetlands and any portions of the Properties along the shore line of Lake Serene. Any and all portions of the Properties protected as conservation areas pursuant to the Conservation Easement shall be governed by Article X, Section 31 of this Declaration in order to assure compliance with the District permits and the Conservation Easement.

(k) "Declarant" shall mean and refer to Butler Ridge Development, Inc., a Florida corporation, and its successors and assigns. No successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment, or unless such rights pass by operation of law.

(l) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Bella Notte at Vizcaya Phase Three, as amended and supplemented from time to time.

(m) "District" shall mean and refer to the South Florida Water Management District.

(n) "The Esplanade" shall mean and refer to Tract "N" as shown on the plat of the Properties.

(o) "Esplanade Maintenance Associations" shall mean and refer to the Association, Vizcaya Master Homeowners' Association, Inc. and Mirabella at Vizcaya Phase Three Homeowners Association, Inc.

(p) "Lot" shall mean and refer to each platted parcel of land in the Properties which is subject to separate ownership and intended for use as a site for construction and maintenance of a Residential Unit, whether or not yet improved.

(q) "Member" shall mean and refer to each Owner who is a member of the Association as provided in Section 2 of Article III.

(r) "Owner" shall mean and refer to the record holder, whether one or more persons or entities, of fee simple title to any Lot in the Properties; but, notwithstanding any applicable theory of the law of mortgages, Owner shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceeding or a conveyance in lieu of foreclosure. All persons holding an ownership interest in a particular Lot shall be treated for all purposes hereunder as a single Owner for such particular Lot, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Declarant shall be an Owner for so long as Declarant owns any portion of the Properties.

(s) "Properties" shall mean and refer to the land and improvements described in Exhibit "A" attached to this Declaration and incorporated herein by this reference, together with all Additional Properties actually annexed to the operation and effect of this Declaration from time to time under the provisions of Article II of this Declaration, if and when annexed, and excluding any lands and improvements withdrawn from the provisions hereof in accordance with the procedures set forth in this Declaration.

(t) "Private Roads" shall mean and refer to all roads or streets situated on Tract "A" which are not dedicated to any governmental unit. Private Roads shall not include The Esplanade.

(u) "Recreational Amenities" shall mean and refer to those facilities, services or amenities, if any, such as but not limited to clubhouses, swimming pools, parks, gazebos, leisure trails, bike paths and gardens, located within the Common Property and designated in writing by Declarant as being reserved exclusively for the use and enjoyment of all, or a designated class of, Owners of Residential Units.

(v) "Residential Unit" shall mean and refer to each separately described portion of the Properties, whether attached or detached, which is intended to be occupied as a single family residence or household, including without limitation each Lot (together with the residence, if any, constructed thereon), zero lot line dwelling, patio home, townhouse, cluster home, and any other form of residential occupancy or ownership now existing or hereafter created. In the case of a structure which contains multiple dwelling units, each dwelling unit shall be deemed a separate Residential Unit. "Residential Unit" shall include in its meaning any interest in real property appurtenant to the ownership of the Residential Unit.

(w) "Single Family Units" shall mean and refer to those Residential Units other than Townhome Units.

(x) "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions and restrictions executed by Declarant, and by the owner of the affected lands if same are not owned by Declarant, which extends the provisions of this Declaration to Additional Properties.

(y) "Surface Water Management System" shall mean and refer to all underground drainage pipes, drainage canals, swales, inlets, culverts, storm drains, outfalls, lakes, drainage retention/detention ponds and related systems located or to be located within the Properties, and which serve the stormwater and surface drainage, control and retention needs of the Properties, as may be approved by Orange County, Florida, and the District. The Surface Water Management System shall be deemed Common Property for the purposes of (i) the Owners' reasonable use thereof for their intended purposes, and (ii) the maintenance, repair and replacement thereof by the Association.

(z) "Townhome Units" shall mean and refer to those Residential Units located on Lots 38 through 54, inclusive and on Lots 115 through 203, inclusive as shown on the plat of the Properties.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONAL PROPERTY

Section 1. Property Subject to Declaration. The real property which, initially, is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Orange County, Florida, and is more particularly described in Exhibit "A" attached hereto, all of which real property (and all improvements thereto), together with additions thereto, but less any withdrawals therefrom, is herein referred to collectively as the "Properties". In the event of annexation of Additional Properties, the Additional Properties so annexed shall also be held, used, occupied, mortgaged, leased, transferred, sold and conveyed subject to the reservations, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, as amended, and the applicable Supplemental Declaration.

Section 2. Additional Properties. Declarant (joined by the owner of the lands if other than Declarant) shall have the sole right but not the obligation to bring within the encumbrance of this Declaration, as Additional Property, additional lands and improvements in the general vicinity of the Properties. All annexations must occur, if at all, at any time on or before twenty (20) years from the date of recording this Declaration. Annexation may be accomplished without the consent of the Association, the Members, the Owners, or the occupants of the Properties, or any mortgage or lien holder.



Section 3. Method of Annexation. The additions authorized under this Article shall be made by filing of record a Supplemental Declaration with respect to the Additional Property which shall extend the operation and effect of this Declaration to such Additional Property. The Supplemental Declaration shall describe the real property to be annexed and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing property to the scheme of this Declaration and extending the jurisdiction of the Association to the Additional Property. The Supplemental Declaration may contain such terms and provisions not inconsistent with this Declaration as may be desirable to reflect the different character, if any, of the real property being annexed or the various housing or community style characteristics and development approaches being implemented, all of which may be significantly at variance with earlier phases of the Properties. Owners, upon recordation of any Supplemental Declaration, shall also have a right and non-exclusive easement of use and enjoyment in and to the Common Property within the real property so annexed and an obligation to contribute to the cost of management, operation and maintenance of such Common Property within the annexed lands. Any Supplemental Declaration recorded in accordance with the terms hereof shall be conclusive in favor of all persons who rely thereon in good faith. From and after recordation of any Supplemental Declaration, the Additional Property described therein shall be subject to the provisions of this Declaration and to the jurisdiction of the Association.

Section 4. Merger or Consolidation. Upon a merger or consolidation of the Association with another association, the properties, rights and obligations of each may, by operation of law, be transferred to the surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger or consolidation. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration and any Supplemental Declaration within the Properties, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration or any Supplemental Declaration within the Properties.

ARTICLE III

STRUCTURE, POWERS AND DUTIES OF, AND MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Association. The Association shall be a non-profit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Declaration. The Articles and Bylaws are subject to amendment in accordance with their respective provisions and it shall not be necessary to amend this Declaration in order to amend the Articles or the Bylaws; provided, however, neither the Articles nor the Bylaws shall, for any reason,



be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be either (1) Members of the Association, or (2) officers, directors, representatives or employees of Declarant. A Board of Directors of the Association, and such officers as the Board may elect or appoint, shall conduct the affairs of the Association in accordance with this Declaration, the Articles and the Bylaws.

Section 2. Membership. Declarant, each assignee of Declarant and each Owner shall be Members of the Association. The Association membership of each Owner (other than Declarant and its assignees) shall be appurtenant to and may not be separated from the Residential Unit giving rise to such membership, and shall not be transferred except upon the transfer of title to said Residential Unit and then only to the transferee of title thereto. Any prohibited separate transfer shall be void. Any transfer of title to a Residential Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class "A" Class "A" Members shall be all Owners of Lots, with the exception of Declarant and any assignee of Declarant who is a builder, contractor or other that acquires a Lot for the purpose of constructing improvements thereon for resale and who has been assigned Class "B" votes for so long as Declarant or such assignees shall be Class "B" Members. Class "A" Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold the interest required for membership.

(b) Class "B" The Class "B" Member(s) shall be Declarant and each assignee of Declarant who is a builder, contractor or other that acquires a Lot for the purpose of constructing improvements thereon for resale and to whom Declarant assigns in writing one or more of the Class "B" votes. Upon the execution of this Declaration, the Class "B" Members shall be entitled to three (3) votes per Lot. At such time as a Class "A" Member is the owner of a Lot, there shall be no Class "B" votes associated with such Lot. The Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following:

- (i) Three (3) months after ninety percent (90%) of the Lots within the Properties have been sold and conveyed to Class "A" Members; or
- (ii) Twenty (20) years from the date of recording this Declaration; or
- (iii) When, in its sole and absolute discretion, Declarant so determines.



From and after the happening of any one of these events, Declarant shall call a meeting as provided in the Bylaws for special meetings to advise the Association membership of the termination of Class "B" status.

Section 4. Multiple Owners. Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. As to Class "A" Members, in the event that joint or multiple Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote on behalf of a particular Residential Unit, it shall thereafter be conclusively presumed for all purposes that he was or they were acting with the authority and consent of all other Owners thereof. In the event more than the appropriate number of votes are cast for a particular Residential Unit, none of said votes shall be counted and said votes shall be deemed void.

Section 5. Duties, Powers and Authority of the Association. The Association shall have all the powers of a non-profit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation, the Bylaws, or this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, assigned, required or permitted to be done by this Declaration, any Supplemental Declaration, the Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration and improvement of the Properties and Areas of Common Responsibility. The Association may obtain and pay for the services of any person or entity to manage any of its affairs or to perform any of its duties or prerogatives, and the Association may employ personnel for such purposes. In addition, the Association may engage legal and accounting services necessary or desirable in connection with the operation of the Association and the enforcement of this Declaration, the Bylaws, or the rules and regulations of the Association. All costs and expenses incident to the employment of any manager, contractor, attorney, or accountant shall be a Common Expense or individual assessment, as determined by the Board.

Section 6. Governance. The Association shall be governed by a Board consisting of three (3), five (5), or seven (7) members. Initially, the Board shall consist of three (3) members, with the number in subsequent years to be determined by the members of the Board as provided for in the Bylaws; provided that there shall always be an odd number of directorships created. So long as there exists a Class "B" membership, Declarant shall be entitled to designate all members of the Board of Directors of the Association. Notwithstanding anything in this Declaration to the contrary, after the termination of Class "B" membership, at least one (1) out of three (3), two (2) out of five (5) or three (3) out of seven (7) members of the Board shall be Members who are Owners of Single Family Units and at least one (1) out of three (3), two (2) out of five (5) or three (3) out of seven (7) members of the Board shall be Members who are Owners of Townhome Units.

Section 7. Indemnification of the Board. The members of the Board of Directors, the officers of the Association as may be appointed by the Board, and the managing agent of the Association, if any, shall not be liable to the Members for any mistake in judgment or acts or omissions made in good faith, as directors, officers or managing agent. As is more particularly set forth in the Articles, the Members shall indemnify and hold harmless those parties against all contractual liabilities to others arising out of agreements made by those parties on behalf of the Members or the Association unless such agreements shall have been made in bad faith or with the intention of violating the provisions of this Declaration. The liability of any Member for the foregoing indemnity obligation shall be limited to the Member's proportionate share thereof as if same were an assessable Common Expense. All contracts and agreements entered into by the Board, officers of the Association, or the managing agent, shall be deemed executed by those parties, as the case may be, as agent for the Members or the Association.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 1. Title to Common Property. Declarant may retain the legal title to all or any portion or portions of the Common Property until such time as it has completed improvements thereon and until such time as, in the opinion of Declarant, the Association is able to maintain the same but in no event later than the date on which ninety-eight percent (98%) of all Lots within the Properties have been conveyed by Declarant to third party purchasers. Declarant may convey or turn over certain items of the Common Property and retain others. In consideration of the benefits accruing to the Association and to the Members under this Declaration and in consideration of the covenants and agreements of the Declarant hereunder, the Association hereby agrees to accept title to any Common Property, or to any interest in the Common Property, now or hereafter conveyed to it pursuant to the terms and conditions of this Declaration. Upon the due recording of a deed, easement, lease or other instrument or memorandum of conveyance to the Association in the Public Records of Orange County, Florida, title or such other interest in Common Property conveyed shall vest in and to the Association (as applicable) without the necessity of any further act, deed or approval of any person, including the grantor, lessor and/or Association (as applicable). Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use. Any fee simple interest in property transferred to the Association by Declarant shall be transferred by quit claim deed, subject to the terms of this Declaration, and subject to any and all easements, rights-of-way, reservations, covenants, conditions, restrictions, equitable servitudes and other encumbrances of record or reserved by Declarant in the instrument of conveyance including, but not limited to any access easements reserved by the Declarant or the right to connect any of the streets within the Properties. The instrument by which Declarant conveys any property or interest in property to the Association may impose special restrictions governing the uses of such property and special obligations on the Association with respect to the maintenance of such property.

The Association shall accept "as is" the conveyance of Common Property without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements and repairs to be completed after the conveyance, including, without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion or the future economic performance or operation of, or the materials or furniture which has been or will be used in such property or repairs, except as set forth herein.

In order to preserve and enhance the property values and amenities of the Properties, the Common Property, and all landscaping, drainage and other improvements now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards.

Section 2. Member's Easements of Enjoyment. Subject to the provisions of this Declaration, the Association, Declarant (until Declarant transfers ownership of the last Residential Unit in the Properties) and every Member of the Association shall have a non-exclusive right, license, privilege and easement of use and enjoyment in and to the Common Property and The Esplanade and such rights shall be appurtenant to and shall pass with the title to every Residential Unit in the Properties. Said rights shall include, but not be limited to, the following:

(a) Right-of-way for ingress and egress by vehicles or on foot, in, through, over, under and across the streets, roads and walks in the Common Property and The Esplanade for all lawful purposes; and

(b) Rights and easements of drainage across stormwater drainage and retention structures and areas, and to connect with, maintain and make use of utility lines, wires, pipes, conduits and cable television lines which may from time to time be in or along the streets and roads or other areas of Common Property and The Esplanade; and

(c) Rights to use and enjoy the Common Property and The Esplanade for any purpose not inconsistent with this Declaration, any applicable Supplemental Declaration, the Bylaws and rules and regulations of the Association, or governmental regulations.

Section 3. Extent of Members Easements. The rights and non-exclusive easements of use and enjoyment created hereby shall be subject to the following:

(a) The Association, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Property and all improvements thereon.

(b) The easements and rights of Declarant reserved by this Declaration.

(c) The right of the Association to borrow money (a) for the purpose of improving the Common Property or any Area of Common Responsibility, (b) for acquiring additional Common Property, (c) for constructing, repairing, maintaining or improving any facilities located within the Common Property or any Area of Common Responsibility, or (d) for providing the services authorized herein, and to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Property; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interest, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any mortgage, irrespective of when such mortgage is executed or given.

(d) The rights and easements specifically reserved in this Declaration for the benefit of the Association.

Section 4. Location of Common Property Not Controlling As To Use. Designation by Declarant of property as Common Property shall entitle all Members of the Association to the use and enjoyment of the Common Property regardless of the tract or phase in which the Common Property is located.

Section 5. Easement Reserved to Declarant Over Common Property and The Esplanade. Declarant hereby reserves to itself and its successors and assigns, such licenses, rights, privileges and easements in, through, over, upon and under all Common Property and The Esplanade, including, but not limited to, (1) the right to use the said properties for rights-of-way and easements to erect, install, maintain, inspect and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, telephone and electrical equipment, gas, cable television, drainage facilities, ditches or lines, or other utilities or services and for any other materials or services necessary or convenient for the other materials or services necessary or convenient for the completion, marketing, and use and enjoyment of the Properties, (2) the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance, (3) the right to locate thereon wells, pumping stations and irrigation systems and lines, (4) the right and easement of ingress and egress for purposes of development, construction and marketing, (5) the right and easement to install, maintain, repair and replace improvements thereon, (6) the right to install signage thereon, for purposes of advertising and marketing the Properties, and (7) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of the Properties; provided, however, that said reservation and right shall not be considered an obligation of Declarant to provide or maintain any such utility, development, improvement or service. Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage and



other utility lines which may from time to time be in or along the streets and roads, or within the Common Property, The Esplanade, easements, or green belts. Declarant and the Association and their respective agents, employees, contractors, licensees, successors, and assigns may carry on such activities as may be reasonably required, convenient, or incidental to the construction, completion, improvement, maintenance, repair, operation and sale of the whole or any portion of the Properties, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model dwellings. The right of Declarant to maintain and carry on such facilities and activities shall include specifically the right to use dwellings as model residences, and to use any dwellings as an office for the sale of Lots and/or Residential Units and for related activities. Finally, Declarant reserves the right to use the Common Property and The Esplanade in its efforts to market the Properties. The easements and rights-of-way herein reserved shall continue in existence in favor of Declarant after conveyance of Common Property to the Association and after conveyance of The Esplanade to the Esplanade Maintenance Associations until such time as Declarant has sold all lands contained within the Properties. This Section may not be amended without the written consent of Declarant.

Section 6. Beneficiaries. The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of the Association, Declarant, and the Owners, all as more specifically set forth elsewhere in this Declaration; and any Owner or Declarant may also grant the benefit of such easement, license, right or privilege to tenants and guests for the duration of their tenancies or visits, but the same are not intended nor shall they be construed as creating any rights in or for the benefit of the general public.

Section 7. Easement for Encroachments. In the event that any portion of any roadway, walkway, parking area, driveway, water lines, sewer lines, utility lines, sprinkler system, building or any other structure or improvement as originally constructed encroaches on any Lot or Common Property, it shall be deemed that the Owner of such Lot or the Association, as the case may be, has granted a perpetual easement to the Owner of the adjoining Lot or the Association, as the case may be, for the continuing maintenance and use of such encroaching improvement or structure. The foregoing shall also apply to any replacements of any such improvements or structures if same are constructed in substantial conformity with the original structure or improvement.

Section 8. Access, Ingress and Egress: Roadways. All Owners, by accepting title to property conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such property and acknowledge and agree that such access, ingress, and egress shall be limited to roads, sidewalks, walkways, trails, and waterways located within the Properties from time to time, provided that pedestrian and vehicular access to and from all Residential Units in the Properties shall be provided at all times. There is reserved unto Declarant, the Association, and their respective successors and assigns, the right, privilege and obligation to maintain guarded or electronically controlled gates controlling vehicular access to and from the Properties. The location of any gates or guardhouses, when constructed, shall be determined by



Declarant in its sole discretion, and Declarant, its successors and assigns, reserves the right, at its sole cost and expense, to relocate or modify any gates or guardhouses, as applicable, in its sole discretion.

Section 9. Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, employees, contractors, managers, and licensees, and the ARB, to enter upon any Lot in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner directly affected thereby. Whenever the Association, Declarant, the ARB, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Properties, the entering thereon and the taking of such action shall not be deemed to be trespass.

Section 10. Maintenance Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any property subject to this Declaration for the purpose of providing insect, reptile and pest control, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Properties, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions, or to provide garbage or trash removal services. Furthermore, it is hereby reserved for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of properties subject to this Declaration which are located within fifteen (15') feet from the water's edge of any lake, canal, lagoon, pond or other body of water within the Properties for the purpose of (a) mowing such area and keeping the same clear and free from unsightly growth and trash, (b) maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards, and (c) installing, constructing, repairing, replacing, and maintaining docks and bulkheads.

Section 11. Drainage Easements. There is hereby reserved for the benefit of Declarant, the Association, all Owners and their respective successors and assigns a non-exclusive easement for storm water collection, retention, detention and drainage over, upon and within the rights-of-way of all streets and roads, the Surface Water Management System and all other drainage easements shown on each plat or otherwise reserved, declared or created pursuant to this Declaration. There is further hereby reserved for Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all unimproved portions of the properties for the purposes of constructing, installing, inspecting, maintaining, repairing and replacing the Surface Water Management System and all

appurtenant improvements and facilities. Additionally, Declarant, for the benefit of itself, the Association and all Owners hereby reserves easements over any and all other portions of the Common Property and The Esplanade as may be reasonably required from time to time in order to provide storm water drainage to all or any portions of the Properties; provided, however, that any such additional drainage easements shall not unreasonably interfere with the use and enjoyment by any Owners, the Common Property affected thereby or any improvements from time to time located on any portion of the Common Property or The Esplanade.

Section 12. Wells and Effluent. Subject to applicable law and the requirements of Article X, Section 11, there is hereby reserved for the benefit of Declarant, the Association, and their respective affiliates, agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement (a) to pump water from lake, canal, lagoons, ponds, and other bodies of water located within the Properties for the purpose of irrigating any portions of the Properties, (b) to drill, install, locate, maintain, and use wells, pumping stations, water towers, siltation basins and tanks, and related water and sewer treatment facilities and systems within the Common Property and The Esplanade, or (c) to spray or locate any treated sewage effluent within the Common Property and The Esplanade, or upon any Lot or upon unimproved portions of any other property subject to this Declaration.

Section 13. Roadways Within Development. It is the present intent of Declarant that all streets in the Properties will remain private consistent with Articles XVI and XVII and in compliance with governmental requirements including but not limited to any Orange County Ordinance governing gated communities. Unless otherwise determined by Declarant, all of the Private Roads and Surface Water Management Systems in all of the Properties shall be maintained by the Association as a Common Expense.

Section 14. Changes in Boundaries: Additions to Common Areas. Declarant reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Property with any Lots owned by Declarant; provided that any such change or realignment of boundaries shall not materially decrease the acreage of the Common Property and shall be evidenced by a Supplemental Declaration which shall be filed in the Public Records of Orange County, Florida.

Section 15. Enforcement. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Article IV of the Declaration which relate to the maintenance, operation and repair of the Surface Water Management System.

Section 16. Transfer of Property Rights. Any transfer of property rights to Orange County or other governmental entity as to Private Roads or The Esplanade or Surface Water Management Systems shall be prohibited, unless one hundred percent (100%) of the Owners agree in writing to such a transfer.

ARTICLE V

TRAFFIC CONTROL

The enforcement of all traffic laws on the Private Roads and The Esplanade within the Properties, including but not limited to enforcement of speed limits established by the Association, shall be enforced by the Orange County Sheriff. The expenses associated with such enforcement shall be borne by the Association as a Common Expense.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

The Association's Board of Directors shall have the authority to obtain insurance for insurable improvements on the Common Property owned by it, and on any Area of Common Responsibility, against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, and to obtain public liability policies covering the Association and its Members for damage or injury caused by the negligence of the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members or agents, and, if obtainable, directors' and officers' liability insurance, and to obtain any and all other types of insurance coverages with respect to such risks or persons as shall be deemed necessary or appropriate by the Board. Any insurance obtained shall include such coverages, contain such deductibles provisions, and be in such limits as shall be determined by the Board. The Association shall also have the discretion to self-insure against any risk. Premiums for insurance shall be a Common Expense if for the benefit of the Association, its officers or directors, the entire membership as a group, or relate to the Common Property or the Areas of Common Responsibility. Premiums for insurance exclusively for the primary or exclusive benefit of the Townhome Units or the Single Family Units shall be allocated and assessed to the Owners of such Townhome Units or Single Family Units.

All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee for the respective benefitted parties. Exclusive authority to adjust losses under policies in force on the Common Property and obtained by the Association shall be vested in the Association's Board; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

It shall be the individual responsibility of each Owner at their own expense to provide, as they see fit, public liability, property damage, title, and other insurance with respect to their own property. In the event of damage or destruction by fire or other casualty to any property subject to this Declaration, or the improvements thereon, and in the further event that the Owner responsible for the repair and replacement of such property elects not to repair or rebuild, such Owner shall



promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such property in a clean, orderly, safe, and presentable condition. Should such Owner elect to repair or rebuild such property or other improvements thereon, such Owner shall repair or rebuild in accordance with the standard to which the improvements were originally constructed and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work or repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

ARTICLE VII

COVENANT FOR ASSESSMENTS

Section 1. General.

(a) Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed to any Residential Unit included in the Properties, whether or not it shall be so expressed in any such deed or other conveyance, and each purchaser at a judicial sale, shall be deemed to and hereby does covenant and agree to pay to the Association: (1) annual assessments, (2) special assessments, and (3) individual assessments. Said assessments shall be fixed established and assessed to the Owners as hereinafter provided. The assessments, together with interest thereon, late charges and costs of collection thereof, including court costs and reasonable attorneys' fees, shall be an equitable charge and a continuing lien upon the Residential Unit against which each such assessment is made from the date on which each assessment is due. Each such assessment, together with interest, late charges, costs and attorneys' fees, as herein provided, shall also be the personal obligation of the person who was the Owner of such Residential Unit at the time when the assessment fell due, and his grantee shall take title to such property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor. In the event of co-ownership of any Residential Unit subject to this Declaration, all of such co-Owners shall be jointly and severally liable for the entire amount due.

(b) Exempt Property. The following property now or hereafter subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

1. All existing and proposed Common Property; and
2. Tract "B" as shown on the plat of the Properties; and
3. The Esplanade; and



4. Residential Units owned by Declarant or any Class "B" Member assignee of Declarant during the time Declarant and / or such assignee subsidizes the budget deficit in accordance with Section 9 below.

Except as set forth in this subsection, no Residential Units in the Properties shall be exempt from assessments, charges or liens. No Owner may avoid the obligation for payment of assessments by virtue of non-use or abandonment of the Common Property.

Section 2. Purpose of Assessments. The assessments levied by the Association may be used for the purpose of promoting the recreation, health, safety, and welfare of the lands and Owners in the Properties, for the performance by the Association of its duties and the exercise of the powers conferred upon it, for the improvement and maintenance of properties, services and facilities which have been or will be constructed, installed or furnished upon, and which are devoted to the purpose and related to the use and enjoyment of, the Common Property, The Esplanade, the Areas of Common Responsibility, and for such other purpose as may be deemed desirable or appropriate from time to time by the Board, including but not limited to:

(a) Payment of operating expenses of the Association including but not limited to the Association's share of the operating costs of The Esplanade in accordance with Article XVII below; and

(b) Lighting, improvement and beautification of access ways and easement areas, and the acquisition, maintenance, repair and replacement of project identification signs, directional markers and traffic control devices, and the costs of controlling and regulating traffic on the access ways; and

(c) To pay all real and personal property taxes and assessments (if any) separately levied upon or assessed against the Association and the Common Property. Such taxes and assessments may be contested or compromised by the Association. It is the intent of this Declaration that, inasmuch as the interest of each Owner to use and enjoy the Common Property constitutes an interest in real property on a proportionate basis appurtenant to each benefitted Residential Unit, the value of the interest of each Owner in such property shall be included in the assessed value of each Residential Unit and any taxes levied directly against such community property should be of a nominal nature; and

(d) Management, maintenance, improvement and beautification of landscaping and stormwater drainage and retention features on Common Property and the Areas of Common Responsibility; and

(e) Repayment of deficits previously incurred by the Association, if any, in making capital improvements to or upon the Common Property or the Areas of Common Responsibility, and in furnishing services to or for the Members of the Association; and

(f) Repair and maintenance of all Private Roads situated upon the Common Property or the Areas of Common Responsibility, which have not been dedicated to any governmental unit; and

(g) Funding of appropriate reserves for future repair and replacement, including but not limited to the reserves required to be set aside under Article XVI, Section 4 and Article XVII below; and

(h) Doing any other thing necessary or desirable in the judgment of said Association to keep the Properties, the Common Property, and the Areas of Common Responsibility neat and attractive, or to preserve or enhance the value thereof, or to eliminate fire, health or safety hazards, or which, in the judgment of said Association, may be of benefit to the Owners or occupants of the Properties; and

(i) In the event that a majority of the Owners of either the Single Family Units or the Townhome Units (or both) shall so elect, providing for common landscape and lawn maintenance services and/or for maintenance, repair and replacement of the roofs and/or other exterior features of such Residential Units.

Section 3. Determination of Annual Assessments.

(a) Operating Budget. Subject to the requirements of Articles XVI and XVII below, it shall be the duty of the Board, by majority vote, at least forty-five (45) days prior to the end of the Association's fiscal year, to prepare and approve a budget covering the estimated costs of operating the Association during the coming year, including but not limited to operational items such as overhead and indirect costs, insurance, utilities, taxes, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years, and such capital improvement budget items as approved by the Board pursuant to Subsection (b) below.

(b) Capital Budget. Subject to the requirements of Articles XVI and XVII below, the Board shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement costs. The Board shall set the required annual capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing. The annual capital contribution required shall be fixed by the Board and included within the annual operating budget and assessments. A copy of the capital budget shall be distributed to each Member as an appendix to the operating budget.

(c) Recreational Amenities and Other Exclusive Benefits. In the event that there are any Residential Units exclusively benefitted by any Recreational Amenities, insurance policies, common landscape and lawn maintenance services or roof and/or exterior feature maintenance, repair and replacement, the Board shall, in preparing the Operating Budget and the Capital Budget each year, and in setting the assessments, separately prepare sub-budgets of estimated costs and anticipated revenues for any such Residential Units, such separate sub-budget being solely an accounting of the Common Expenses attributable to the costs of operation, maintenance and repair of Recreational Amenities, insurance premiums, landscape and lawn maintenance and reserves, and/or maintenance, repair and replacement of roofs and/or exterior features. The total amount of assessment derived from each such separate sub-budget is called the "Allocated Assessment." The purpose of preparing such separate Allocated Assessment is to subtract the amount thereof from the total assessment in order to apportion the net assessment derived from such subtraction among all Residential Units, such net amount being the "Net Assessment", so that the Allocated Assessment is only apportioned among the Residential Units which use and enjoy any such Recreational Amenities or benefit from the insurance coverage, landscape and lawn maintenance services or roof and/or exterior feature maintenance, repair and replacement to the exclusion of all other Residential Units in the Properties.

(d) Adoption of Budget. The Board shall cause a copy of the budget and the projected assessments to be levied for the following year, broken down according to type of Residential Unit, to be delivered to each Member at least twenty-one (21) days prior to the end of the Association's fiscal year. The budget and the assessments shall become effective unless and until disapproved at a special meeting of the Members held on or before sixty (60) days after the proposed budget and assessments are mailed to the Members, by a majority vote of the membership (without regard to class) of the Association. In the event that the membership so disapproves the proposed budget for the succeeding year, or in the event the Board shall fail to propose a budget, then and until such time as a new, acceptable budget shall have been determined, the budget in effect for the preceding year shall continue for the succeeding year.

(e) Allocation of Assessments Among Residential Units. Those portions of the operating budget reflecting exclusive benefits to the Owners of Townhome Units and/or Single Family Units shall be assessed only against those Owners of the respective type of Residential Unit such assessment being the same for each similar type of Lot or Residential Unit. The balance of the operating budget of the Association shall be assessed against all non-exempt Owners and non-exempt Residential Units in the Properties in proportions based upon an equal pro-rata assessment against each Residential Unit, which requirement of an equal pro-rata assessment may only be amended by the holders of at least 90% of the votes in the Association, notwithstanding any other provision of this Declaration to the contrary.



Section 4. Special Assessments.

(a) Special Assessments. In addition to the annual assessments established pursuant to Section 3 hereof, the Board may levy at any time a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Property, The Esplanade or any Area of Common Responsibility, including the necessary fixtures and personal property related thereto, for the purpose of covering any insufficiency of assessments to fund the actual monetary needs of the Association over and above the budgeted annual assessments, or for any other use or purpose deemed desirable or appropriate by the Board; provided, however, that any special assessment shall have the approval of two-thirds (2/3) of the votes of the Members (without regard to class) who are in attendance and voting in person or by proxy at a meeting duly called for said purpose. Special assessments to be paid only by the Owners of either Single Family Units or Townhome Units shall require only the approval of two-thirds (2/3) of those Owners (without regard to class) within the affected Residential Units who are in attendance in person or by proxy and voting at a meeting duly called for that purpose.

(b) Individual Assessment. The Association may levy an individual assessment upon any Owner to cover the costs incurred by the Association due to that Owner's failure to maintain its Residential Unit pursuant to the standards set forth in this Declaration, or to reimburse the Association or the Esplanade Maintenance Associations for any damage to any Common Property, The Esplanade or any Area of Common Responsibility caused by any Owner or its tenant or invitee, or for any other purpose permitted by this Declaration or any Supplemental Declaration. Individual assessments shall be due and payable within thirty (30) days after written notice from the Association.

Section 5. Date of Commencement of Assessments; Initial Annual Assessment; Due Dates. The assessments for each Residential Unit shall commence on the later of (i) the date upon which such Residential Unit is conveyed to a person other than Declarant or a Class "B" Member assignee of Declarant, or (ii) the date that the subdivision plat depicting such Residential Unit is recorded in the Public Records of Orange County, Florida but no later than the year in which Orange County issues its certificate of completion for the streets, Surface Water Management System and other related improvements. Assessments for each such Residential Unit shall be adjusted according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such assessments commence. The initial annual assessment for each Residential Unit in each Additional Property shall be set forth in the pertinent Supplemental Declaration.

Annual assessments shall be due, in advance, on or before commencement of the fiscal year for which imposed; provided, however, the Board shall have the discretion to collect assessments in installments over the year for which imposed at such payment intervals as it shall determine. In

the event of such deferred payments, the Board shall also be permitted to charge a uniform rate of interest upon the amounts from time to time remaining unpaid at any rate deemed appropriate by the Board; provided, however, such rate shall not exceed the statutory usury limit then existing. The Board may accelerate the unpaid balance of any assessment upon default in the payment of any installment thereon.

The annual assessment (exclusive of any Allocated Assessment apportioned among a class of Residential Unit Owners) shall be SIX HUNDRED DOLLARS (\$600.00) per annum for each Residential Unit for the first year of assessment within the Properties and shall not increase to more than NINE HUNDRED DOLLARS (\$900.00) per annum for the second year.

The amount of the annual assessment to be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bears to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any Additional Property annexed at a time other than at the beginning of an assessment period.

Section 6. Certificate of Payment. Upon request, the Association shall furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence in favor of third parties of payment of any assessment therein stated to have been paid.

Section 7. Effect of Non-Payment of Assessment. If any assessment is not paid on the date when due, then such assessment shall become delinquent and the delinquent assessment, together with interest thereon and/or late charges as shall be imposed by the Board at its discretion, and the cost of collection thereof, as herein provided, shall be secured by a continuing lien on the lands and improvements located thereon with respect to the ownership of which the assessment accrued which shall bind such lands and improvements in the hands of the then Owner, its heirs, successors, personal representatives and assigns and successors in title. Such lien shall be prior to all other liens hereinafter created except taxes or assessments levied by governmental authority, and except as to the lien of any first mortgage or any institutional mortgage, as hereinafter provided. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them, but no such assumption shall relieve any Owner personally obligated for delinquent assessments from such Owner's personal liability therefor.

If the assessment or installment thereon is not paid within thirty (30) days after the due date, same shall bear interest from the date due at the highest rate allowed by Florida law or at such lesser rate as may be determined by the Board and uniformly applied, and the Association may bring an action at law for collection against the Owner personally obligated to pay the same and/or to foreclose the lien against the lands and improvements, and there shall be added to the amount of such



assessment the aforesaid interest, late charges, if any, costs of collection and court costs, and reasonable attorneys' fees, including court costs and attorney's fees upon appeal, and the said costs of collection shall be recoverable whether or not suit be brought.

If it becomes necessary for the Association to file a claim of lien against any Residential Unit, a lien fee in an amount set by the Board may be charged by the Association. Such lien fee shall be added to the unpaid assessment and same shall be secured by the lien hereby created.

Section 8. Subordination. The lien of the assessments provided for by this Declaration shall be subordinate to the lien of any first mortgage or any mortgage or mortgages now or hereafter placed upon any Residential Unit in the Properties and held by a commercial or savings bank, trust company, credit union, industrial loan association, insurance company, pension fund, or business trust, including but not limited to a real estate investment trust, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such lender, or any private or governmental institution or agency which has insured the loan of any such lender, or any combination of any of the foregoing entities; provided, however, that a sale or transfer of any Residential Unit pursuant to a decree of foreclosure, or pursuant to any conveyance in lieu of foreclosure, shall not relieve such Residential Unit from liability for any assessments which thereafter become due, nor from the lien of any subsequent assessment. Said assessment liens, however, shall be subordinate to the lien of any such mortgage or mortgages hereafter placed upon the properties subject to assessment.

Section 9. Declarant's Properties. Anything contained herein to the contrary notwithstanding, Declarant and any Class "B" Member assignee of Declarant shall be exempt from the payment of any assessments with respect to properties owned by Declarant or such assignees and subject to this Declaration. Notwithstanding the foregoing, Declarant hereby covenants and agrees, however, that, so long as a Class "B" membership exists, Declarant shall pay to the Association, at the end of the annual accounting period, a sum of money equal to any operating deficit experienced by the Association, inclusive of any reserves for the replacement of improvements and any extraordinary losses or expenses; provided, however, Declarant shall not pay more than a sum equal to the amount of the assessment for said year, or portion thereof owed, which the Declarant would have paid if the exempted property were not exempt. Declarant may also waive the assessment obligations of one or more Owners or classes of Owners as long as Declarant covers the resulting budgetary shortfall of the Association. At any time, Declarant shall be entitled to terminate the option to pay the operating budget shortfall of the Association in accordance with this paragraph, in which event Declarant shall then pay a per-Residential Unit assessment for each Residential Unit in the Properties then owned by Declarant. Notwithstanding the foregoing, the foregoing right and obligation of Declarant to pay the Association's operating deficits shall automatically pass to and be deemed to be assumed by the aforementioned assignees of Declarant in proportion to the number of Lots owned by such assignees at such time as Declarant has assigned the voting rights of

Declarant as a Class "B" Member to such assignees and any further right or obligation of Declarant shall be automatically terminated.

Section 10. Working Capital. Each Member shall pay to the Association, at the closing of the purchase of such Member's Residential Unit, an initiation fee for working capital purposes ("Working Capital Assessment") which Working Capital Assessment shall be FIVE HUNDRED DOLLARS (\$500.00) for each Residential Unit. The Working Capital Assessment shall remain on reserve in an escrow account controlled by the Association and may be disbursed to pay for expenses of the Association which are not covered by the Assessments described in Article VII, Section 5. Further, the Working Capital Assessment shall be paid by each Member in addition to the Member's Assessments, as they become due under Article VII, Section 5. Notwithstanding the foregoing, Working Capital Assessments shall be deferred for Members who are builders, contractors, or developers who purchase Residential Units for the purpose of constructing improvements thereon for resale. Accordingly, the Working Capital Assessment shall be paid to the Association by such builder, contractor, or developer who is purchasing the Residential Unit for the purpose of constructing improvements thereon for resale upon the issuance of a building permit for such improvements. Further notwithstanding the foregoing, the Working Capital Assessment shall not be due and payable at the time of a sale or transfer of any Residential Unit pursuant to a decree of foreclosure or pursuant to any conveyance in lieu of foreclosure but shall be deferred and shall be due and payable (a) by any Member who is not a builder, contractor, or developer who acquires title for the purpose of constructing improvements thereon for resale, at the closing of the purchase of such Member's Residential Unit from the transferee pursuant to a decree of foreclosure or pursuant to any conveyance in lieu of foreclosure or (b) by any Member who is a builder, contractor, or developer who acquires title for the purpose of constructing improvements thereon for resale, upon the issuance of a building permit for such improvements.

Working Capital Assessments are and shall remain separate and distinct from annual Assessments under Article VII, Section 5, shall not be considered advance payments of annual Assessments, and shall not be returned to the Owner by the Association under any circumstance, including, without limitation, the sale of the Owner's Residential Unit.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Architectural Control. Except as otherwise expressly provided in this Declaration, all lands and improvements in the Properties are subject to architectural and environmental review. This review shall be in accordance with this Article VIII. No site work, landscaping, utilities extensions, drainage improvements, paving, parking areas, construction, fence, wall or any other physical or structural improvement, (including without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, docks, patios, courtyards,

greenhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, screened enclosures, television or radio antennae, satellite receiving dishes and equipment, swimming pools, tennis courts, playhouses, swing sets, basketball courts, standards and/or backboards or any other recreational devices or equipment) nor shall any exterior addition to or change or alteration to the exterior of any existing structure or improvement be made (including, without limitation, painting or staining of any exterior surface) or change or alteration to the exterior of any existing structures or improvements, or to any existing landscaping, shall be commenced, erected or maintained unless and until the plans or specifications showing the nature, size, workmanship, design, signs, shape, finished grade elevation, height, materials and color of the same, together with a detailed landscape plan and a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes, shall have been submitted to and approved in writing by the Architectural Review Board ("ARB") as to harmony of exterior design and materials and location in relation to surrounding structures, and as to drainage features and topography. Nothing herein contained shall be deemed to limit the right of an Owner to finish or alter the interior of that Owner's improvements as that Owner deems appropriate or desirable. Further, notwithstanding anything to the contrary contained in this Article VIII, no ARB approval shall be required for the initial construction of the Townhome Units and the ARB may give blanket approval to a builder of Single Family Units as to particular models which said builder desires to build on various Lots subject to this Declaration.

Section 2. ARB. So long as Declarant owns any lands subject to this Declaration or eligible for annexation to this Declaration, Declarant shall be entitled to appoint all members of the ARB. Thereafter, the membership of the ARB shall be determined by the Board. The ARB shall consist of no less than three (3) members, none of whom shall be required to be Owners or occupants of the Properties. Declarant may at any time assign in writing its powers of removal or appointment to any entity or person, subject to such terms and conditions as Declarant may choose to impose. A majority of the members of the ARB shall constitute a quorum for transacting business, and the concurrence of a majority of the members of the ARB shall be required for any decision of the ARB. The conclusion and opinion of the ARB shall be binding. The ARB shall determine whether plans and specifications submitted for approval are acceptable to the Association. If in its opinion, for any reason, including purely aesthetic reasons, the ARB should determine that any proposed improvement, alteration, etc. is not in the best interest of the Properties or the Owners thereof, such alteration or improvement shall not be made.

Section 3. Approval or Disapproval. Unless waived by the ARB, all plans and specifications shall be prepared by a Florida licensed or certified architect or engineer, said person to be employed by and at the expense of the Owner making the application. Approval of the plans and specifications may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by virtue of the reasonable dissatisfaction of the ARB with the location of the structure on the lot, the elevation, the color scheme, the finish, design, proportions, architecture, drainage plan, shape, height, style and



appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the property, or because of its reasonable dissatisfaction with any or all other matters or things which, in the reasonable judgment of the ARB, will render the proposed item of improvement inharmonious. The ARB shall establish fees reasonably related to the expenses of reviewing plans and related data and to compensate any consulting architects, landscape architects, engineers, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Two (2) sets of plans, specifications and plot plans shall be submitted to the ARB by the Owner prior to applying for a building permit. The Owner shall obtain a written receipt for the plans and specifications from a member of the ARB. Plans and re-submittals thereof shall be approved or disapproved within thirty (30) days after receipt by the ARB. Failure of the ARB to respond in writing to a submittal or re-submittal of plans within such period shall be deemed to be an approval of the plans as submitted or re-submitted. The ARB approval or disapproval, as required by this Declaration, shall be in writing and shall accompany one (1) set of plans to be returned to the Owner. Whenever the ARB disapproves plans and specifications, the disapproval shall be accompanied by a written outline of the reason or reasons for such disapproval. The remaining set of plans shall become property of the ARB.

Section 4. Violations. The work approved must be performed strictly in accordance with the plans, specifications and plot plans, as submitted and approved. If after such plans and specifications have been approved, the improvements are altered, erected, or maintained upon the property otherwise than as approved by the ARB, such alteration, erection and maintenance shall be deemed to have been undertaken without the approval of the ARB having been obtained as required by this Declaration. Following approval of any plans and specifications by the ARB, representatives of the ARB shall have the right during reasonable hours to enter upon and inspect any property or improvements with respect to which construction is underway within the Properties to determine whether or not the plans and specifications thereof have been approved and are being complied with. After the expiration of one (1) year from the date of completion of any improvement, addition or alteration, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to comply with all of the provisions hereof unless a notice of such noncompliance executed by any member of the ARB shall appear of record in the office of the Clerk of the Circuit Court of Orange County, Florida, or legal proceedings shall have been instituted to enforce compliance with these provisions. Upon approval of the ARB, it shall be conclusively presumed that the location and exterior configuration of any building, structure or other improvement placed or constructed in accordance with the approved plans and specifications does not violate the provisions of this Declaration. The approval of the ARB of any plans or specifications submitted for approval as herein specified shall not be deemed to be a waiver by the ARB of its rights to object to any of the features or elements embodied in such plans or specifications if or when the same features or elements are embodied in any subsequent plans or specifications submitted.

Section 5. Variances. The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation restrictions upon height,



size or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and must be signed by at least two (2) members of the ARB and shall be effective upon delivery to the Owner. If such variances are granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Residential Unit and the particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Owner's Residential Unit, including but not limited to zoning ordinances and setback requirements imposed by Orange County.

Section 6. Waiver of Liability. Neither Declarant, the ARB, any member of the ARB, the Board, any member of the Board or the Association, or any of their representatives shall be liable in damages to anyone submitting plans for approval or to any Owner or occupant of the Properties by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of any plans, or the failure to approve any plans. Every person who submits plans for approval agrees, by submission of such plan, and every Owner or occupant of any Residential Unit agrees, by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit to recover any such damages. Approval of any building plans, specifications, site or landscape plans or elevations, or any other approvals or consents pursuant hereto or otherwise is given solely to protect the aesthetics of the Properties and shall not be deemed a warranty, representation or covenant that such buildings, improvements, landscaping or other action taken pursuant thereto or in reliance thereof complies with, or is not in violation of, any applicable laws, ordinances, requirements, codes, rules or regulations. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be built in a lawful, safe, good and workmanlike manner. Declarant, the ARB, or any agent or consultant thereof, shall not be responsible in any way for any defects in any plan or specifications submitted, revised or approved in accordance with the requirements of the ARB, or for any structural or other defect in any work done according to such plans and specifications.

Section 7. Enforcement of Planning Criteria. Declarant and the Board shall have the standing and authority on behalf of the Association to enforce in courts of competent jurisdiction decisions of the ARB and they shall have all remedies available at law and in equity, including without limitation action to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. Should Declarant or the Association be required to enforce the provisions hereof by legal action, the reasonable attorney's fees and costs incurred, whether or not judicial proceedings are instituted, shall be collectible from the violating Owner. In addition, should any Owner fail to comply with the



requirements hereof after thirty (30) days written notice, Declarant and the Association shall have the right to enter upon the Owner's property, make such corrections or modifications as are necessary, or remove anything in violation of the provisions hereof, and charge the cost thereof to the Owner. Declarant and the Association, or their agents or employees, shall not be liable to the Owner or to any occupant or invitee of any Lot for any trespass or damages or injury to the property or person unless caused by negligence or intentional wrongdoing.

Section 8. Term of Approval. Approval by the ARB shall be effective for a period of one (1) year from the date the approval is given, or one (1) year from the expiration of the thirty (30) day period specified in Section 3 hereof where approval is not expressly granted or denied. If construction has not commenced within the said one (1) year period, the approval shall have expired and no construction shall thereafter commence without written renewal of such prior approval.

Section 9. Exempt Property. The provisions of this Article VIII of this Declaration shall not apply to any property owned by Declarant, a "Class B" Member assignee of Declarant, the Association, the Esplanade Maintenance Associations or Orange County. Accordingly, the design, construction, installation and placement of any buildings, landscaping, parking and other improvements on any property owned by the foregoing shall be exempt from compliance with the provisions of this Article VIII.

ARTICLE IX

EXTERIOR MAINTENANCE

Section 1. Owner's and Association Responsibilities: Default. Subject to the provisions of Article VII, Sections 2 and 3 above, it shall be the affirmative duty of each Owner at all times to keep and maintain all improvements, lawns, landscaping, and grounds, and all Surface Water Management System facilities located on and serving to drain its Residential Unit, in good and presentable condition and repair consistent with the approved plans and specifications therefor. Except to the extent performed by the Association, and subject to the provisions of the District permit described in Article 10, Section 11 hereof, each Owner shall landscape, irrigate, mow, trim and otherwise maintain in good and presentable condition the areas lying between the boundaries of that Owner's Residential Unit and the waterline of any lake, canal, lagoon or pond located adjacent to the nearest boundary of that Owner's Residential Unit. The Association shall have the right to provide exterior maintenance upon any Residential Unit and improvements thereon in the Properties in the event of default by any Owner in its duties hereby imposed; subject, however, to the following provisions. Prior to performing any maintenance on an Owner's property, the Board shall determine that same is in need of repair or maintenance and is detracting from the overall appearance of the Properties. Except in the event of an emergency, prior to commencement of any maintenance work, the Board must furnish fifteen (15) days prior written notice to the relevant Owner at the last address listed in the Association's records notifying the Owner that unless certain



specified repairs or maintenance are commenced within said fifteen (15) day period and thereafter diligently pursued to completion, the Association may procure said repairs and charge same to the benefitted Owner(s). Upon the failure of the Owner to act within said period of time and to thereafter diligently pursue repairs or maintenance, the Association shall have the right to enter in or upon any Residential Unit and the exterior of improvements located thereon, or to hire personnel or contractors to do so, to make such necessary repairs, or maintenance as is specified in the written notice. In this connection, the Association shall have the right; but without the obligation, to do such things as, but not limited to, paint, repair, replace and care for roofs, gutters, down spouts and exterior building surfaces, clean or resurface paved access ways and parking areas, trim and care for trees, shrubs, grass, walks, swales, berms and other landscaping and drainage improvements, clean and maintain swimming pools and spas, as well as to provide general cleanup, shoreline maintenance, and removal of debris which in the opinion of the Association detracts from the overall beauty and setting of the Properties. Declarant and the Association; or their agents or employees, shall not be liable to any Owner for any trespass or damages or injury to the property or person of the Owner or the occupants or invitees of the affected Residential Unit or any improvements thereon unless caused by negligence or intentional wrongdoing.

Section 2. Assessment of Cost. The cost of the repair or maintenance referred to in Section 1 shall be assessed as an individual assessment against the Owner of the Residential Unit upon which such maintenance is done. Said individual assessment shall be secured by a lien upon each such Owner's Residential Unit and shall also constitute a personal obligation of each such Owner. The individual assessment shall be collectible along with interest at the highest rate allowed by law from date of expenditure to date of payment by the Owner, and costs of collection and attorneys fees, in the same manner as delinquent annual assessments.

Section 3. Access at Reasonable Hours. For the purpose of performing the repairs or maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right to enter upon any Residential Unit and the exterior of any improvements thereon during normal business hours on any day except Sundays and holidays, except that in an emergency situation, as determined by the Board, entry may be made on any day and at any hour.

Section 4. Association Maintenance Responsibility. The Association shall maintain and keep in good and presentable condition and repair all of the Common Property and Areas of Common Responsibility, and all improvements thereon. Said maintenance obligation shall be deemed to include but not be limited to maintenance, repair and replacement, of (a) the recreational amenities, if any, (b) all Private Roads, road shoulder, walks, trails, harbors, lakes, canals, lagoons, ponds, Surface Water Management System, parking lots, landscaped areas, and other improvements situated within the Common Property and, (c) security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of its said properties and which are not maintained by a public authority, public service district, public or private utility, or other person, and



(d) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon its said properties. Pursuant to the terms of Article XVII below, the Esplanade Maintenance Associations shall maintain and keep in good and presentable condition and repair all roadways within The Esplanade. The Association shall not be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person, (ii) resulting from any rain or other surface water which may leak or flow from any portion of its properties, or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility situated upon the said Common Property, The Esplanade or Areas of Common Responsibility. It shall also be the affirmative duty of the Association to maintain as a Common Expense all stormwater drainage and retention improvements and features located in the Properties or Areas of Common Responsibility and comprising part of the Surface Water Management System. All maintenance of each Residential Unit in the Properties and all parts of any structure thereon, unless specifically identified as being the responsibility of the Association, shall be the responsibility of the Owner of such Residential Unit. The Association shall be responsible for all maintenance of Common Property, notwithstanding the fact that Declarant may not yet have transferred same to the Association and the Esplanade Maintenance Associations shall be responsible for all maintenance of all roadways within The Esplanade, notwithstanding the fact that Declarant may not yet have transferred same to the Esplanade Maintenance Associations.

Section 5. Exculpation from Liability and Responsibility. It is contemplated that title to, or easements for, the Private Roads, The Esplanade and Surface Water Management System for the Properties may hereafter be, granted and conveyed by the Declarant to the Association, the Esplanade Maintenance Associations or Orange County. Following such conveyance, the Association, the Esplanade Maintenance Associations or Orange County, as applicable, shall, subject to the terms and provisions of this Declaration, have sole and exclusive jurisdiction over and responsibility for the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, improvement, preservation and protection of the Private Roads, The Esplanade and Surface Water Management System within the Properties. Accordingly, each Owner, by the acceptance of a deed or other conveyance to his Lot shall be deemed to have agreed that neither the Declarant, nor any governmental agency other than Orange County, if applicable, shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the Private Roads, The Esplanade and the Surface Water Management System for the development thereof and each such Owner shall be deemed to have further agreed to look solely and exclusively to the Association, the Esplanade Maintenance Associations or Orange County with respect to any such liability or responsibility.

ARTICLE X

RESTRICTIVE COVENANTS

Except as may be otherwise set forth in this Declaration, in any Supplemental Declaration, in any agreement with Declarant, or by specific deed restriction imposed by Declarant, the following covenants, conditions, restrictions and reservations shall apply with respect to the Properties subject to this Declaration:

Section 1. Compliance with Law. In addition to complying with plans and specifications approved by the ARB, all improvements constructed on a Lot shall be designed and constructed in compliance with all applicable laws, ordinances, codes, regulations and requirements of governmental authorities with jurisdiction over the Properties, including, without limitation, all applicable zoning, building codes, health and fire-safety codes and all requirements related to construction in flood hazard areas.

Section 2. Use of Residential Units. Except as permitted by Section 5 of Article IV, each Residential Unit shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a Residential Unit as an office by an Owner or other occupant shall not be considered to be a violation of this covenant if such use is lawful and does not create regular customer, client or employee traffic. Lease or rental of a Residential Unit for residential purposes shall also not be considered to be a violation of this covenant so long as the lease (a) is for not less than the entire dwelling and all the improvements thereon, and (b) is otherwise in compliance with rules and regulations as may be promulgated and published from time to time by Declarant and the ARB. All such leases or rental agreements shall be required to be in writing and, upon request, the Owner shall provide the Declarant and ARB with copies of such lease or rental agreement.

Section 3. Water Wells and Septic Tanks. Subject to the terms of Section 5 of Article IV, no private water wells or septic tanks may be drilled, installed or maintained on the Properties. Shallow well pumps may be authorized by the ARB for air conditioning/heating and lawn and garden irrigation use if tests indicate water is satisfactory.

Section 4. Landscaping. Subject to the provisions of Article VII, Sections 2 and 3 above, landscaping on each Lot and Surface Water Management System facilities located on and serving only that Lot shall be continuously maintained in good, aesthetically pleasing condition by the Owner thereof. The Owner of each Lot abutting a body of water or any canal shall maintain the shoreline of said Lot free of debris and weeds consistent with applicable environmental regulations. All landscaped and grassed areas on each Lot shall be watered by means of an automatic underground sprinkler system which shall be employed so as to keep all vegetation in excellent condition.

Landscaping as approved by the ARB shall be installed prior to occupancy of the building improvements on each Lot.

Section 5. Obnoxious or Offensive Activity. No obnoxious or offensive activity shall be allowed upon the Properties, nor shall any use or practice be allowed which is a source of annoyance, embarrassment or discomfort to Owners or their tenants or invitees, or which interferes with the peaceful possession and proper use and enjoyment of the Properties, nor shall any improper, unsanitary, unsightly, offensive or unlawful use be made of or condition or activity permitted on any Residential Unit or improvements thereon or of the Common Property nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The use, enjoyment and occupancy of the Properties shall be in such a manner so as not to cause or produce any of the following effects discernible outside buildings located thereon or affect the adjoining property or any portion or portions thereof; noise or sound that is objectionable because of its volume, duration, intermittent beat, frequency or shrillness; smoke, noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; or vibration. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Properties, or except as may be permitted by the ARB.

Section 6. Rules and Regulations. Rules and regulations promulgated by the Board as to the use and enjoyment of the Properties shall be observed by the Owners and occupants thereof. Such rules and regulations may involve matters such as but not limited to air conditioning units, signs, mailboxes, temporary structures, noisy mufflers or other nuisances, garbage and trash disposal, clotheslines, parking, vehicle traffic, and the state of repair of vehicles, gutters, pets, game and play structures, swimming pools, telecommunication dishes and antennae, driveways, walkways, sight distance at intersections, garages, fences, sunscreens, blinds and shades. These matters are set out by way of illustration only and shall not be construed to limit the authority of the Board to promulgate and enforce rules and regulations. Such rules and regulations may supplement or clarify the terms of this Declaration, any Supplemental Declaration, or any provision, covenant or restriction contained in either. Copies of such rules and regulations shall be made available to each Owner prior to the time same become effective. Such rules and regulation shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation be specifically overruled, canceled, or modified by the Board or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the votes cast.

Section 7. Animals. No animals, livestock, birds, poultry or reptiles of any kind shall be raised, bred, or kept by any Owner upon any portion of the Properties except for a reasonable number of dogs, cats, birds or other usual and customary household pets kept in dwellings, subject to rules and regulations adopted by the Association, and further provided that such pet or pets are



kept or maintained solely as domestic pets and not for any commercial purpose. For purposes hereof, numbers in excess of three (3) of each such type of household pet (other than aquarium-kept tropical fish) or in excess of two (2) dogs of 50 pounds or over shall *prima facie* be considered unreasonable. No owner of any pet shall be permitted to allow its pets to place or have excretions on any portion of the Properties other than the Lot of the Owner. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No exterior structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Properties. Upon the written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 7, a particular pet is a usual and customary household pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Properties if such pet is found to be a nuisance or to be in violation of these restrictions. Each Owner shall be liable to the Association for the cost of repair of any damage to the Common Property caused by the pet of such Owner or of an occupant of such Owner's dwelling.

Section 8. Garbage and Trash. All garbage and trash containers must be stored inside each building or underground or placed in walled-in areas or landscaped areas so that they are not visible from any adjoining Lot or any street. No Lot shall be used or maintained as a dumping ground for rubbish, trash or other waste. There shall be no burning of trash or other waste material. Trash, garbage or other waste shall be kept only in closed containers and all equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No trash, rubbish, debris, garbage or other waste material or refuse shall be placed outside for pick-up prior to 7:00 p.m. on the night before such garbage is scheduled to be picked up. Declarant may place common sanitary containers for the use of Owners of Townhome Units in locations determined by Declarant in its sole discretion.

Section 9. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and same may be installed only within an approved accessory building, within a screened area, or buried underground, and shall otherwise comply with standards established from time to time by the Board.

Section 10. Vehicles. Vehicles shall not be parked in any front or side yard of any Lot except in areas designated as a driveway or parking area. Vehicles in disrepair shall not be stored on the Property. No passenger vehicle without current registration and license tag will be allowed on the Property or on any Owner's Lot. Visitors and guests only may use paved streets for temporary parking of their vehicles. All Owners must park in designated parking areas on their Lot.

No maintenance or repairs shall be performed on any vehicles upon any portion of the Property except in an emergency situation. Notwithstanding the foregoing, all repairs to disabled vehicles within the Property must be completed within 12 hours from the vehicle's immobilization or the vehicle must be removed.

No commercial vehicle, boats, personal watercraft, mobile home, motor home, house trailer or camper or other recreational vehicle or equipment, horse trailer or van, or the like, shall be permitted to be parked or to be stored at any place on any portion of the Property, except as provided in this paragraph, unless they are parked within a garage. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles used for pickup, delivery and repair and maintenance of a Lot, nor to any vehicles of the Declarant.

Any such vehicle, boat or recreational equipment parked in violation of these or other regulations contained herein or in the Rules and Regulations adopted by the Association may be towed by the Association at the sole expensive of the owner of such vehicle or recreational equipment if it remains in violation of such rules for a period of 24 consecutive hours or for 48 non-consecutive hours in any 7 day period. The Association shall not be liable to the owner of such vehicle or recreational equipment for trespass, conversion or otherwise, nor guilty of any criminal act by reason of such towing and neither its removal nor failure of the owner of such vehicle or recreational equipment to receive any notice of said violation shall be grounds for relief of any kind.

Section 11. Surface Water Management System. Notwithstanding anything else contained in this Declaration, including, without, limitation, any and all rights of direction and control afforded to the Association as may be provided herein (including any ability to delegate maintenance responsibilities to a water management district), the Association shall be responsible to the Owner of each Lot for: (i) performing any maintenance, repair or replacement activities to be conducted upon the Surface Water Management System pursuant to this Section, (ii) performing said activities in a manner so as to reasonably minimize any interference with the normal and customary use of the Lot, and (iii) promptly repairing and restoring any portion of a Lot which is unreasonably damaged as a result of such maintenance, repair or replacement activities conducted upon the Surface Water Management System. No Member or Owner shall cause or permit any interference with such access and maintenance of the Surface Water Management System by the Association. No Owner shall utilize, in any way, any of the Surface Water Management System, or incorporate any portion of the Surface Water Management System, into the Owner's development plans, without the express prior written consent of the Association. Further, where an Owner's Lot is contiguous to the Surface Water Management System, the Owner shall prepare its development plan so that the utilization of its Lot will not adversely affect the Surface Water Management System and so as to be aesthetically compatible with Surface Water Management System. Any modification to the Surface Water Management System may require a modification to the permit(s) for construction or operation of the Surface Water Management System issued by the District ("Permit"). A copy of the Permit shall be attached to the Rules and Regulations promulgated by the Board in accordance with Article X, Section 6 herein. The registered agent of the Association shall maintain a copy of the Permit and copies of all further permitting actions for the benefit of the Association.

Section 12. Temporary Structures. No structure of a temporary character, including but not limited to trailers, tents, shacks, sheds, barns and out buildings, shall be placed upon the



Properties at any time; provided, however, that this prohibition shall not apply to (i) Declarant's or builder's sales and construction activities, or (ii) shelters or temporary structures used by the contractor during construction of permanent structures (provided such temporary shelters may not, at any time, be used as residences or permitted to remain on the subject property after completion of construction), or (iii) out buildings approved in writing by the ARB. The provisions of this Section 12 shall not prohibit the erection of temporary structures for social functions as may be permitted by rules and regulations promulgated by the ARB.

Section 13. Signs. No signs, advertisements, billboards or solicitation or advertising structures of any kind, including, without limitation, real estate signage, shall be erected, modified or maintained within any windows, on the exterior of any improvements, or on the grounds of any Residential Unit, unless prior written approval of the ARB is obtained; provided, however, street numbers and name signs on Residential Units and one sign containing not more than fifteen (15) square feet of surface area per side (2 sides maximum) and used solely in connection with the marketing of Residential Units for sale shall be permitted without prior written approval. The restrictions of this Section shall not apply to Declarant, or to any signs, etc. required by legal proceedings.

Section 14. Air-Conditioning Equipment. No air conditioning equipment which is visible on the exterior of any improvement shall be permitted in the Properties unless approved by the ARB. Approval shall be based upon adequacy of screening and/or landscaping of such equipment. The ARB may prohibit window air conditioning units altogether or impose stricter standards.

Section 15. Drainage Structures. No person (other than Declarant), without the prior written approval of the ARB and the District, shall obstruct, alter or in any way modify the method and/or structures of drainage utilized or now or hereafter installed by Declarant or the Association from, on and over any Residential Unit, Common Property, The Esplanade or any Area of Common Responsibility; nor shall any structure be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation.

Section 16. Receiving and Transmitting Devices. No outside antennas, antenna poles, antenna masts, satellite television reception devices, electronic devices, antenna towers or citizen band (CB) or amateur band (HAM) antennas shall be permitted except as approved in writing by the Association; provided, however, that a satellite television reception dish 18 inches or less in diameter shall be permitted without approval by the ARB if the same is so located that it cannot be seen from any street and is shielded from view from any adjoining Lot. The ARB will approve an outside antenna, antenna pole, antenna mast, satellite television reception device, electronic device, antenna tower or citizen's band (CB) or amateur band (HAM) antenna only if it is so located that it cannot be seen from any street and is shielded from view from any adjoining Lot. A flagpole for display of the American flag or any other flag shall be permitted only if first approved in writing by the Association, as to its design, height, location and type of flag. Radio or television signals, or any



other form of electromagnetic radiation, shall not be permitted to originate from any property within the Properties; provided, however, that Declarant and the Association, and their designated licensees, shall not be prohibited from installing equipment necessary for mast antenna, security, cable television, satellite receiving facilities, mobile radio, or other similar systems within the Properties.

Section 17. Solar Panels. No solar panels shall be erected, attached to or installed on any portion of the Properties except those attached or installed in accordance with applicable law and the prior written consent of the ARB.

Section 18. Further Subdivision. No part of the Properties shall be further subdivided except as platted without the prior written consent of Declarant for so long as Declarant owns any portion of the Properties, and thereafter by the Board.

Section 19. Additional Restrictions. No Owner may impose additional covenants and restrictions on any lands within the Properties beyond those contained in this Declaration without consent of the Declarant for so long as Declarant owns any portion of the Properties or any land which is eligible for annexation to the Properties, and thereafter without consent of the Board. Declarant may impose additional covenants and restrictions on property then owned by Declarant without the consent of any other Owner or the Association. Declarant reserves the right to impose additional covenants, conditions and restrictions on Additional Properties pursuant to the Supplemental Declaration applicable to each such Additional Property.

Section 20. Completion of Construction. After commencement of construction of any improvements in the Properties, the Owner shall diligently prosecute the work thereon, to the end that the improvements shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. The Owner of the Lot on which improvements are being constructed shall at all times keep public and private streets contiguous to the Lot free from any dirt, mud, garbage, trash or other debris which might be occasioned by construction of the improvements. During construction, the Owner shall require its contractors to maintain the Lot upon which such work is being done in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, the Owner shall cause its contractors to immediately remove all equipment, tools, and construction material and debris from the Lot.

Section 21. Excavation. No clearing or excavation shall be made except in connection with the construction, maintenance or repair of an improvement; and upon completion thereof exposed openings shall be back-filled, and disturbed ground shall be leveled, graded and seeded, as provided on the approved plans for landscaping.

Section 22. Mailboxes. All residences shall have a special mailbox which will be supplied by the initial homebuilder at Owner's expense. Mailboxes shall be maintained in good state of repair



by Owner at all times. No changes are to be made to the original style, design or color of the mailbox or post.

Section 23. Clotheslines. No clotheslines shall be permitted in the Properties. No clothing, rugs, or other unsightly or inappropriate item may be hung on any railing, fence, hedge, or wall.

Section 24. Play Structures and Yard Accessories. All game and play structures, including basketball hoops and backboards, shall be located at the side or rear of the dwelling improvement, or at the rear of the dwelling improvement of the corner Lots. Tree house or platforms of a like kind or nature shall not be constructed on any part of the Lot located in front of the rear line of the dwelling improvement constructed thereon.

Section 25. Trees. Unless located under or within ten (10) feet of a permitted improvement, no Owner, other than Declarant, may cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four (4) feet above the ground level, or other significant vegetation as designated from time to time by the ARB, without obtaining the prior approval of the ARB; provided, however, that dead or diseased trees or other designated significant vegetation which are inspected and certified as dead or diseased by the ARB shall be removed promptly from any property by the Owner thereof. In the event of conflict between the provisions of this Section 25 and any laws pertaining to cutting and removal of trees and vegetation, the more restrictive of the two shall apply.

Section 26. Sidewalks. There shall be constructed upon each Lot in accordance with the applicable regulations of the governmental agency or agencies with jurisdiction, at the expense of the Owner thereof, a sidewalk in front of the Lot, and on the side if the Lot is a corner Lot, on or before the earlier of completion of construction or occupancy of the dwelling on that Lot.

Section 27. Garages. No Single Family Residential Unit shall be constructed without having a minimum of a double car garage. No garage shall be converted to living area without prior ARB approval.

Section 28. Fences. Subject to approval by the ARB, fences may be permitted as follows:

(a) With the exception of lots adjacent to conservation areas, retention ponds and lakes, fences shall have a maximum height of six (6) feet.

(b) Fences on lots adjacent to conservation areas, retention ponds and lakes shall have a maximum height of three (3) feet from the rear of the main body of the home to the rear of the lot.

(c) With the exception of corner lots, fences are permitted from the rear of the lot to a point no farther forward than the midpoint of each side of the home. On corner lots, no wall, fence or hedge shall be erected closer to the street than the rear corner of the main body of the house.

(d) All fences must be constructed of either, white PVC or black (bronze) wrought iron/aluminum. Chain link fences are not permitted.

(e) The fence height is measured from the base of the fence at ground level to the highest point of the fence. The ground shall not be raised or filled where the fence is located without ARB approval.

Section 29. Lights. The design and location of all exterior lighting fixtures shall be subject to the approval of the ARB. Neither those lighting fixtures nor any other illumination devices, including, but not limited to, holiday lighting displays and ornaments, located anywhere on the structures or grounds of any property shall be located, directed, or of such intensity to affect adversely, in the sole discretion of the ARB, the night-time environment of any adjoining property.

Section 30. Security Systems. In the event that either Declarant or the Association shall install a central security system within the Properties, or in the event Declarant grants to a third-party supplier the right to install same, with the capability of providing security services to each Residential Unit within the Properties, then no Owner shall be entitled to install or maintain any alternative security systems within a dwelling other than security systems which are appurtenant to and connected with such central security system, without obtaining the prior written consent and approval of the Declarant, or the Board.

Section 31. Conservation Easement Area.

The Association and its respective employees, agents, contractors, invitees, licensees, and designees shall at all times have a right and non-exclusive easement of access, ingress and egress over all portions of the Conservation Easement area for the purpose of performing the obligations of the Association set forth in this Section 31, including, without limitation, testing, removing any structures placed in the Conservation Easement area, bringing in equipment, and doing any and all acts necessary to maintain, monitor and restore the Conservation Easement area.

In the event that the Association shall violate the covenants or restrictions set forth in this Section 31, the Association acknowledges that it shall be lawful for the District to pursue any and all actions it may have in equity or at law against the Association for such violation.

The following restrictions shall apply to the Conservation Easement area:

(a) Prohibited Uses. All Owners of Lots within the Properties shall be prohibited from conducting the following activities within the Conservation Easement area:

1. Constructing or placing buildings, roads, signs, billboards, or other advertising, utilities or other structures on or above the ground;
2. Dumping or placing soil or other substance or material as landfill or dumping or placing trash, waste or unsightly or offensive materials;
3. Removing, trimming, or destroying trees, shrubs or other vegetation;
4. Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface;
5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation, including, but not limited to ditching, dyking and fencing;
7. Acts or uses detrimental to such retention of land or water areas; and
8. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

(b) Reserved Rights. Notwithstanding the prohibited uses set forth in Section 31(a) herein, the following rights shall be reserved in favor of the Association, with respect to the use of the Conservation Easement area:

1. Limited land clearing for the purpose of constructing docks for lake access;
2. Regular and periodic maintenance within the Conservation Easement area for the purpose of exotic and nuisance plants, species control which is conducive to the improvement and perpetuation of natural conditions;
3. Periodic, non-motorized, hand trimming of vegetation (excluding trees) upward to a height not in excess of eight feet (8') from the ground level; and



Section 32. Above-Ground Pools. No above-ground pool shall be constructed or placed on any Lot, except that inflatable pools for small children are acceptable.

Section 33. Size of Residences. No residence shall be constructed containing less than 1,600 square feet exclusive of porches, garages and breezeways. In computing the square footage of any residence containing a basement which is finished and heated, one-half (½) credit shall be given. Exceptions to these limitations may be granted by the ARB if, in the opinion of the ARB, the proposed residence would be in keeping with the overall concept of the subdivision and in compliance with Orange County requirements.

Section 34. Roofs. All roofs must be finished in roofing tile. No wood, asphalt or composition shingles of any kind shall be permitted. Roof pitches shall be at least four-twelfths (4/12) unless approval is given by the Architectural Committee for a lower pitch on a specific set of plans. Porch pitches may be three-twelfths (3/12).

Section 35. Driveways. The total area of all driveways of Single Family Units shall be paved by brick pavers. All driveways shall be able to accommodate two (2) full-size cars parked side by side in the parking area of the driveway.

ARTICLE XI

AMENDMENT

Section 1. Amendments by Owners. Except as to provisions relating to amendments set forth herein regarding certain specific items and the method of amending or altering same, any other provisions, covenants, or restrictions set forth herein may be amended in accordance with this provision. The holders of at least two-thirds (2/3) of the votes in the Association, without regard to class may change or amend any provision hereof (1) by executing a written instrument in recordable form setting forth such amendment, or (2) by causing a certified copy of a duly adopted resolution to be recorded in the Public Records of Orange County, Florida. A proposed amendment may be initiated by Declarant, the Association, or by petition signed by ten percent (10%) of the Owners. If a proposed amendment is to be adopted by vote, a written copy of the proposed amendment shall be furnished to each Owner at least thirty (30) days but not more than ninety (90) days prior to the meeting to discuss the proposed amendment. If adopted by vote, affirmative vote required for adoption shall be two thirds (2/3) of the votes of the Members (without regard to class) who shall be present in person or by proxy at a meeting duly called, and the recorded certificate shall contain a recitation that notice was given as above set forth and said recitation shall be conclusive as to all parties, and all parties of any nature whatsoever shall have full right to rely upon said recitation in such recorded certificate. The amendment shall be effective upon recordation of the executed amendment or the certified copy of the duly adopted resolution among the Public Records of Orange County, Florida.



So long as Declarant shall own any lands within the Properties, no Declarant-related amendment shall be made to this Declaration, any Supplemental Declaration, or to the Articles or Bylaws of the Association unless such amendment is first approved in writing by Declarant. Any amendment shall be deemed to be Declarant-related if it does any of the following:

- (a) directly or indirectly by its provisions or in practical application relates to Declarant in a manner different from the manner in which it relates to other Owners.
- (b) modifies the definitions provided for by Article I of this Declaration in a manner which alters Declarant's rights or status.
- (c) modifies or repeals any provision of Article II of this Declaration.
- (d) alters the character and rights of membership as provided for by Article III of this Declaration or affects or modifies in any manner whatsoever the rights of Declarant as a Member of the Association.
- (e) alters any previously recorded or written agreement with any public or quasi-public agencies, utility company, political subdivisions, public authorities, or other similar agencies or bodies, respecting zoning, streets, roads, drives, easements, or facilities.
- (f) denies the right of Declarant to convey Common Property to the Association.
- (g) denies the right of Declarant to convey The Esplanade to the Esplanade Maintenance Associations.
- (h) modifies the basis or manner of assessment as applicable to Declarant or any lands owned by Declarant.
- (i) alters or repeals any of Declarant's rights or any provision applicable to Declarant's rights as provided for by any provision of this Declaration or any Supplemental Declaration.

No amendment shall be made to this Declaration, any Supplemental Declaration, or to the Articles or Bylaws of the Association, without the written consent of all affected mortgagees with respect to any amendment which would materially and adversely affect any rights accorded to such mortgagee hereunder or any security, title or interest of any mortgagee of a Residential Unit, and such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected.



Section 2. Amendments by Declarant. During any period in which Declarant owns any land encumbered by this Declaration or which is eligible for annexation to this Declaration, Declarant may amend this Declaration, the Articles, the Bylaws or any Supplemental Declaration by an instrument in writing filed in the Public Records of Orange County, Florida, without the approval of the Association, any Owner or any mortgagee; provided, however, that, with the exception of the annexation of Additional Property to the terms of this Declaration, (i) in the event that such amendment materially and adversely alters or changes any Owner's right to the use and enjoyment of his Residential Unit or the Common Property as set forth in this Declaration or adversely affects the marketability of title to any Residential Unit, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; (ii) in the event that such amendment would materially and adversely affect any rights accorded to such mortgagee hereunder or any security, title or interest of any mortgagee of a Residential Unit, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected; and (iii) in the event that such amendment also is an amendment to the Bylaws, the amendment will be subject to the applicable non-variable provisions of Sections 617.301 - 617.312, Florida Statutes and said Bylaws. Any amendment made pursuant to this Section 2 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and mortgagees if required, and shall be effective upon being filed in the Public Records of Orange County, Florida, or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Residential Unit, agrees to be bound by such amendments as are permitted by this Section 2 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Properties (a) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any of the Properties, (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any of the Properties, or (d) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgages on any of the Properties.

Section 3. Amendments Regarding Surface Water Management System. Any amendment to the Declaration, whether by the Owners or Declarant, which alters any provision relating to the Surface Water Management System, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the District.

Section 4. Amendments Affecting Requirements for Gated Communities. Any amendment to this Declaration which alters any of the requirements for gated communities in



Section 34-290 of the Orange County Code, as may be amended from time to time, must have the prior written approval of the County.

ARTICLE XII

PARTY WALLS OR PARTY FENCES

Section 1. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction and any replacement of improvements in the Properties.

In the event that any portion of any structure, as originally constructed, including any party wall or fence, shall protrude over an adjoining Common Property or Residential Unit, such structure, party wall or fence shall not be deemed to be an encroachment upon the adjoining lands, and the affected Owner shall neither maintain any action for the removal of the party wall or fence or projection, nor for damages. In the event there is a protrusion, it shall be deemed that the affected Owner has granted a perpetual non-exclusive easement to the adjoining Owner for continuing maintenance and use of the projection, party wall or fence. The foregoing shall also apply to any replacements of any structures, party walls or fence same are construed in conformity with the original structure, party wall or fence.

Section 2. Sharing of Repair and Maintenance. Unless otherwise specified in any Supplemental Declaration, the cost of reasonable repair and maintenance of a party wall or party fence shall be shared equally by the Owners who make use of the wall or fence in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall or fence must restore it, and if other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall or party fence, or under the provisions of this Article (but only this Article), each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. The decision of the arbitrators shall not, however, be binding and conclusive upon the parties and any party to the dispute shall thereafter have the right to institute any action or proceeding, at law or equity, which he deems necessary or desirable.

ARTICLE XIII

COVENANTS COMMITTEE

Section 1. Committee. The Board may serve as or may, at its option, appoint a Covenants Committee consisting of at least three (3) and no more than seven (7) members. Acting in accordance with the provisions of this Declaration, the Bylaws, and any resolutions the Board may adopt, the Covenants Committee shall be the hearing tribunal of the Association relative to alleged infractions of this Declaration, the Bylaws, the rules and regulations of the Association and violations of the approvals of the ARB. Subject to compliance with the provisions of Section 2 hereof, upon the violation of this Declaration, the Bylaws, or any rules and regulations duly adopted hereunder, the Board shall have the power (i) to impose reasonable monetary fines (not exceeding Fifty and No/100 Dollars (\$50.00) per violation) which shall constitute an equitable charge and a continuing lien upon the Residential Unit, the Owners, occupants, or guests of which are guilty of such violation, (ii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of the Common Property, or (iii) to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his co-Owners or the family, guests, or tenants of his co-Owners. Notwithstanding anything herein, however, an Owner's access to its property over Private Roads constituting Common Property, if any, will not be terminated hereunder. Any suspension of rights hereunder may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

Section 2. Hearing Procedure. The Board shall not impose a fine, suspend voting, or infringe upon any other rights of a Member or other occupant of the Properties for violations of this Declaration, the Bylaws, the rules and regulations or the approvals of the ARB unless and until the following procedure is followed: