

DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS

2972570

OF

PALM ISLAND

12306

THIS DECLARATION is made the 29th day of November, 1990, by MOODY DEVELOPMENT OF PALM ISLAND, INC. ("Developer"). Developer hereby declares that the real property which it owns and is now known as "PALM ISLAND" (the "Property"), according to the plat recorded in Plat Book 47, beginning at Page 56, of the Public Records of Lee County, Florida, and any such additions as may be made in accordance with Article XI ("Property") will hereafter be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens contained in this Declaration, for the purpose of establishing uniform standards of development quality for Property, providing for maintenance of the Common Property, including any surface water drainage and retention system and providing for, maintaining and operating certain recreational amenities.

I. DEFINITIONS

The following words and phrases, when used in this Declaration, will have the meaning shown, except that singular nouns may include the plural, and one gender the others:

1.1 "Articles" will mean and refer to the Articles of Incorporation of the Association, as from time to time amended.

1.2 "Association" will mean and refer to PALM ISLAND HOME OWNERS ASSOCIATION, INC., a Florida corporation not-for-profit, its successors and assigns.

1.3 "Bylaws" will mean and refer to the Bylaws of the Association, as from time to time amended in accordance with the Articles.

1.4 "Common Property" will mean and refer to those tracts of land which are deeded to the Association and such improvements thereon as are specifically conveyed to the Association. The term "Common Property" shall also include any personal property acquired by the Association, as well as certain areas within the Property designed for maintenance responsibility which the Association is herein obligated to maintain, notwithstanding that it may not own the underlying fee simple title including without limitation the Stormwater Management System (as hereinafter defined). All Common Property is to be devoted to and intended for the common use and benefit of the Owners and their guests, lessees or invitees and the visiting general public (to the extent permitted by the Board of Directors or the Association) subject to any operating rules adopted by the Association and subject to any use rights made or reserved by Declarant prior to conveyance of such Common Property and subject to any and all Permits.

1.5 "Common Roads" will mean and refer to the roads depicted on any plat of the Property which provide ingress and egress to a Lot, Dwelling Unit or Common Property. The Common Roads shall be conveyed to the Association upon completion and thereafter maintained by the Association and accordingly unless specifically set forth to the contrary, references to Common Property shall mean and include the Common Roads.

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1.6 "Developer" will mean and refer to Moody Development of Palm Island, Inc., its successors and assigns, provided that such rights as Developer are specifically assigned thereto.

1.7 "Drainage Easements" will mean and refer to easements within which Stormwater Management System may be constructed, maintained and used. The initial Drainage Easements are either described in or graphically depicted on the Plat or described in this Declaration.

1.8 "Dwelling Unit" will mean and refer to any single family residence built upon a Lot including attached or detached units.

1.9 "Easements" will mean and refer to the easements included within the Property. Initially, it will include only those Easements described in or graphically depicted on the Plat, and those described in this Declaration. It will also include those hereafter dedicated for the common use and benefit of the Lot Owners as a part of the Common Property and accepted by the Association as provided in this Declaration.

1.10 "Institutional Mortgage" will mean and refer to any bona fide first mortgage lien encumbering a Lot as security for the performance of an obligation owing to an institutional mortgage holder; "Institutional Mortgagee" will mean and refer to the holder of an Institutional Mortgage, an insurer or guarantor of such mortgage, including without limitation, the Veterans Administration, the Federal Housing Administration and/or a purchaser or guarantor of such mortgages in the secondary market, including without limitation, Federal National Mortgage Association and Government National Mortgage Association and the Developer, if it is holding a first mortgage or any portion of the Property.

1.11 "Lake" will mean and refer to the waterbodies which are part of the Common Property and graphically depicted on the Plat which constitute a part of the Stormwater Management System.

1.12 "Lake Maintenance Easement" will mean and refer to the Easement which is twenty feet (20') in width, as measured landward from the control elevation of the Lake, and which borders the Lake, by use of which access to the Lake is permitted for the sole purpose of maintaining the Lake.

1.13 "Lot" will mean and refer to any parcel of real property within the Property on which a house may be constructed. However, a Lot will include, for the purposes of this Declaration, even those portions of property which are not capable of private use by the Lot Owner, such as the portions of a Lot which are subject to Easements for the Lake, Common Roads, Easements, Utility Easements and Drainage Easements. The Lots will be those graphically depicted on the Plat.

1.14 "Owner" or "Lot Owner" will mean and refer to each person or entity who is a record owner of a Lot. It will not, however, include purchasers under contract or mortgagees.

1.15 "Plat" will mean and refer to the Plat of the Property which is identified on the first page of this Declaration, together with any and all amendments which may from time to time be made and any plats of Contiguous Property which are subjected to this Declaration as provided in Article XI.

1.16 "Property" will mean and refer to all of the real property described in and subject to the Plat.

1.17 "Recreational Area" will mean and refer to that portion of the Common Property which may be improved from time to time be recreational facilities.

1.18 "Stormwater Management System" will mean and refer to a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events; incorporating methods to convey, collect, store, absorb, inhibit, treat, use or re-use water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.

1.19 "Utility Easements" will mean and refer to Easements within which sewers, storm sewers, water mains, gas mains, electric cables, telephone cables, television cables and other utilities may be constructed, maintained and used. The initial Utility Easements are either described in or graphically depicted on the Plat or described in this Declaration.

II. PROPERTY RIGHTS CREATED

2.1 Owner's Common Property Easements. Subject to the provisions of the Declaration, the rules and regulations of the Association, and any prior use rights granted or reserved in the Common Property, every Owner, their successors and assigns and their families and every guest, tenant, and invitee of every Owner, as well as all employees, agents and designees of the Developer, are hereby granted a right and easement of ingress and egress and use in and to Common Property which shall be appurtenant to and shall pass with the title to every Lot and Dwelling Unit, subject to the following provisions:

(a) The right of the Association to suspend the voting rights of an Owner for any period during which any Assessment (as hereinafter defined) against his Lot or Dwelling Unit remains unpaid; and for a period, not to exceed sixty (60) days, for any infraction of its published rules and regulations. In no event may the Association deny an Owner the use of the Common Roads so as to prohibit ingress and egress to his Lot or Dwelling Unit or to deny utility service.

(b) The right of the Board of Directors, without further consent from Owners or their Institutional Mortgagees, to dedicate, transfer or grant an easement or fee simple ownership over all or any part of the Common Property to any public agency, authority or utility company for the purpose of providing utility or cable television service to the Property and the right of the Board to acquire, extend, terminate or abandon such easement.

(c) The right of the Association to sell, convey or transfer the Common Property or any portion thereof to any third party other than those described in Subsection (b) for such purposes and subject to such conditions as may be approved by a two-thirds vote of the Board of Directors.

(d) The right of the Board of Directors to adopt and to enforce reasonable rules and regulations pertaining to the use of the Common Property and all facilities and improvements located thereon. Any rule or regulation adopted by the majority vote of the Board shall remain in full force and effect until rescinded or modified, as if originally set forth at length in this Declaration.

(e) The right of the Developer or the Association to authorize other persons to enter upon or use the Common Property for uses not inconsistent with the Owners' rights therein.

(f) The right of the Association to mortgage any or all of the Common Property for the purposes of improvement or repair of the Common Property, subject to the approval of two-thirds (2/3) of the Board of Directors.

2.2 **Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Property to the members of his family, his tenants, guests and invitees of contract purchasers who occupy the Dwelling Unit within the Property.

2.3 **Owners' Common Road Easements.** It is specifically acknowledged that the Common Roads will be conveyed by the Developer to the Association free and clear of all liens, except taxes, matters of record prior to the conveyance and except Developer's reserved easement for itself, its successors, assigns and mortgagees for ingress and egress over and across all Common Roads for all traffic, including without limitation, construction vehicles. Developer's reserved right, for itself, its successors, assigns and mortgagees, but not obligation, to install all utilities, street light, and signage, including without limitation, cable television in the road right of way. Each Owner of a Lot, Dwelling Unit, or any parcel of Property, his heirs, successors, assigns and mortgagees, domestic help, guests, invitees, delivery, repair, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of utilities serving the Property, Institutional Mortgagees and such other persons as the Developer and/or the Association shall designate, are hereby granted a perpetual nonexclusive easement for ingress and egress over the Common Roads.

The Developer and the Association shall have the unrestricted and absolute right, but not obligation, to deny ingress to any person who, in the opinion of the Developer or the Association, may create or participate in a disturbance or nuisance on any part of the Property; provided that, the Developer or the Association shall not deny an Owner or Institutional Mortgagee the right of ingress and egress or right to obtain utility services to any portion of the Property owned by such Owner or Institutional Mortgagee. The Developer and the Association shall have (a) the right to adopt reasonable rules and regulations pertaining to the use of the Common Roads; (b) the right, but no obligation, from time to time, to control and regulate all types of traffic on the Common Roads, including the installation of gatehouse and gate systems, if the Developer or Association so elects. The Developer and the Association shall have the right but no obligation to control speeding and impose speeding fines to be collected by the Association in the manner provided for Assessments and to prohibit the use of the Common Roads by traffic or vehicles (including without limitation, all terrain vehicles, "go-carts", three-wheeled vehicles), which in the opinion of Developer or the Association would or might result in damage to the Common Roads, any improvement within rights of way or create a nuisance for the Owners; (c) the right, but no obligation, to control and prohibit parking on all or any part of the Common Roads; and (d) the right, but no obligation, to remove or require the removal of any fence, wall, hedge, shrub, bush, tree or other thing, natural or artificial which is placed or located on the Property, if the location of the same will, in the opinion of the Developer or the Association, obstruct the vision of a motorist.

The Developer reserves the sole and absolute right at any time to dedicate a Common Road for public use and to redesignate, relocate, or close any part of the Common Roads without the consent or joinder of any Owner or Institutional Mortgagee, so long as no Owner or his Institutional Mortgagee is denied reasonable access from his Lot or Dwelling Unit to a public roadway by such redesignation, relocation, or closure. In such event the foregoing easement over the Common Roads shall be automatically terminated and, if necessary, the Association shall reconvey the Common Road at the request of the Developer.

2.4 **Conveyance of Common Property.** The Common Roads shall be conveyed to the Association as provided above, the Developer

may convey the Common Property to the Association at such time as all the planned improvements, if any, are complete, and in the event the Common Property is unimproved at such time as the Developer determines, but in all events no later than the time of termination of the Class B membership. Such conveyance shall be subject to easements and restrictions of record and free and clear of all liens except taxes and matters of record prior to conveyance. The Developer may reserve certain rights to itself for use of the Common Property and/or Common Roads. The Developer may terminate the designation of land as Common Property without consent or joinder of any Owner or Institutional Mortgagee. Upon conveyance of the Common Property to the Association, such Common Property shall be held for the benefit of the Association and its Members.

III. THE ASSOCIATION

The Developer has created the Association for the purposes of continuing management and maintenance of the Property and to enforce the terms and conditions of this Declaration.

3.1 Membership. Each current and future Lot Owner will, during the period of ownership, be a member of the Association. Membership in the Association will be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot Owner will be entitled to vote upon all matters coming before the membership as provided in the Articles and Bylaws.

3.2 Regulatory Documents. Each Lot Owner will abide by the terms and conditions contained in this Declaration and the Articles and Bylaws.

3.3 Power and Authority of Association. Without limiting any other provision of this Declaration, the Articles or the Bylaws, the Association has the power and responsibility to enforce the restrictions and covenants contained in this Declaration, levy and collect Assessments (as hereinafter defined) to provide funds for operating, managing and maintaining the Common Property of the Property, enforce and implement these covenants, easements, and restrictions, operate, maintain and manage the Common Property of the Property to perform such other duties as are required or authorized under this Declaration, the Articles or the Bylaws and if it so elects, operate a centralized activity program for the Owners.

The Board of Directors may, at their option, determine to operate a gatehouse. If operated, the gatehouse may be staffed by a watchman or operated by a "card" or "access code" entry system. The Board's decision with respect to the extent or operation of the gatehouse will be reviewed from time to time with respect to its economic feasibility. The gatehouse is intended for the convenience or privacy of the Owners and in no way is intended guaranty security or otherwise assure or insure the safety of the Owners. If operated, the cost of such gatehouse will be a part of the budget upon which the Assessments are based.

3.4 Lot Owners to Pay Assessments. The Owner of a Lot within the Property is obligated to pay to the Association Assessments in the manner set forth in Article IV. All Assessments will be used for the purposes set forth in this Declaration and to operate the Association in the manner herein provided. The Lot Owners are also required to pay to the Association any other Assessments which the Association deems necessary and proper and will levy pursuant to the Declaration, Articles and Bylaws.

3.5 Fidelity Bonds. Upon the termination of Class B membership, the Association will obtain and maintain blanket fidelity bonds for each person handling or responsible for

Association funds, whether or not the person receives compensation. The Association will be the payee under such bonds and the premiums will be paid as a part of the Common Expenses of the Association. In the event that a management agent handles the funds of the Association, the agent will also be bonded, and, the Association will be named as an additional payee in the management agent's bond. The fidelity bond should be in the amount of the maximum amount of funds that will be in the custody or control of the person or management agent at any time the bond is in force, but, not less than the amount of three (3) months Assessments for all Lots, plus the amount of reserves. The bonds must provide for ten (10) days advanced written notice of cancellation to the Association and each person, firm or corporation servicing a FNMA owned mortgage on a Lot in the Property. These requirements are contained in this Declaration for the purpose of compliance with the requirements of certain Institutional Mortgagees. Should such coverage become unobtainable or such Mortgagees modify their requirements, the Association may, in its discretion, make such modifications to the provisions of this paragraph as the Board of Directors of the Association (the "Directors"), deems prudent and reasonable.

IV. ASSESSMENT

The Association will make, levy and collect Assessments made against Lots as provided in the Articles and Bylaws, and, as follows:

4.1 Creation of the Lien and Personal Obligation for Assessments. All Assessments from time to time levied against a Lot by the Association, together with interest on the principal amount of the Assessment from the date due up to the maximum rate allowable by law and costs of collection (including reasonable attorney's fees) will be a charge on and continuing lien upon that Lot, and, will also be the person obligation of the Owner. By accepting ownership of an interest in a Lot, the Owner will be liable to the Association for all Assessments becoming a lien against that Lot at any time prior to or during the time that the Owner owns an interest in the Lot, together with all interest accruing on the principal amount of those Assessments and the costs of collection. The co-Owners of a Lot will be jointly and severally liable for Assessments, interests and costs. No Owner may waive or otherwise escape liability for the Assessments by not using or abandoning Common Property. No part of the Property which is not included in a Lot will be subject to Assessment.

4.2 Purpose of Assessments. Annual and Special Assessments levied by the Association will be used for the purpose of operating and maintaining the Association, operating and maintaining the Common Property and all improvements thereon, including without limitation, any clubhouse, pools, spas, docks, walks, boat basin, parks, tennis courts, and other recreational facilities, water or sewer system which may be constructed on the Common Property of the Property and designated for the joint use and benefit of the Owners. The costs shall include, without limitation, the cost of taxes, insurance, labor, equipment, materials, management, maintenance and supervision, for the purpose of improving and maintaining the entrance sign, interior signage (excluding permitted sales or promotional signs), landscaping and irrigation on the Common Property, for improving and maintaining the Stormwater Management System, including the maintenance of the Lakes, accounting and legal fees, and for such other permissible activities undertaken by the Association. The Directors will establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Property. Additions to this reserve fund will constitute a portion of the annual budget and will be maintained out of the Assessments. The Directors may also establish reserve funds from the Assessments to be held in

reserve for (a) major rehabilitation or major repairs; (b) emergency and other repairs required as a result of storm, fire, mutual disaster or other casualty loss; and, (c) initial cost of any new service to be performed by the Association.

The Association will operate a landscape maintenance program wherein Owners will have the grass, trees and shrubbery on the Lot maintained, fertilized, pruned, mulched and irrigated by the Developer and/or company which provides such service for the Common Property for the Association. The cost of such service will vary depending on the size of the Lot and the type of landscaping installed thereupon. The cost will be established by the Board and as established from time to time will constitute the Landscape Maintenance Assessments. All references to "Assessment" herein shall mean and refer to this Landscape Maintenance Assessment unless set forth to the contrary.

The Association may determine to operate a gatehouse to limit access to the Property. To the extent that such a gatehouse is operated, the cost thereof shall be a part of the Annual Assessment.

In addition, the Association may determine, from time to time that it is necessary and convenient to dredge the canal located on the boundary of the Property. In such event, the Association may include the cost of such dredging in the Annual Assessment for that year or may assess a General Special Assessment for the cost thereof.

4.3 Annual Assessment. The Directors will annually fix an Annual Assessment based upon the projected financial needs of the Association, as determined by the Directors. At the annual meeting of the Directors, the Directors will adopt a budget, determine the rate of Annual Assessment and Landscape Maintenance Assessment and as soon as is practicable after the annual meeting of the Association, bills for the Assessments will be mailed to Lot Owners at their last known address. On the bill, in capital letters, the following should be stated:

"THIS ASSESSMENT MUST BE PAID TO PALM ISLAND HOME OWNERS ASSOCIATION, INC., WITHIN 15 DAYS FROM THE DUE DATE, FAILING WHICH A CLAIM OF LIEN FOR THE AMOUNT OF THIS ASSESSMENT WILL BE RECORDED IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. IN ADDITION, A LATE PAYMENT CHARGE IN THE AMOUNT OF \$10.00 MAY BE ASSESSED. IF THIS ASSESSMENT IS NOT PAID WITHIN (30) DAYS OF THE DUE DATE OF THIS BILLING, PROCEEDINGS MAY BE COMMENCED TO FORECLOSE THE CLAIM OF LIEN FOR THE ASSESSMENT IN THE MANNER PROVIDED BY THE BYLAWS OF THE PALM ISLAND HOME OWNERS ASSOCIATION, INC. INTEREST SHALL ACCRUE FROM THE DUE DATE AT A RATE WHICH IS NO GREATER THAN THE HIGHEST RATE PERMITTED BY LAW. IF IT IS NECESSARY TO FILE SUCH A CLAIM OF LIEN, YOU WILL BE RESPONSIBLE FOR ALL COSTS THEREOF, INCLUDING ATTORNEYS' FEES AND RECORDING COSTS."

The Annual Assessment shall be payable in advance on the first day of each month unless the payment schedule is modified by the Board of Directors to a annual, semi-annual or quarterly payment system.

4.4 Uniform Rate and Maximum Amount of Assessment. All regular Annual Assessments except Landscape Maintenance Assessment will be at a uniform rate for each Lot. The maximum amount of the Annual Assessments for any calendar years during which the Developer controls the Association by electing a majority of the members of the Directors will not exceed fifteen percent (15%) per annum. Landscape Maintenance Assessment will vary based upon the charges made by the service providers. Upon termination of the Developer's control of the Association, the

assessment may be increased by an amount as determined by the Board of Directors.

4.5 Special Assessments. In addition to regular Annual Assessments, the Association may levy Special Assessments which are two types: (a) those assessed against all Owners for purposes which benefit all the members of the Association (referred to herein as "General Special Assessments") and (b) those assessed against specific Owners for failing to comply with this Declaration (referred to herein as "Specific Special Assessments"). General Special Assessments may be levied for a calendar year, applicable to that calendar year only, for any purpose approved by the Directors. However, no such General Special Assessments may be levied until after the Developer has lost or relinquished the right to elect the Directors as provided in the Articles, and, no General Special Assessment may be levied during a calendar year if it exceeds fifty percent (50%) of the regular annual Assessment for that calendar year unless approved by a majority vote of Lot Owners.

Specific Special Assessments may be assessed against an Owner after the Board or its agents give the Owner written notice of the violation of this Declaration, the Articles, Bylaws or the rules and regulations and a period to cure. If the Owner fails to cure such violation within the cure period or violates the terms of the Declaration, Articles, Bylaws or rules and regulations again, the Board may assess a Specific Special Assessment against the Lot in an amount equal to the cost to cure such violation and if it is not paid within thirty (30) days then in such event the Board may file a claim of lien and foreclose such lien in the same manner as elsewhere provided herein.

4.6 Date of Commencement and Assessments Due Date. The regular Annual Assessment and Landscape Maintenance Assessment levied against a Lot for a calendar year will become a lien against that Lot as of the 1st day of January of that calendar year even, if the amount is not known. A General Special Assessment against all Owners will become a lien against the Lots as of the date (which will be the first day of a month) fixed by the Directors. The due date(s) of such General Special Assessments will be fixed in the resolution authorizing the Assessment, and may be paid in advance in lump-sum or in monthly, quarterly, semi-annual, or annual installments, as determined by the Directors.

4.7 Payment Roster. The Association will prepare and maintain a roster of the Lots and the outstanding Assessments against each Lot. The roster will be kept in the registered office of the Association or in the office of the management agent, if any, and will be open to inspection by any Owner or the representative of any Owner. Written notice of an Assessment will be sent to every Owner as soon as is practicable after it is established. The Association will, upon reasonable advance request, furnish to any Owner a written estoppel certificate signed by an officer of the Association or its management agent setting forth the amount, if any, of the unpaid Assessments, interest and costs constituting a lien against a Lot by virtue of this Declaration.

4.8 Effect of Non-Payment of Assessment: The Lien, the Personal Obligation, Remedies of Association. If an Assessment against a Lot is not paid within fifteen (15) days of the due date, the Association shall file a claim of lien in the Public Records of Lee County, Florida. The claim of lien is not necessary to perfect the lien as an encumbrance against a Lot. A claim of lien will state the description of the Lot encumbered, the name of the Owner, the amount remaining unpaid and the date when due. A claim of lien will include only Assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon. Claims of lien will be signed

by an officer or agent of the Association. Upon full payment of all sums owing and evidenced by a claim of lien, it will be satisfied of record. If an Assessment against a Lot is not paid within thirty (30) days of the due date, it will accrue interest from the due date up to the maximum rate allowable by law and the Association may at any time thereafter bring an action to foreclose the lien against the Lot in like manner as a foreclosure of a mortgage on real property, and/or a suit on the personal obligation of the Owner(s). There will be added to the amount of such Assessment in either event the cost of collection including a reasonable attorney's fee and court costs.

4.9 Subordination to Institutional Mortgages. A lien (for Assessments, interest, costs and other sums owing the Association with respect to a Lot, (whether evidenced by a claim of lien or otherwise) which first becomes due (1) after the execution and delivery of the Institutional Mortgage, and, (2) before the sale or transfer of the Lot pursuant to a decree of foreclosure of the Institutional Mortgage, will be subordinate to the lien of the Institutional Mortgage. No other sale or transfer will relieve any Lot from liability for any Assessment, and even a foreclosure sale of an Institutional Mortgage will not relieve a Lot of the lien for Assessments first becoming due before the execution and delivery of the Institutional Mortgage or subsequent to the judicial sale. The written opinion of either the Developer or the Association that the lien is subordinate to an Institutional Mortgage will be dispositive of any questions of subordination.

4.10 Exempt Property. The Directors will have the right to exempt from the Assessments, charge or lien described in this Declaration any parts of a Lot used (and as long as it is used) for any of the following purposes: (1) as an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (2) as Common Property; and, (3) as Property exempted from ad valorem taxation by the laws of the State of Florida, to the extent agreed to by the Association.

4.11 Special District. The Developer and the Association reserve the right to create a Special District as may be provided under Florida Statutes for the purpose of financing the installation, operation and maintenance of street lights within the Property including the implementation of taxing authority as may from time to time be permitted under Florida Statutes.

4.12 Developer Assessment. For as long as Developer (or any of Developer's affiliates) is the Owner of any Lot, Developer shall have the option, in its sole discretion, to (i) pay Assessments on the Lots owned by it, (ii) pay Assessments only on certain designated Lots (e.g. those under construction or those improved with a Dwelling Unit or those for which a certificate of occupancy has been issued) or (iii) not pay any Assessments but in lieu thereof to fund any deficit in the Association's budget not produced by Assessments received from Owners other than Developer. Such deficit shall be the difference between (i) actual operating expenses of the Association (exclusive of capital improvement costs, reserves and management fees) and (ii) the sum of all funds receivable by the Association (including, without limitation, Assessments, interest, late charges, fines, incidental income) and any surplus carried forward from the preceding year(s). Developer may from time to time change the option under which the Developer makes its payments to the Association by giving the Association written notice of its election. When all Lots within the Subdivision are sold and conveyed to purchasers, neither the Developer, nor its affiliates, shall have further liability of any kind to the Association for the payment of Assessments, deficits or contributions.

V. ARCHITECTURAL CONTROLS

5.1 **Submission of Plans.** In order to insure that the Dwelling Units and all modifications and additions thereto will preserve a high standard of quality, no building or other structure will be erected, modified, expanded or placed on any Lot until it is submitted for review by the Architectural Review Board ("Review Board"). The Review Board will review plans for the construction of Dwelling Units (except those Dwelling Units to be constructed by the Developer) or for the additions or modifications of Dwelling Units which affect or alter the exterior of the Dwelling Units, also for pools, fences, play structures, tree removal, landscaping plans and exterior color selections (all of which including all buildings and other structures are jointly referred to herein as "Proposed Improvements"). Two complete sets of drawings or blueprints showing the Proposed Improvements and their location shall be submitted to the Review Board for approval as to meeting the requirements of this Declaration, as well as evidencing quality materials and design. An Owner who wants to construct Proposed Improvements reflecting material departure from typical architectural designs in the Property should present plans to the Review Board in "draft" form for a preliminary statement of the position of the Review Board. Any review by the Review Board is for aesthetic purposes only; compliance with any governmental codes, rules and regulations is the sole responsibility of the Owner.

5.2 **Review and Approval.** Upon submission of two sets of plans for the Proposed Improvement, the Review Board will give prompt approval or disapproval of all Proposed Improvements submitted for its review. If approved, the Review Board will return one signed set of plans to the Owner and retain one set for its files. If disapproved, the Review Board will state the basis of its disapproval. This approval will not be withheld unreasonably and all decisions will be made so as to comply with the general scheme of development, however, refusal of approval of plans and specifications and location may be based on any grounds, including purely aesthetic grounds, at the sole discretion of the Review Board.

The Review Board may from time to time establish certain "pre-approved designs" or "criteria" for Proposed Improvements including, without limitation, screen enclosures, pool enclosures, fences, walls, seawalls, canal riprap, or docks. Once a pre-approved design or set of criteria is established by the Review Board then any Owner desiring to install or construct such Proposed Improvement shall construct it in accordance with the plans and specifications for the pre-approved design or set of criteria. Provided however, prior to constructing a Proposed Improvement of a pre-approved design, a sketch plan showing location shall be submitted to the Review Board for approval together with any drawings necessary to show compliance with preapproved criteria.

5.3 **Inaction.** If the Review Board does not issue a written decision approving or disapproving the Proposed Improvements submitted within fifteen (15) days of receipt of the complete plans for the Proposed Improvement together with all additional information required by the Review Board, then such Proposed Improvements will be deemed to have been approved.

5.4 **Inspection.** The Review Board has the right to inspect a Lot and/or Proposed Improvement to assure compliance with the approval. Following the approval of any Proposed Improvement, the Review Board has the right during reasonable hours to enter upon and inspect any Proposed Improvement with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being

complied with. If the Review Board determines that the Proposed Improvement has not been approved or is not being constructed in compliance with the approved plans and specification, the Review Board is entitled to enjoin further construction and to require the removal or correction of any work in place which is not in compliance with the approved plans and specifications.

5.5 Composition of the Review Board. The architectural review and control functions set forth in this Declaration shall be administered and performed by the Review Board, which shall consist of at least three (3) members who need not be members of the Association. The Developer shall have the right to appoint all of the members of the Review Board, of such lesser number as it may, in its sole discretion, appoint for so long as it owns any portion of the Property subject to this Declaration or as may be added from time to time. Thereafter, members of the Review Board as to whom Developer may relinquish the right to appoint, shall be appointed by, and shall serve at the pleasure of the Board of Directors of the Association. A majority of the Review Board shall constitute a quorum to transact business at any meeting of the Review Board, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the Review Board. Any vacancy occurring on the Review Board because of death, resignation or other termination of service of any member thereof shall be filled by the Board of Directors; except that Developer, to the exclusion of the Board, shall fill any vacancy created by the death, resignation, removal or other termination of services of any member of the Review Board appointed by Developer.

5.6 Liability. Neither the Review Board, the Association or Developer or any of their representatives shall be liable in damages to anyone submitting plans for approval to any Owner or occupant of the Property by reason or 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. Any Owner making or causing to be made any Proposed Improvement or additions on any portion of the Property or Proposed Improvement agrees and shall be deemed to have agreed, for such owner, and his heirs, personal representatives, successors and assigns to hold the Review Board, Association, Developer and all other Owners harmless from any liability, damage to the Property, the Lot or the Dwelling Unit and from expenses or damages arising from the construction and installation of any Proposed Improvement and such Owner shall be solely responsible for the maintenance, repair and insurance of any alteration, modification or change and for assuring that the Proposed Improvement meets with all applicable governmental approvals, rules and regulations.

No approval as provided herein shall be deemed to represent or imply that the Proposed Improvement, if constructed in accordance with the approved plans and specifications, will result in properly designed and constructed improvements or will meet all applicable building codes, applicable governmental permits or other governmental requirements.

VI. RESTRICTIONS

6.1 Use. All Lots will be used exclusively for single family residential purposes. No trade, business or commercial activities may be carried on upon any of the Property, with the exception of a home office generating no more than one trip per day by any patron, client or other person. This provision, however, will not prevent an Owner from renting his property for residential use, nor will Developer and/or his agents, assigns or designated builders be prevented from carrying on activities relating to the development and sale of the Lots and homes located within the Property or any future addition to the Property. The construction and operation of model homes or

sales centers including adjacent parking are exempt from the definition of trade, business or commercial activities. The Developer reserve the right, however, to subdivide a Lot and use it for road purposes or parking, in its sole discretion.

6.2 Minimum Area. All homes built on Lots will contain a minimum air conditioned living area, exclusive of open porches and garages, of one thousand (1,000) square feet and each will have a two-car enclosed garage of not less than four hundred (400) square feet. No garage may be enclosed and used for living area.

6.3 Buildings. No prefabricated, module, mobile home, tent, temporary structure or shed will be permitted on any Lot, except by the Developer in connection with sales or construction of the Development. No out-buildings of any kind will be permitted.

6.4 Diligent Completion of Construction. Once the construction of any Proposed Improvement is commenced, substantial work toward the completion of the construction will be pursued diligently and the Proposed Improvement completed within a reasonable period of time after commencement. If, for any reason, no substantial progress is made toward the completion of a Proposed Improvement commenced on a Lot, for a period of ninety (90) days, the Association may enter upon the Lot and take such action as the Association may deem appropriate to correct the undesirable appearance of the partially completed Proposed Improvement, at the cost and expense of the Owner of the Lot, which cost and expense shall be assessed against such Owner as a Specific Special Assessment.

6.5 Building Set-Back Requirements. All Dwelling Units and other Proposed Improvements on Lots will comply with the following setback requirements: garages will be a minimum of fifteen (15') feet from the front Lot line; the front of Dwelling Units will be a minimum of twenty (20') feet from the front Lot line, rear and side setback of Dwelling Units will be a minimum of six inches (6") however, in all cases a six foot (6') separation shall be maintained between structures. A building or structure to be constructed on a corner Lot will be set back a minimum of twenty (20') feet from Lot lines abutting any road. The Developer reserves the sole right to establish the location of the Dwelling Unit on the lot as well as to determine the zero Lot lines.

6.6 Lawns, Landscaping and Maintenance. All areas of the Lot not covered by Dwelling Unit, pavement, patio material or riprap must be totally sodded and/or mulched and the sod and/or mulch will extend to the pavement line. All mulching materials will be those commonly used by landscapers.

(a) **Review Board Approval.** Before major modifications or alterations of landscaping as originally installed, the Owner will submit landscaping plans to the Review Board for approval.

(b) **Indigenous and Installed Plants.** All existing trees, and other desirable natural vegetation, wherever practicable, will be retained on each Lot. Owners must receive the prior approval of the Review Board to remove any trees or plants on their Lots.

(c) **Maintenance.** All landscaping and yard areas will be mowed, trimmed and cared for regularly and otherwise maintained at all times in an aesthetically pleasing manner; failure to do so may result in a Specific Special Assessment.

6.7 Approved Contractors. Only the Developer and those general contractors approved by the Developer may construct homes within the Property.

6.8 Underground Utilities. All utilities provided to Lots will be located underground. No overhead utility lines or overhead cable will be permitted in the Property.

6.9 Parking and Vehicles.

(a) **Overnight Parking.** No tractors, trailers, off-road vehicles, disabled automobiles or automobiles under repair, semi-trailers, trucks other than pickup trucks, or other vehicles other than automobiles may be parked overnight on the Property unless parked within a garage. For these purposes, the term "automobiles" will include passenger cars and passenger vans. The term will also include pickup trucks which do not have signs or other features commonly associated with commercial or business use.

(b) **Recreational Vehicles.** Campers, motor homes, trailers, boats and other recreational vehicles will be stored in garages only. Any Owner having visitors in a camper, motor home or recreational vehicle which is parked on the Owner's Lot will be limited to having such visitors for a maximum of one consecutive week at a time with a minimum of one month between each visit.

(c) **Construction Vehicles - Exception.** Construction vehicles and equipment may be parked on a building site during construction.

(d) **Vehicles Restricted to Pavement.** No one will be permitted to operate unauthorized or unlicensed vehicle of any kind on the Common Roads within the Property, no one will be permitted to operate any vehicle of any kind, other than on Common Roads, except only vehicles and equipment used to maintain utilities, the Lake, or Stormwater Management System, or used to construct or maintain improvements within the Property.

6.10 Pets.

(a) **General Limitation.** No animals, livestock, or poultry will be raised, bred or kept on any Lot except (i) dogs, (ii) cats and (iii) household pets which are kept in the Dwelling Unit or fenced yard at all times; provided that any such permitted animal does not constitute a nuisance. No commercial kennels or breeding operations will be permitted for any animals.

(b) **Leashes Required.** All pets outside of the immediate home and yard will be restrained on a leash.

(c) **Pet Litter, etc.** Pet owners will immediately remove and dispose of any pet litter or waste deposited on any property, including their own Lot.

6.11 Driveways and Parking Areas. All driveways will be constructed of concrete, with or without a decorative finish. This restriction, however, will not apply to the model home parking area.

6.12 Antennas Prohibited. No antennas or exterior reception apparatus including satellite dishes, will be permitted by individual Lot Owners.

6.13 Trash Containers. Garbage and trash containers will be kept in a clean and sanitary condition in the garage so as not to be unsightly from adjoining property or Common Roads. Containers

set out for pick up will be returned to garage by nightfall of pick up day.

6.14 Air Conditioning and Other Equipment. Air conditioning equipment, pool and water treatment equipment will be visually screened so as not to be unsightly from adjoining property and roadways. Window and wall units are not permitted.

6.15 Fences.

(a) **Sight Line at Corners.** No fence, wall, hedge or shrub planting that obstructs sight lines at elevations between two feet (2') and six feet (6') above the Common Roads will be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point fifteen feet (15') from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property line extended. No tree will be permitted to remain with such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(b) **Review Board Approval.** No fence or wall will be erected, placed or altered on any Lot without prior approval of the Review Board and all fences will be of whatever design, material, color and location as specified and designed by Developer. Chain link or hurricane fences will not be allowed on individual lots.

(c) **County Requirements.** All fences must receive a Lee County building permit prior to construction and must meet all Lee County requirements.

6.16 Easement Encroachment for Construction. All Lots are hereby subjected to an easement for encroachment of not more than twenty-four inches (24") by eaves or the similar projections of the Dwelling Units on the adjacent Lot. Each Lot shall also be subject to an easement created by construction settling and overhangs. A valid easement for such encroachments and for the maintenance of same shall and does exist for so long as they stand.

The Owner of the burdened Lot hereby grants to the Owner of the benefitted Lot a perpetual non-exclusive easement on the burdened Lot, together with appurtenant air rights, drainage rights and right of access for construction and maintenance as may be necessary and convenient to build, repair, construct, restore and maintain any portion of the Dwelling Unit on the benefitted Lot. Provided, however, the Owner of the benefitted Lot shall exercise such rights so as to minimize any disturbance to the burdened Lot and in the event that the exercise of any rights contained herein result in any damage to the burdened Lot or the improvement or landscaping thereon, the Owner exercising his rights shall repair or restore the damage at this cost and expense.

In the event that a Dwelling Unit is partially or totally destroyed and then rebuilt, the Owners of the burdened Lot agree that the originally constructed encroachments of parts of the Dwelling Unit shall be permitted and a valid easement for any such encroachment and the maintenance thereof shall exist.

6.17 Easements. The use and occupancy of each Lot will be subject to the Easements graphically depicted on the Plat and those described in this Declaration, including those described in this paragraph.

(a) **Utility Easements.** A Utility Easement is hereby established over, across and under the portion of each Lot which

is within ten feet (10') of each front lot line for the purpose of installing any electric lines, cable television, sewer and water lines and all other utilities.

(b) **Drainage, Irrigation and Landscape Maintenance Easement.** A Drainage, Irrigation and Landscape Maintenance Easement is hereby established over, across and under any portion of the Lot which is not encumbered by the Dwelling Unit. The Developer and Association may locate and install drainage and an irrigation system and maintain and operate such system as they determine. The Developer and Association may, but is not obligated to, utilize the easement to fertilize, prune, weed, mulch, mow, replace and otherwise maintain the existing landscaping. Patios, fences, pools and landscaping may be installed on the easement, providing such improvements do not interfere with drainage or irrigation systems. Further, Lot Owners shall assume all responsibility for the replacement or restoration of any such improvements which are removed or damaged in connection with the installation, maintenance and operation of the irrigation or drainage system.

(c) **Consolidation of Lots.** If two or more Lots or portions of Lots having a common Lot line are consolidated into a single building site, then the Utility Easements and Drainage Easements which would otherwise exist along either side of those common side Lot lines by virtue of this paragraph (as opposed to being graphically depicted on the Plat) will be vacated by the Developer, for so long as it is a Class B member of the Association and thereafter by the Association, subject to the following matters and things:

(i) The Owner of the Lots being consolidated will request in writing that the Association vacate the Easements;

(ii) The Association determines that vacating the Easements will not have a material adverse effect upon the use of any other Lots included in the Property;

(iii) If Easements vacated as a consequence of the consolidation of Lots are being used, the Owners consolidating the Lots will, at the Owner's expense, relocate to other reasonably acceptable Easement areas, water, sewer, storm water management system, transmission cables and other utilities located within the Easements being vacated;

(iv) The consolidation of Lots will not mitigate the obligation of the Lot Owner to pay for (or reimburse the Developer for) a separate utility connection for each Lot included in the consolidation, as though there had been no consolidation;

(v) The consolidation of Lots will not mitigate the obligation of the Lot Owner to pay Assessments for each Lot or part of a Lot included in the consolidation as though there had been no consolidation.

(d) **Obstructions.** Within these Easements, no structure, fence, planting or other material will be placed or permitted to remain that violates the terms and conditions of the agreement pertaining to the Easement as recorded in official records or as specified by the individual utility company.

(e) **Maintenance of Easement Area by Owner.** The Easement areas of each Lot and all improvements in it will be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible, or for which the Association is responsible.

6.18 Signs. No signs of any kind will be displayed to the public view on any Lot except the Owner's name and street number; one sign, not larger than two (2) square feet, advertising the property for sale or rent or any sign used by the Developer to advertise the Property during the construction and sales period.

6.19 Oil and Mining Operation. No oil drilling, mining operations, oil refining, quarrying or oil development operations, or tanks, tunnels, mineral excavations or shafts shall be permitted upon, in or under any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

6.20 Hazardous Materials. No hazardous materials or toxic materials or pollutants shall be discharged, maintained, stored, released or disposed of on the Property except in strict compliance with applicable rules and regulations. Flammable, combustible or explosive fluids, materials or substances for ordinary household use may be stored or used on the Property subject to strict safety codes and shall be stored in containers specifically designed for that purpose.

6.21 Utility Provisions. Developer reserves the right from time to time to designate a utility company ("Utility Company") as the sole and exclusive entity to provide all water and/or sewage facilities and service to the Property. Developer reserves the right, but not the obligation, to establish a Utility Company and to operate it or convey it to the Association for the purpose of operation. No well of any kind shall be dug or drilled on any one of the Lots to provide water for use within the Dwelling Units to be built, and no potable water shall be used within said structures except potable water which is obtained from Utility Company or obtained in individual containers. Provided, however, nothing herein shall be construed as preventing the digging of a well to be used exclusively for use in the yard and garden of any Lot or of any portion of the Property or to be used exclusively for air conditioning, pool, or spa. All sewage from any building must be disposed of through the Utility Company's sewage lines and through the sewage lines and disposal plan owned or controlled by Utility Company. No water from air conditioning systems, ice machines, swimming pools, or any other form of condensate water or water from drains located in or on docks, shall be disposed of through the lines of the sewer system. Utility Company has a non-exclusive, perpetual and unobstructed easement and right in and to, over and under the Easements as shown in the plat of the Property or as subsequently granted to the Utility Company for the purpose of ingress, egress and installation and/or repair of water and sewage facilities. Utility Company is hereby given the right and power to enforce the provisions of this paragraph against any person who violates the provisions hereof.

6.22 Property of Lots. No Lot shall be further subdivided into smaller lots by any Owner, except Developer, provided that this provision shall not be construed to prohibit corrective deeds of similar corrective instruments. Developer or its designee shall, however, have the right to subdivide Lots or cause such Lots to be subdivided for the purposes of construction of a road, or for such other purposes as Developer or its designee deems reasonable or necessary.

6.23 Energy Conservation. Solar energy and other energy conservation devices, including clothes lines, are not prohibited or discouraged, but the design and appearances of such devices will be closely scrutinized and controlled by the Review Board to assure consistency with neighborhood aesthetics. Request for approval of installation of any type of solar equipment shall be included in the plans and specifications for the Proposed Improvement submitted to the ARB and must be constructed in accordance therewith.

6.24 Insurance. Nothing shall be done or kept on any Lot or on the Common Property which will increase the rate for the insurance covering the Common Property. No Owner shall permit anything to be done or kept on his Lot or in the Dwelling Unit which will result in the cancellation of insurance on the Common Property or any other Lot or Dwelling Unit of which would be in violation of any law.

6.25 Nuisances. Nothing shall be done or maintained on any Lot or in any Dwelling Unit which may be or become an annoyance or nuisance to the other Owners of the Property. Any activity on a Lot or in a Dwelling Unit which interferes with televisions, cable or radio reception on another Lot or Dwelling Unit shall be deemed a nuisance and a prohibited activity. In the event of a dispute or questions as to what may be or become a nuisance, such dispute or questions shall be submitted to the Board of Directors of the Association and the written decision of the Board shall be dispositive of such dispute or question.

The Property abuts a canal which provides water access for the Owners of Lots adjacent to the canal as well as persons owning Lots outside the Property. Further, the Recreational Area contains a boat ramp and boat slips for use by the Owners. Certain levels of noise are created by the operation and use of boats, such noise shall not be deemed a nuisance.

6.26 Wildlife Refuge. A natural habitat for native wildlife will be established to provide for the protection of gopher tortoise and other indigenous species. Native vegetation will be established and shall be maintained for food and protection. Lake edges will be established and shall be maintained as native, lakeside wildlife habitat. Gopher tortoise and all other wildlife shall be protected in these areas and encouraged to remain.

6.27 Jurisdictional Lands. To the extent that the South Florida Water Management District, the Department of Environmental Regulation, the Army Corps of Engineers or other similar governmental agencies assert their jurisdiction over any portion of the Property and restrict the use of such portions of the Property, the Owners of such restricted Property shall comply with such restrictions. Prior to commencing any Proposed Improvements on a Lot of any portion of the Property, it shall be the responsibility of the Owner thereof to ascertain the restrictions, if any, on such Lot or Property and comply therewith.

6.28 Canal Lots. No Owner of a Lot abutting the canal may remove any native plant life except hand removal of certain "exotic" plants as permitted by the applicable governmental entities. Docks may be constructed on any canal Lot, subject to approval by the Review Board. Seawalls may be installed on those Lots that have an existing older seawall; a riprap seawall may be installed where there is no evidence of a pre-existing seawall. All must comply with any and all applicable governmental regulations and restrictions. Owners of Canal Lots are responsible for assuring all improvements, including landscaping, are in accordance with applicable governmental regulations.

6.29 Additional Use Restrictions. The Board of Directors of the Association may adopt reasonable additional use restrictions, rules or regulations, applicable to all or any portion or portions of the Property and to waive or modify application of the foregoing use restrictions with respect to any Lot(s) or Dwelling Unit(s) as the Board, in its sole discretion, deems appropriate.

6.30 Enforcement Procedure. Every Owner and occupant shall comply with the provisions of this Declaration as set forth herein, any and all rules and regulations made pursuant to this

Declaration, Bylaws and Articles of Incorporation of the Association, as amended from time to time. Failure of an Owner or occupant to so comply shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, lessees or occupants, to comply with any covenants, restrictions, rules or regulations herein or in the Articles of Incorporation or Bylaws, provided in the following procedures are adhered to:

(a) The Association shall notify the Owner or occupant of the infraction or infractions. Included in the notice shall be a date and time of the next Board of Directors' meeting at which time the Owner or occupant may present reasons why penalties should not be imposed.

(b) The non-compliance shall be presented to the Board of Directors after which the Board of Directors shall hear reasons why penalties should not be imposed. A written decision of the Board of Directors shall be submitted to the Owner or occupant not later than twenty-one (21) days after the Board of Directors' meeting.

(c) The Board of Directors may impose fines against the applicable Lot or Dwelling Unit up to the maximum amount of \$50.00 per incident.

(d) Each separate incident which is grounds for a fine shall be the basis of one separate fine. In the case of continuing violations, each continuation of same after a notice thereof is given shall be deemed a separate incident.

(e) Fines shall be paid not later than thirty (30) days after notice of the imposition thereof.

(f) All monies received from fines shall be allocated as directed by the Board of Directors.

(g) These fines shall not be construed to be exclusive remedies and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled, including, without limitation, the right to assess a Specific Special Assessment provided in Section 4.5; however, any penalty paid by the offending Owner or occupant shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner or occupant.

VII. LAKE AND WATER RIGHTS

7.1 **Ownership of Lake.** The Lake is a part of the storm water drainage and retention system of the Property. The bottom of the Lake may be conveyed to the Association, be incorporated as a part of a Lot or be retained by the Developer, and the fee simple title holder of the Lake will be the "Owner" of the Lake for the purposes set forth in this Declaration; however, water quality and maintenance of the Lake will be controlled by the Association, in accordance with any requirements and restrictive set by any governmental entities.

7.2 **Declaration of Easement.** Each Lake is for the purpose of detention, retention, storage and filtration of surface or stormwater drainage. A perpetual non-exclusive easement is hereby declared and reserved over, under and through the Lakes and any and all drainage easements as depicted on the plat or granted by separate document for such retention, storage, detention and filtration of surface or stormwater drainage.

7.3 Maintenance of Lake Embankments and Lake Bottoms. Irrespective of the ownership of the Lake bottom, the Association will be responsible for and obligated to maintain and control the water level, indigenous plants around Lake edge, and quality of the Lake and will maintain the Lake bottom, all in accordance with the permits issued from time to time from the government entities having jurisdiction (jointly referred to as "Permits"). The Association will have the duty, power and right as it deems appropriate, to control and maintain plants, fowl, reptiles, animals, and fish in and on the Lake, as well as to maintain any drainage device and/or water level devices so as to insure compliance with the Permits. The Owner of the land adjacent to the water edge of the Lake ("Adjacent Owner") will maintain the embankment to their property line only. It is understood and acknowledged that the Association shall maintain the Lake edges as a "littoral shelf" with native vegetation and wildlife habitat; accordingly, all Owners abutting the Lakes shall take care and precaution not to disturb the plant or animal life or otherwise disturb the Lakes. The Association shall have any "exotic" plants deemed objectionable by the state or county removed periodically, at least annually.

7.4 Improvements on Lake. In the event that the Developer, an entity designated by the Developer, or the Association construct any bridges, docks, or piers or other improvements which may extend over or into the Lake or construct any bulkheads or similar improvements to support or enhance the Lake, the Association will maintain any and all improvements in good repair and condition. No Owner, except the Developer, its designee or the Association, will be permitted to construct any improvement, permanent or temporary, on, over or under any Lake without the written consent of the Developer and the Association, which consent may be withheld for any reason.

7.5 Lake Access. The Owners' use and access to any Lake will be subject to and limited by the rules and regulations of the Association. Access to any Lake shall be from the lakeside parks or Common Property. The Association is hereby granted a non-exclusive easement for ingress and egress over any Lake and all Common Property adjacent to the Lake to permit the access of appropriate equipment to provide such maintenance, for the purpose of providing the maintenance required herein.

7.6 Lake Use Restrictions and Covenants. The Lakes constitute an aesthetic amenities of the Property. In connection with the use of any Lake, the following restrictions will apply:

(a) No motorized or power boats will be permitted on any Lake with the exception of boats used for maintenance of the Lakes;

(b) No bottles, trash, cans or garbage of any kind or description will be placed in or beside any Lake;

(c) No activity will be permitted on any Lake which may become an annoyance or nuisance to the adjacent property and the Owners thereof. The Association's determination whether any activity constitutes an annoyance or nuisance will be dispositive;

(d) No person or entity, except Developer or the Association, will have the right to pump or otherwise remove any water from any Lake for the purpose of irrigation or other use;

(e) The Lakes will not be used in conjunction with any business enterprise or public use whatsoever;

(f) The Association may, but is not obligated to, stock the Lakes with fish. Only Owners and their guests will be permitted to fish in the Lakes provided that no Owner may stock the Lakes or place any non-native plant or aquatic life within the Lakes;

(g) No swimming, bathing or wading will be permitted within any Lake; any Owner, for himself, his tenants, guests or invitees is hereby deemed to indemnify the Developer, the Association and all other Owners and hold them harmless from and against any and all loss, damage or liability which may result from swimming, bathing or otherwise entering the waters of the Lakes;

(h) No dredging or filling will be undertaken nor will any action take place which will disturb any land subject to the jurisdiction of the applicable governmental entities within the Property without the consent of the Directors;

(i) No adjacent Owner may remove or otherwise dispose of native plants lying adjacent to or within the Lakes;

(j) No permitted boats may be stored or left at the edge or on the bank of any Lake, all boats used on the Lakes shall be stored within the Owner's Dwelling Unit;

(k) The Association will establish, amend, or modify rules and regulations governing the use of the Lakes as the need arises.

7.7 Indemnification. In connection with the platting of the Property or obtaining permits necessary to develop the Property, the Developer may assume or may be required to assume certain obligations for the maintenance of the Lakes. The Developer hereby assigns to the Association and the Association hereby assumes all the obligations of the Developer under the Plat, applicable permits or any applicable governmental regulations and for any and all obligations for the maintenance of any Lake. Association further agrees that subsequent to the recording of this Declaration, it will indemnify and hold Developer harmless from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage or other damage arising from or out of occurrence, in, upon, at or from the maintenance of the Lakes, occasioned wholly or in part by any act or omission of the Association or its agents, contractors, employees, servants or licenses but not including any liability occasioned wholly or in part by the acts of the Developer, its successors, assigns, agents or invitees.

7.8 Stormwater Management System. The Stormwater Management System is a part of the Common Property and as such, it is the responsibility of the Association to operate and maintain the Stormwater Management System, which cannot be altered in any manner without prior approval of South Florida Water Management District or its successor. Any amendment to this Declaration which would affect the obligations hereunder with respect to the Stormwater Management System, including the water management portions of the Common Property and Lakes, must have the prior approval of the South Florida Water Management District or its successor.

7.9 Boat Basin. As a part of the Common Property the Developer intends to construct a boat docking and basin facility which will provide for a boat launching facility. Without limiting any other provisions hereof, the use rights for all these facilities will be governed by the rules and regulations of the Association as such are adopted from time to time by the Board. It is understood and acknowledged that these rules and regulations may be amended or modified from time to time to

provide for equitable use by all Owners and as may be required to promote safe boat use and operation.

VIII. LIABILITY - GENERALLY

8.1 General Provisions. Notwithstanding anything contained in this Declaration of the Articles, Bylaws or Rules and Regulations of the Association or any other document governing or bind the Association (jointly referred to herein as "Property Documents"), neither the Developer nor the Association will be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Property, including without limitation, residents, their families, guests, invitees, agents, servants, contractors or subcontractors nor for any property of such persons nor for the decision whether and to what extent the Board, the Association or the Developer determine to operate the gatehouse described in Section 4.2.

8.2 Specific Provisions. Without limiting the generality of the foregoing:

(a) It is the express intent of the Property Documents that the various provisions of the Property Documents which are enforceable by the Association and which govern or regulate the use of Property have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof.

(b) Neither the Developer nor the Association is empowered to enforce or insure compliance with the laws of the United States, the State of Florida or the County of Lee or any other jurisdiction or to prevent tortious activities.

(c) The provisions of the Property Documents setting forth the uses of Associations which relate to health, safety or welfare will be interpreted and applied only as limitations on the uses of such funds and not as creating a duty of the Association or the Developer to protect or further the health, safety or welfare of the persons even if such funds are used for such purposes.

8.3 Owner Covenant. Each Owner, his heirs, successors and assigns (by virtue of his acceptance of title to his Lot (and each other person or entity having an interest or lien upon or making the use of, any portion of the Property) by virtue of accepting such interest or lien or by making use thereof, will be bound by this Paragraph and will be deemed to have automatically waived any and all rights, claims, demands or causes of action against the Association or Developer arising from or connected with any manner for which the liability of the Association or Developer have been disclaimed in this Paragraph.

8.4 Landscape Liability. The Association shall use reasonable efforts to maintain the lawns and shrubbery constituting the landscaping on the Lots and Common Property but shall, in no manner, be deemed to be an insurer or guarantor of the landscaping. All costs of replacement shall be included within the annual budget or in the Landscape Maintenance Assessment unless the damage or destruction is caused by the Owner, his family or invitees.

IX. ACCOMMODATION OF INSTITUTIONAL MORTGAGEES

The Developer wants the holders of Institutional Mortgages to be confident in the successful development of the Property and the high standards which are to be maintained for the Property and, as an accommodation to the holders of Institutional Mortgages, certain notices and information will be made available, as provided in this section.

9.1 Institutional Mortgagee Requests for Notice. Upon written request to the Association identifying the name and address of a Mortgagee and specifying the Lot encumbered by an Institutional Mortgage, the holder of the Institutional Mortgage will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Property or any Lot on which there is an Institutional Mortgage held, insured or guaranteed by such mortgagee;

(b) Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to an Institutional Mortgage held, insured or guaranteed by such mortgagee, which remains uncured for a period of sixty (60) days;

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

(d) Any proposed action of a material nature which would require the consent of a specified bond maintained by the Association.

9.2 Institutional Mortgagee Information. The Association will make available to Owners and Institutional Mortgage holders current copies of this Declaration, Articles, Bylaws and rules and regulations of the Association, as well as books, records and financial statements of the Association. "Available" means available for inspection, upon written request during normal business hours or under other reasonable circumstances.

9.3 Financial Statements. Upon written request of the holder of an Institutional Mortgage, the Association will obtain and deliver to a mortgagee the most recent financial statements of the Association.

X. INSURANCE, CONDEMNATION AND RECONSTRUCTION

10.1 Damage to or Condemnation of Common Property. In the event that any portion of the Common Property is damaged or destroyed by casualty, natural events or taken through condemnation or a conveyance under threat of condemnation, it will be repaired or restored by the Association to substantially its condition prior to the damage or destruction, if practicable. Repair, reconstruction or restoration of the improvements to the Common Property will be substantially in accordance with the plans and specifications pursuant to which the same was originally constructed, if practicable. All insurance proceeds will be applied to the repair, reconstruction and restoration of such damage. If the insurance proceeds or condemnation award and any reserves maintained by the Association for that purpose are insufficient to pay for the damage, the deficit will be assessed against all Owners as a Special Assessment. If there is a surplus of insurance proceeds or condemnation award, such will become the property of the Association. The Association is hereby designated to represent the Owners in any proceedings, negotiations, settlements or agreements concerning any insurance proceeds or condemnation award connected with any loss or damage to the Common Property or improvements thereon.

10.2 Damage to or Condemnation of the Lots. In the event of damage or destruction to any portion of the improvements on a Lot, due to casualty, natural events, condemnation or conveyance in lieu thereof, the improvements will be promptly repaired or restored by the Owner. In the event that the damage, destruction or condemnation renders the improvements uninhabitable or the damage is so substantial that the Owner determines not to rebuild the improvements on the Lot, the Owner will clear the debris,

have the Lot leveled within 60 days from the date of destruction or damage and will thereafter maintain the Lot in a clean and sanitary condition.

10.3 Damage to Common Property Improvements Due to Owner Negligence. In the event that the Common Property is damaged as a result of the willful or negligent acts of the Owner, his tenants, family, guests or invitees, the damage will be repaired by the Association and the cost of repair will be a Special Assessment against such Owner.

10.4 Insurance. The Association will obtain and maintain insurance policies insuring the interests of the Association. A policy of property insurance will cover all of the Common Property and Improvements thereto (except land, foundation excavations and other items normally excluded from coverage) but including fixtures and building service equipment, to the extent that they serve the Common Property. The policy or policies will afford, as a minimum, protection against the following:

(a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;

(b) All other perils which are customarily covered with respect to projects similar in construction, location and use, including flood insurance, if applicable, and all perils normally covered by the standard "all risk" endorsement, where it is available at reasonable rates. If flood insurance is required, it must be in an amount of 100% of the then current replacement cost of the improvement or the maximum coverage under the National Flood Insurance Program; and,

(c) Losses covered by general liability insurance coverage covering all Common Property and improvements thereto in the amount of \$1,000,000.00, or such greater or lesser amount determined reasonable by the Directors, for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy will include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of Common Property and any legal liability that results from lawsuits related to employment contracts in which the Association is a party. If the policy obtained does not include a "severability of interest" provision, the Association will obtain a specific endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

The hazard policy will be in an amount equal to 100% of the current replacement cost of the insured properties exclusive of land, foundation, excavation and items normally excluded from coverage. The maximum deductible amount for such policies will be the lesser of \$10,000 or 1% of the policy face amount, or such greater or lesser amount determined reasonable by the Directors, provided that funds to cover the deductible will be included in the Association reserve accounts. In the event that any of the insurance requirements contained herein become unavailable and/or prohibitively expensive or the Institutional Mortgagees modify the insurance requirements, the Directors, in their discretion, may determine to modify the coverages contained herein in such a manner as the Directors, using their business judgment, deem prudent and reasonable. The policy will provide that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association. The Directors may obtain such additional insurance as it in its sole discretion deems reasonable, convenient or necessary.

XI. ADDITION OF PROPERTY

Real property which is contiguous to the Property ("Contiguous Property") may become part of the Property and the owners of lots within the Contiguous Property may become members of the Association, subject to this Declaration, Articles and Bylaws, as provided in this subparagraph.

11.1 Addition by Developer. The Developer may, without the consent of either the Association, any Lot Owner or Institutional Mortgagee being required, make Contiguous Property a part of the Property, subject to this Declaration, and the owners of lots included in the Contiguous Property members of the Association, in the manner provided in this paragraph. The Developer is not obligated to add any additional contiguous property to the Property.

11.2 Additions by Others. With written approval of the Developer, but, without the consent of either the Association, any Lot Owner or Institutional Mortgagee being required, another owner of Contiguous Property, may make Contiguous Property a part of the Property, subject to this Declaration, and the owners of lots included in the Contiguous Property members of the Association in the manner provided in this paragraph.

11.3 Manner of Adding Contiguous Property. Contiguous Property may be added to the Property and the owners of lots within the Contiguous Property made members of the Association by the Developer (and other owner, if applicable), filing in the Public Records of Lee County, Florida, a supplement to this Declaration with respect to the Contiguous Property declaring that such land shall be held, conveyed, transferred and occupied subject to the terms and conditions of this Declaration (the "Supplemental Declaration"), identifying the Plat of the Contiguous Property by a name which clearly identifies it as an addition to the Property such as, by way of example, "Palm Island".

11.4 Content of the Supplemental Declaration. The Supplemental Declaration may contain such additions and modifications of the covenants, conditions, restrictions, easements contained in this Declaration as may be necessary or convenient in the judgment of the Developer or other Owner, to reflect the different character, if any, of the other Contiguous Property or requirements of governmental entities.

11.5 Effect of Supplemental Declaration. The execution and recording of a Supplemental Declaration with respect to the Contiguous Property will extend the operation and effect of this Declaration to the Contiguous Property and the owners of its lots, membership in the Association, with equal rights to all Owners under this Declaration as if they had been a member at the time of recording this Declaration. The modifications, if any, contained in the Supplemental Declaration will have no effect on the real property originally included in the Property or other Contiguous Property previously added to the Property. Provided however, until a Supplemental Declaration is recorded subjecting the Contiguous Property to the Declaration, this Declaration shall not constitute a lien, defect or encumbrance on the title of the Contiguous Property.

XII. MAINTENANCE

12.1 Association Responsibility. In addition to specific obligations set forth herein, the Association shall maintain, repair and restore all the Common Property, including, without limitation, maintenance, repair and replacement of all landscaping, irrigation system, structures, Common Roads, rights of way, Stormwater Management System, any water and any sewer system and any and all improvements set thereupon and shall

perform or cause to be performed landscape maintenance on the Lots. The Association shall assume the maintenance responsibilities set forth in any amendment or Supplemental Declaration affecting all or part of the Property.

12.2 Owner Maintenance Required and Failure to Maintain. Unless otherwise provided in a Supplemental Declaration or Declaration of Condominium, the Owner shall maintain the exterior of all buildings and improvements on his Lot and his Dwelling Unit in good and workmanlike manner, and shall present a neat and clean appearance upon the Lot and Dwelling Unit including painting, repairing, replacing and caring for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

In the event that any Owner fails or refuses to keep his Lot or Dwelling Unit in compliance with the terms hereof, after written notice to Owner, the Board may authorize its agents to enter upon the Lot and perform any necessary maintenance at the expense of the Owner, and such entry will not be deemed a trespass and the cost thereof shall be collected as a Special Assessment as provided in Section 4.4. Upon completion of construction, the Lot shall be maintained free and clear of weeds, debris and underbrush.

XIII. GENERAL PROVISIONS

13.1 Enforcement. The covenants, conditions, restrictions and other provisions of this Declaration will be enforceable by the Developer, the Association or a Lot Owner. Compliance herewith may be enforced in any manner permitted in law or in equity. In the event of violation by a Lot Owner, the costs, including a reasonable attorney's fee (whether incurred before trial, during trial or during appeals) of compelling compliance will be borne by the Lot Owner.

13.2 Severability. The invalidation of any of these covenants by judgment or Court order will in no way affect any other provisions, which will remain in full force and effect.

13.3 Amendment. As long as the Developer owns a Lot, the Developer reserves the right, without consent or joinder of any Owner, Institutional Mortgagee or the Association to amend this Declaration (a) to cure any ambiguity in or inconsistency between the provisions contained in this Declaration, (b) to include in any Supplemental Declaration or other instrument hereafter made any additional covenants, restrictions or easements applicable to the Property which do not lower the standards of the covenants, restrictions or easements contained in this Declaration, (c) to release any Lot from any part of the covenants and restrictions which may have been violated, (d) to accommodate the requirements of any Institutional Mortgagee or otherwise governing the development of the Property and (e) as Developer may deem necessary or convenient to supplement the terms and conditions of the Declaration. Thereafter, this Declaration may be amended at any time and from time to time in a written instrument executed by the Owners of at least two-thirds (2/3) of the Lots included within the Property and recorded among the public records of Lee County, Florida; provided, however, that these restrictions may be amended, modified, added to, deleted in whole or in part and variances granted only with the advance approval of the Developer for as long as the Developer owns a Lot.

13.4 Interpretation. The provisions of this Declaration will be interpreted without regard to the headings contained herein, which have been inserted and used for ease of reference only.

13.5 Survival. This Declaration will be binding upon the Developer and all persons claiming by, through and under the Developer.

13.6 Proceedings by Association. No judicial or administrative proceedings will be commenced or prosecuted by the Association unless same is approved by a vote of the Owners of 75% of the Lots at a general meeting. This paragraph will not apply however to (1) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (2) the imposition of Assessments as provided, (3) proceedings involving challenges to ad valorem taxation or (4) counterclaims brought by the Association in proceedings instituted against it. Notwithstanding the provisions of subparagraph XI(C), this subparagraph F will not be amended unless such amendment is made by the Developer or is approved by the percentage vote and pursuant to the same procedures, necessary to institute proceedings as above.

13.7 Duration. The restrictions contained in this Declaration will run with the Lots and be binding upon the Lot Owners, insuring to the benefit of and enforceable by the Association and each Lot Owner and each person claiming by, through and under them, for a term beginning with the date of recording this Declaration and ending on December 31, 2020, after which they will be automatically extended for successive periods of ten (10) years each unless an instrument terminating them is executed by Lot Owners owning not less than two-thirds (2/3) of the Lots included in the Property and recorded in within the public records of Lee County, Florida.

IN WITNESS WHEREOF, the Developer has caused these presents to be executed as required by law on this, the day and year first above written.

Witnesses:

MOODY DEVELOPMENT OF PALM ISLAND, INC.

Ethel T. McCalland
[Signature]

By: *Claudia N. Hart*
Claudia N. Hart, President

STATE OF FLORIDA

COUNTY OF LEE

RECORDERS MEMO:
COLOR OF INK USED TO SIGN/PREPARE
DOCUMENT UNSATISFACTORY FOR REPRODUCTION
FROM FILM.

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Claudia N. Hart, the President of Moody Development of Palm Island, Inc., to me well known to be the person described in and who executed the foregoing instrument and she acknowledged before me that she executed the same freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal at *No. Fort Myers*, County of Lee, and State of Florida, this *30th* day of *November*, A.D., 1990.

Ethel T. McCalland
Notary Public

My Commission expires:

Notary Public, State of Florida
My Commission Expires March 22, 1992
Bonded Thru Tracy Fair - Insurance Inc.

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CONSENT BY MORTGAGEE

Citizens & Southern Bank, the holders of a certain mortgage encumbering the lands embraced by these Covenants and Restrictions, duly acknowledge receipt of consideration for and do hereby join in this Declaration of Covenants and Restrictions for PALM ISLAND.

29 In Witness we have executed and delivered this consent this day of November, 1990.

Witnesses to Mortgagee:

[Signature]
[Signature]

By: [Signature]
Its Vice President

STATE OF FLORIDA

COUNTY OF LEE

The foregoing Declaration of Covenants and Restrictions for PALM ISLAND of Lee County, was acknowledged before me the 29 day of November, 1990, by Bank W. Duval.

[Signature]
Notary Public

My Commission expires:

RECORDERS MEMO:
COLOR OF INK UNSEEN TO SIGN/PREPARE
DOCUMENT UNSATISFACTORY FOR REPRODUCTION
FROM FILM.

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES: Nov. 29, 1994.
BONDED THRU NOTARY PUBLIC UNDERWRITERS

9/18/90

LCKDEC PALMISL:WP377

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Prepared By:
Ethel V. Mc Clelland
Moody Development Corp.
P.O. Box 2070
Ft. Myers, Fl. 33902

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IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

INDUSTRIAL COMMUNICATION COMPANY,

CASE NO: 90-28616 (16)

Plaintiff,

vs.

2972571

J. R. ORLANDO CO. and J. R.
ORLANDO,

Defendants.

ORDER ON MOTION OF INDUSTRIAL COMMUNICATION
COMPANY FOR CHARGING INDIVIDUAL INTEREST OF
J. R. ORLANDO AND FOR THE APPOINTMENT OF A RECEIVER

THIS CAUSE came before the Court on the Motion of INDUSTRIAL COMMUNICATION COMPANY for an Order Charging the Individual Interest of J. R. ORLANDO, a/k/a JAMES R. ORLANDO, and for the Appointment of a Receiver, and the Court having reviewed this matter, due consideration having been given by this Court, being fully advised in the premises, and good cause appearing, it is

ORDERED and ADJUDGED that the Plaintiff's Motion is GRANTED, and that the individual interests of Defendant, J. R. ORLANDO, a/k/a JAMES R. ORLANDO, in the partnership of 540 Partners, a Florida general partnership, be charged with payment of the judgment rendered in this action in favor of INDUSTRIAL COMMUNICATION COMPANY for the sum of Thirty-Two Thousand Four Hundred Thirty-Seven and 43/100 (\$32,437.43) Dollars, with interest at twelve percent (12%) per annum and additional costs which will be established at the appropriate time by Affidavit. It is further

ORDERED AND ADJUDGED that D. S. A. Smith be appointed as Receiver of Defendant's share of the profit and any other

RECORD VERIFIED: SHARIE GREEN CLERK
BY: T. NEAL, D.C.

OR2201 PG0382