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**DECLARATION OF COVENANTS,  
RESTRICTIONS, CONDITIONS, AND EASEMENTS**

OF

**HARBOUR ISLAND AT MARSH LANDING**

*In common wealth*  
*(39) Rec 157 + 20.00*

**THIS DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS AND EASEMENTS OF HARBOUR ISLAND AT MARSH LANDING** (the "Declaration") is made the 22nd day of April, 1993, by Fletcher Realty III, Inc., a Florida corporation (the "Developer"). The Developer hereby declares that those portions of real property more fully described in Exhibit A attached hereto and made a part hereof ("Property") and such Additional Property (as hereinafter defined) as it is subjected to this Declaration, shall hereafter be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens contained in this Declaration which are for the purpose of protecting the value and desirability of and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall enure to the benefit of each Owner thereof.

**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 "Additional Property" means and refers to any land which is adjacent to or contiguous with the Property including without limitation land described in Exhibit B attached hereto and made a part hereof or which is subsequently owned by the Developer or a designee of the Developer which is located such that if the land is annexed by declaration by its owner (the "declarant") or by the Developer or its successor or assigns, it shall form an integrated community with the Property. Declarant may annex the Additional Property by recording in the public records a supplemental declaration subjecting such Additional Property to the covenants and conditions of this Declaration in the manner hereinafter set forth; provided, however, until such Additional Property is subjected to the Declaration, this Declaration shall not constitute a lien, encumbrance or defect on the title thereof, and shall in no way affect the conveyance or transfer of such land.

1.2 "Articles" mean and refer to the articles of incorporation of the Association, as from time to time amended.

1.3 "Association" means and refers to HARBOUR ISLAND AT MARSH LANDING HOMEOWNERS ASSOCIATION, INC., a Florida corporation not-for-profit.

1.4 "Bylaws" mean and refer to the Bylaws of the Association, as from time to time amended.

1.5 "Board" means and refers to the Board of Directors of the Association.

1.6 "Common Property" means and refers 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 designated for maintenance responsibilities which the Association is hereby obligated to maintain, notwithstanding that it may not own the underlying fee simple title. All Common Property is to be devoted to and intended for the

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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 or the Association) subject to any operating rules adopted by the Association and subject to any use rights made or reserved by the Developer prior to the conveyance of such Common Property and subject to any and all Permits. Common Property shall not include the facilities which are designated a part of Marsh Landing Country Club including, without limitation, the golf course, clubhouse, tennis courts, swimming pool and related facilities.

1.7 "Common Roads" mean and refer to the roads depicted on any plat of the Property which provide ingress and egress to a Lot or Dwelling Unit. 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.

1.8 "Developer" means and refers to Fletcher Realty III, Inc., a Florida corporation, and its successors or assigns to which it specifically assigns, in a written document, its rights under this Declaration, which assignment is subsequently recorded in the public records of St. Johns County, Florida. In addition, in the event that any person or entity obtains title to all of the Property owned by Developer as a result of foreclosure or deed in lieu thereof, such person or entity may elect to become the Developer by written election recorded in the public records of St. Johns County, Florida, and regardless of the exercise of such election, such person or entity may appoint the Developer or assign any rights of Developer to any other party which acquires title to all or any portion of the Property by written appointment in the public records of St. Johns County, Florida. In any event, any subsequent Developer shall not be liable for any actions, defaults or obligations incurred by any previous Developer, except as may be subsequently assumed by the subsequent Developer.

1.9 "Drainage Easements" mean and refer to Easements within which Storm Water Management System may be constructed, maintained and used for drainage of stormwater. Drainage Easements may be described in or graphically depicted on the Plat, described in this Declaration or specifically granted by separate instrument.

1.10 "Dwelling Unit" means and refers to any single family residence built upon a Lot or combination of Lots, including attached or detached residences.

1.11 "Easements" mean and refer to the easements which encumber the Property. Initially, it will include only those easements described in or graphically depicted on the Plat, and those easements described or reserved in this Declaration. It will also include those easements hereafter dedicated for the common use and benefit of the Lot Owners as a part of the Common Property.

1.12 "Institutional Mortgage" means and refers to any bona fide first mortgage lien encumbering a Lot or Yacht Mooring Slip as security for the performance of an obligation owing to an Institutional Mortgagee.

1.13 "Institutional Mortgagee" means and refers 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 on any portion of the Property, The Daiwa Bank, Ltd., and Marsh Landing Investors, Ltd. or their successors and assigns (The term "Lenders" as used herein shall mean and refer to The Daiwa Bank Ltd and/or Marsh Landing Investors, Ltd., or their successors or assigns for so long as their respective mortgages encumber any portion of the Property).

1.14 "Lagoon System" means and refers to the lands designated on the Plats as tracts of land with the letter "L" and a number which will be improved as an inland waterway and marina providing docking facilities for vessels and access to the Intracoastal Waterway, all as more fully described in Article IX hereof.

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I.15 "Lot" means and refers to any parcel of real property within the Property on which a Dwelling Unit for residential use may be constructed. However, a Lot will include, for the purposes of this Declaration, even those portions of a platted lot 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, Utility Easements and Drainage Easements. In the event that an Owner owns a portion of Lots as depicted on the Plat and constructs a single Dwelling Unit thereon, the entire parcel of Land shall be deemed a "Lot".

I.16 "Master Association" means and refers to the Marsh Landing at Sawgrass Master Association, Inc., a Florida not-for-profit corporation, and its successors and assigns which is the entity operating and enforcing the Master Declaration which governs the operation and maintenance of all of Marsh Landing.

I.17 "Master Declaration" means and refers to the Declaration of Community Covenants for Marsh Landing at Sawgrass as recorded in Official Records Book 524, page 49 of the public records of St. Johns County, Florida as such declaration has been amended and supplemented from time to time. The Master Declaration sets forth certain additional obligations of Owners of Lots as members of the Master Association.

I.18 "Owner" means and refers to each person or entity who is a record owner of a Lot. Owner shall also refer to the persons or entities owning Yacht Mooring Slips which are not subject to an exclusive easement for use by a Lot Owner. It will not, however, include purchasers under contract or any mortgagees.

I.19 "Plat" means and refers to the recorded Plats of the Property now recorded in the public records of St. Johns County, Florida and such other plats of the Property which may be recorded from time to time and subject to the terms of this Declaration.

I.20 "Permits" means and refers to the permits, easements and other approvals secured by various governmental agencies and regulatory bodies which govern the development of the Property, including without limitation, the permits issued by the Florida Department of Environmental Regulation, St. Johns River Water Management District and Army Corps of Engineers.

I.21 "Property" means and refers to all of the real property more fully described on Exhibit A attached hereto and made a part hereof.

I.22 "Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events; incorporating methods to collect, convey, store, absorb, inhibit, treat, use or 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, as permitted pursuant to Chapters 40C-4, 40C, 40 or 40C-42, Florida Administrative Code.

I.23 "Utility Easements" 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 Utility Easements may be described in or graphically depicted on the Plat or described in this Declaration or granted or reserved in a separate instrument.

I.24 "Yacht Mooring Slip" shall mean and refer to a portion of the Lagoon System (as hereinafter defined) which is hereinafter designated for the exclusive use of an Owner for the docking of such Owner's vessel. Yacht Mooring Slips are subject to two types of ownership; (a) Appurtenant Yacht Mooring Slips are those Yacht Mooring Slips which are or may be an appurtenance of ownership of a Lot and (b) Marina Yacht Mooring Slips are those Yacht Mooring Slips which are reserved by the Developer for use as provided in Section X.2. At the time of recording this Declaration, the Developer does not intend to construct the Marina or the Marina Yacht Mooring Slips, and references to the Marina or Marina Yacht Mooring Slips are intended only to reserve certain rights and set forth certain obligations in the event that the Marina is constructed. Such references shall in no way be

construed to create an obligation on the part of the Developer to construct such improvements. References to "Yacht Mooring Slips" herein shall include both types of Yacht Mooring Slips unless set forth to the contrary.

## II. PROPERTY RIGHTS CREATED

The Developer, for itself and all others claiming by, through and under it, or any of them, hereby grants, bargains, sells and conveys to the Association, the Developer, Institutional Mortgagees and all claiming by, through and under them, or any of them, the following perpetual rights, titles, easements and interests appurtenant in, to and under the real property included in the Property, upon and subject to the terms, conditions and limitations set forth in this Declaration, the Master Declaration, the Articles and the Bylaws:

**II.1 Rights of the Association.** To the Association and those claiming by, through and under it, the following rights, titles, easements and interests: (a) As to each Lot and Marina Yacht Mooring Slip, the right to require that Owner or Owners be members of the Association; (b) As to each Lot and Marina Yacht Mooring Slip, the right to make Assessments (as hereinafter defined) against the Lot and/or Marina Yacht Mooring Slip to provide funds for the Association, together with a lien, encumbrance or security interest in and to the Lot or Marina Yacht Mooring Slip, to secure payment of Assessments against the Lot or Marina Yacht Mooring Slip, interest thereon and the costs of collection as provided in the Articles and this Declaration; (c) The right and the obligation to maintain the Common Property including, without limitation, the applicable portions of the Stormwater Management System and make, maintain, repair, replace and use improvements within the Common Property which are not of a private nature; (d) The right to enforce by any lawful means the terms, provisions and restrictions of this Declaration, the Articles and Bylaws; and, (e) The ownership of the portion of the Common Property conveyed to the Association, subject to all other reservations set forth in any conveyance and provisions or this Declaration.

**II.2 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, assigns and Institutional Mortgagees and the families and every guest, tenant, and invitee of every Owner are hereby granted a non-exclusive 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, Dwelling Unit, and Marina Yacht Mooring Slip subject to the following provisions:

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

(b) The right of the Board of Directors 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 (a) for such purposes and subject to such conditions as may be approved by a two-thirds vote of the Board.

(c) The right of the Board to adopt reasonable rules and regulations pertaining to the use of the Common Property.

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

(e) The right of the Board of Directors 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 such conditions as may be approved by two-thirds vote (2/3) of the Board.

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**II.3 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 or contract purchasers who occupy the Dwelling Unit within the Property.

**II.4 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 monetary 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 and Developer's reserved right, for itself, its successors, assigns, designees it may choose, mortgagees and any owners of Additional Property or lands which are subjected to the Master Declaration, but not obligation, to install all utilities, street lighting, and signage, including without limitation, cable television, in the Common Road right of way. Each Owner of a Lot, Dwelling Unit, Marina Yacht Mooring Slip or any parcel of Property, his successors and assigns, domestic help, guests, invitees, delivery, garbage 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 non-exclusive 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 mortgaged to such 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; and (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, motorcycles, "go-carts", three wheeled vehicles), which in the opinion of Developer or the Association would or might result in damage to the Common Roads 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's rights set forth herein are not exclusive and the Sheriff's Department of St. Johns County, Florida is hereby granted the right to enter onto the Property for the purpose of enforcing those rules, regulations and laws which are generally a part of its jurisdiction.

The Developer reserves the sole and absolute right at any time 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, Dwelling Unit or Marina Yacht Mooring Slip to a public roadway by such redesignation, relocation or closure.

**II.5 Conveyance of Common Property.** The Common Roads shall be conveyed to the Association as provided above, and the Developer may convey the Common Property to the Association 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 and its designees 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 subject to the Developer's right to terminate such designation.

**II.6 Wetlands Tracts.** Portions of the Property are designated as wetlands preserves which are evidenced by the letter "W" before the tract number on the Plat ("Wetland Preserves"). The Developer reserves the right, but not the obligation, if permitted under the "Permits", to convey the Wetlands Preserve to the Association or to such other persons or entities as may be designated by the Developer and permitted under the Permits or to use the Wetlands Preserves as may be permitted from time to time. If so conveyed, the Association shall accept the Wetlands Preserve and shall hold it and maintain it in accordance with the Permits.

### 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.

**III.1 Membership.** Each current and future 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. In addition, those persons or entities owning Marina Yacht Mooring Slips which are not subject to an easement for use by a Lot Owner shall be a member of the Association. Upon termination of the Class B Membership, each Member will be entitled to vote upon all matters coming before the membership as provided in the Articles and Bylaws.

**III.2 Regulatory Documents.** Each Owner will abide by the terms and conditions contained in this Declaration, the Articles and Bylaws and the rules and regulations promulgated in accordance therewith.

**III.3 Power and Authority of Association.** Without limiting any other provision of this Declaration, the Articles or the Bylaws, the Association has the powers and responsibilities as set forth in Section II.1 and set forth in the Articles.

**III.4 Classes of Membership and Voting.** The Association shall have three classes of voting memberships.

(a) Class A. Class A Members shall be all Owners of Lots, with the exception of the Developer.

(b) Class B. Class B Member shall be the Developer.

(c) Class C. Class C Members shall be those persons or entities owning Marina Yacht Mooring Slips which are not subject to an easement to the Owner of a Lot.

(d) Class B Membership shall terminate upon the happening of one of the following events whichever shall first occur:

(1) when Developer no longer owns any Lot or Marina Yacht Mooring Slip subject to this Declaration or any part of the Additional Property;

(2) December 31, 2023;

(3) When Developer, in its sole discretion, determines to terminate its Class B Membership.

When entitled to vote, each Lot and Marina Yacht Mooring Slip shall be entitled to one (1) vote. If an Owner owns more than one (1) Lot or Marina Yacht Mooring Slip, such Owner shall be entitled to one (1) vote for each Lot or Marina Yacht Mooring Slip. Provided however, if an Owner owns a Lot and a part of the adjacent

Lot which it occupies as a single building plot, the Owner shall have only one (1) vote. Owners of Lots with Appurtenant Yacht Mooring Slips shall have only one vote. Until such time as the Class B Membership terminates, the Class B Member shall be vested with the sole voting rights of the Association.

#### IV. ASSESSMENTS

The Association will make, levy and collect such funds as are necessary to operate the Association, which funds shall constitute an assessment against Lots, Marina Yacht Mooring Slips and Owners as provided in the Articles and Bylaws, and, as follows:

**IV.1 Creation of the Lien and Personal Obligation for Assessments.** All Assessments from time to time levied against a Lot and Marina Yacht Mooring Slip by the Association, including Annual Assessments, Special Assessments and Bulkhead Assessments (jointly referred to herein as "Assessments"), together with interest on the principal amount of the Assessment from the date due at the maximum rate allowable by law and costs of collection (including reasonable attorney's fees in pre-trial, trial and appellate and bankruptcy proceedings) will be a charge on and continuing lien upon that Lot or Marina Yacht Mooring Slip, and will also be the personal obligation of the Owner. By accepting ownership of an interest in a Lot or Marina Yacht Mooring Slip, the Owner will be liable to the Association for all Assessments becoming a lien against that Lot or Marina Yacht Mooring Slip at any time prior to or during the time that the Owner owns an interest in the Lot or Marina Yacht Mooring Slip, together with all interest accruing on the principal amount of those Assessments and the costs of collection. The co-Owners of a Lot or Marina Yacht Mooring Slip will be jointly and severally liable for Assessments, interests and costs. No Owner of a Lot or Marina Yacht Mooring Slip 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 or Marina Yacht Mooring Slip will be subject to Assessment.

**IV.2 Purpose of Assessments.** Annual and Special Assessments levied by the Association will be used for the purpose of operating and maintaining the Association, and, operating and maintaining the Common Property, including, but not limited to, the cost of taxes, insurance, labor, equipment, materials, management, maintenance and supervision, for the purpose of maintaining or improving the Common Property, (which shall include, but not be limited to the bulkhead for the Lagoon System), for planting and maintaining trees and shrubbery within the rights-of-way, for improving and maintaining the Stormwater Management System, for accounting and legal services, and for such other permissible activities undertaken by the Association. The Board may, but it not required, establish and maintain a reserve fund in amounts as it may determine 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 Board 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, natural disaster or other casualty loss; and, (c) initial cost of any new service to be performed by the Association.

**IV.3 Annual Assessment.** The Board will annually fix the Annual Assessment based upon the projected financial needs of the Association, as determined by the Board. At the annual meeting of the Board, the Board will adopt a budget, establish the total cost of performing the Association's obligations hereunder and shall divide such amount by the number of Lots or Marina Yacht Mooring Slips subject to this Declaration to determine the rate of Annual Assessment and as soon as is practicable after the annual meeting of the Association, bills for the Annual Assessment will be mailed to Lot and Marina Yacht Mooring Slip Owners at their last known address. Provided however, if the Developer, in its sole discretion has elected to fund the deficit as provided in Section IV.12(c), and the Developer is the Class B Member of the Association, the Board may set the Annual Assessment at an amount different from that which would be calculated as set forth herein.

**IV.4 Uniform Rate and Maximum Amount of Annual Assessment.** All regular Annual Assessments will be at a uniform rate for each Lot and Marina Yacht Mooring Slip. The amount of the Annual Assessment for

the first portion of the year from the commencement of the Assessments to the end of the calendar year shall be \$2,000.00 per year.

Thereafter the Annual Assessment may be increased or decreased as determined by the Board so as to be able to provide for all the services of the Association.

In the event that an Owner owns a part but not all of an adjacent Lot, which portion of the Lot is incorporated into a single building plot, the Owner thereof shall be required to pay only one (1) Assessment for such Lot and shall have only one (1) vote in Association matters. If any Owner owns two (2) or more complete Lots, whether or not contiguous, the Owner shall pay one (1) Assessment for each complete Lot owned unless the second lot is incorporated solely as a single building plot and only one Dwelling Unit is located thereon, then the Owner thereof shall pay only one assessment and shall have only one vote. Owners of Appurtenant Marina Yacht Mooring Slips will pay a single Assessment. Annual assessments on Lots shall be the same whether it has been improved by a Dwelling Unit or not. The Developer makes no representations on the date hereof as to the total number of Lots or Marina Yacht Mooring Slips will be subject to Assessments, the amount established for the Annual Assessment shall be fixed by the Board on annual basis based upon the number of improved Lots and actual costs and only these Lots which constitute a part of the Property will be included in the calculation of the Annual Assessments.

**IV.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 or the Articles and Bylaws of the Association and the rules and regulations thereunder (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 Board. However, 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 each Class of Members.

Specific Special Assessments against an Owner shall be assessed against such Owner after the Board or its agents give such Owner written notice of the violation of the Declaration, the Articles, or Bylaws or the rules and regulations and a time certain period to cure the violation. 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 or Marina Yacht Mooring Slip 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 as elsewhere provided herein.

**IV.6 Intracoastal Waterway Bulkhead Assessments.** The Association may assess each Owner of a Lot which fronts upon the Intracoastal Waterway an Intracoastal Waterway Bulkhead Assessment for the repair, restoration and maintenance of the bulkhead along the Intracoastal Waterway on an annual basis or as a separate assessment.

The Association may establish a budget for the repair, restoration and maintenance of the bulkhead along the Intracoastal Waterway together with a reserve for unplanned expenses, which total budget shall be divided by the total number of linear feet of bulkhead. Each Owner of a Lot subject to the Intracoastal Waterway Bulkhead Assessment shall pay a portion of the cost of such repair, restoration or maintenance computed by multiplying the per linear foot amount by the total of linear feet of bulkhead located upon his Lot. The bulkhead within the Lagoon System will be maintained as a part of the Annual Assessments.

**IV.7 Date of Commencement and Assessments Due Date.** The regular Annual Assessment levied against a Lot or Marina Yacht Mooring Slip for a calendar year will become a lien against that Lot or Yacht



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Mooring Slip 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 of Lots and Marina Yacht Mooring Slips will become a lien against the Lots or Marina Yacht Mooring Slips as of the date (which will be the first day of a month) fixed by the Board. The due date(s) of any General Special Assessments will be fixed in the resolution authorizing the Assessment, and paid in advance in lump-sum or in monthly, quarterly, semi-annual, or annual installments, as determined by the Board; provided, however, no Annual Assessments shall be due and payable by any Lot Owner until the portion of the Common Roads serving such Owner's Lot are substantially complete and no Annual Assessments shall be due and payable by any Marina Yacht Mooring Slip Owner until the improvements, including the dock, for such Marina Yacht Mooring Slip is completed. Intracoastal Bulkhead Assessment shall commence for the applicable Lots at such time as is determined by the Board.

**IV.8 Payment Roster.** The Association will prepare and maintain a roster of the Owners and the outstanding Assessments against each Lot and Yacht Mooring Slip. The roster will be kept in the registered office of the Association and will be open to inspection by any Owner or the representative of any Owner or their Institutional Mortgagee. 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 setting forth the amount, if any, of the unpaid Assessments, interest and costs constituting a lien against a Lot or Marina Yacht Mooring Slip by virtue of this Declaration.

**IV.9 Effect of Non-Payment of Assessment: The Lien, the Personal Obligation, and Remedies of Association.** If an Assessment against a Lot or Marina Yacht Mooring Slip is not paid within fifteen (15) days of the due date, the Association may file a claim of lien in the Public Records of St. Johns County, Florida. It is understood that any lien filed against a Lot will include the Appurtenant Yacht Mooring Slip. A claim of lien will state the description of the Lot or Marina Yacht Mooring Slip encumbered, the name of the Owner, the amount remaining unpaid and the date when due. A claim of lien will include Assessments which are due and payable when the claim of lien is recorded, but will secure all Assessments due or overdue thereafter 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 at the Owner's expense. If an Assessment against a Lot or Marina Yacht Mooring Slip is not paid within fifteen (15) days of the due date, the Association may charge a late fee of \$25.00 for the handling of the delayed funds. The Assessment will accrue interest from the due date at the maximum rate allowable by law. The Association may at any time thereafter bring an action to foreclose the lien against the Lot or Marina Yacht Mooring Slip in like manner as a foreclosure of a mortgage on real property, and/or a suit on the personal obligation of the Owner(s) and 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.

**IV.10 Subordination to Institutional Mortgages.** A lien (for Assessments, interest, costs and other sums owing the Association with respect to a Lot or Marina Yacht Mooring Slip, whether evidenced by a claim of lien or otherwise) which first becomes due (a) after the execution and delivery of the Institutional Mortgage, and (b) before the sale or transfer of the Lot or Marina Yacht Mooring Slip pursuant to a decree of foreclosure of the Institutional Mortgage or a deed in lieu thereof, will be subordinate to the lien of the Institutional Mortgage. No other sale or transfer will relieve any Lot or Marina Yacht Mooring Slip from liability for any Assessment, and even a transfer by deed in lieu thereof or a foreclosure sale of an Institutional Mortgage will not relieve a Lot or Marina Yacht Mooring Slip of the lien for Assessments first becoming due before the execution and delivery of the Institutional Mortgage or subsequent to the sale or transfer of such Lot or Marina Yacht Mooring Slip pursuant to a decree of foreclosure or to the sale or transfer of such Lot or Marina Yacht Mooring Slip pursuant to a deed in lieu of foreclosure. 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.

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**IV.11 Exempt Property.** The Board 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: (a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) As Common Property; and (c) As property exempted from ad valorem taxation by the laws of the State of Florida, to the extent agreed to by the Association.

**IV.12 Developer Assessment.** Notwithstanding anything herein to the contrary, Developer shall have the option, in its sole discretion, to (a) pay the Annual Assessments for the Lots or Marina Yacht Mooring Slips owned by it, (b) pay Annual Assessments only on certain designed Lots or Marina Yacht Mooring Slips (e.g. those under construction or those Lots owned by Developer on which a Dwelling Unit has been constructed and a certificate of occupancy has been issued), or (c) not pay Annual Assessments on any Lots or Marina Yacht Mooring Slips and in lieu thereof fund any resulting deficit in the Association's operating expenses. The deficit to be paid under option (c), above, shall be the difference between (i) actual operating expenses of the Association (exclusive of capital improvement costs and reserves) and the administration hereof and (ii) the sum of all monies receivable by the Association including 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 is making payment to the Association by written notice to such effect to the Association. When all Lots and Marina Yacht Mooring Slips are conveyed to purchasers, neither the Developer or its affiliates shall have further liability of any kind to the Association for the payment of Assessments, deficit or contributions.

## **V. ARCHITECTURAL CONTROL AND ARCHITECTURAL REVIEW BOARD**

**V.1 Preamble.** It is the intent of the Developer to preserve and enhance the unique natural environment of the Property. Experience has shown that careful attention during the design and construction stages is required to insure that the finished Dwelling Unit will be compatible with the original site. The Architectural Review Board ("ARB"), as established under the Master Declaration shall perform the duties under this Section. It is recommended that Owners and their approved architects and contractors inspect their Lots with a representative from the ARB prior to initiation of design and construction.

**V.2 Necessity of Architectural Review and Approval.** No Dwelling Unit, landscaping, improvement or structure of any kind, including, without limitation, any building, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvement shall be commenced, erected, placed or maintained upon any Lot or Yacht Mooring Slip or anywhere within the Property, nor shall any addition, change or alteration therein or thereof be made, including repainting of exterior to different color or the alteration of a Lot from its natural condition, (all of the foregoing are jointly and severally referred to as "Proposed Improvement") unless and until the plans, specifications and location of the Proposed Improvement shall have been submitted to, and approved in writing by the ARB. All plans and specifications for Proposed Improvement shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography and as to conformance with the Architectural Planning Criteria (see Section V.6 below) of the ARB. It is hereby acknowledged that initial construction of the improvements for the Yacht Mooring Slips will be made by the Developer; any change or modification of the improvements constituting the Yacht Mooring Slips are "Proposed Improvements" and the Owner thereof is required to obtain the approval of the ARB in the manner provided herein.

It shall be the burden of each Owner to supply preliminary and completed plans and specifications to the ARB and no plan or specification shall be deemed approved unless a written approval is granted by the ARB to the Owner submitting same. Any change or modification to approved plans shall not be deemed approved unless a written approval is granted by the ARB to the Owner submitting the change or modification.

**V.3 Architectural Review Board.** The architectural review and control functions of the Association shall be administered and performed by the ARB in the manner more fully described in the Master Declaration.

**V.4 Powers and Duties of the ARB.** The ARB shall have the following powers and duties:

(a) To recommend, from time to time, to the Board of the Master Association modifications and/or amendments to the Architectural Planning Criteria. Any modification or amendment to the Architectural Planning Criteria shall be consistent with the provisions of this Declaration.

(b) To require submission to the ARB of a preliminary and final application by each Owner and complete sets of all preliminary and final plans and specifications for any Proposed Improvement, the construction or placement of which is proposed upon any portion of the Property, signed by the Owner thereof and contract vendee, if any. The ARB shall also require submission of a complete plan for drainage of the Lot upon completion of the Proposed Improvement, plan for the protection or proposed removal of trees; samples of building materials proposed for use on any Lot, and may require such additional information as may be reasonably necessary for the ARB to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Planning Criteria.

(c) To approve or disapprove any Proposed Improvement or change or modification thereto, including repainting of exterior surfaces of any improvements to a different color, the construction, erection, performance or placement of which is proposed upon any Lot or Yacht Mooring Slip and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon. All decisions of the ARB shall be final.

(d) To approve or disapprove any and all architects who will design any Proposed Improvement on a Lot.

(e) To adopt a schedule of reasonable fees for processing requests for ARB approval of Proposed Improvements. Such fees, if any, shall be payable to the ARB, in cash, at the time that plans and specifications are submitted to the ARB.

The Architectural Planning Criteria set forth herein are intended as guidelines to which adherence shall be required by each person proposing to construct or install Proposed Improvements; provided, however, the ARB shall have the express authority to waive any requirement set forth herein if, in its professional opinion, it deems such waiver is in the best interest of the Property and the deviation required is compatible with the character of the Property. A waiver shall be evidenced by an instrument signed and executed by the ARB upon approval by a majority of its members.

**V.5 Procedure for Approval of Plans.** The ARB shall approve or disapprove the preliminary and the final applications for an Proposed Improvement within thirty (30) days after each has been submitted to it in proper form and all information required by the ARB is supplied. If the plans are not approved within such period, they shall be deemed to have been disapproved. The applications and plans submitted to the ARB shall be in compliance with the then applicable Architectural Planning Criteria.

(b) Upon approval of the preliminary application, a final application shall be filed in duplicate and shall include everything required to be shown on preliminary application and in addition the following:

(1) actual samples of exterior material with specified paint colors applied to those materials;  
and

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(2) identification of all contractors who will be employed by the Owner in performing the required work.

(c) Final application shall not be approved until the Owner tags all trees on the Lot which are scheduled for removal, provides barriers around all trees to be preserved and stakes out the perimeter of any Proposed Improvements.

(d) In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Developer or the Association or the ARB, contemplated under this Article, neither the Developer, the ARB nor the Association shall be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way related to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld by the Developer, the Association or the ARB. Approval of any plans by the ARB does not in any way warrant that the Proposed Improvements are structurally sound or in compliance with applicable codes, nor does it eliminate the need for approval from the St. Johns County building department.

(e) The ARB will be evaluating each Proposed Improvement application for total effect, including the manner in which the Lot is developed. This evaluation relates to matters of judgment and taste which cannot be reduced to a simple list of measurable criteria. It is possible, therefore, that a Proposed Improvement might meet the individual criteria delineated in this Article and still not receive approval, if in the sole judgment of the ARB, its overall aesthetic impact is unacceptable. The approval of an application for one Proposed Improvement shall not be construed as creating any obligation on the part of the ARB to approve applications involving similar designs pertaining to different portions of the Property.

#### V.6 Architectural Planning Criteria.

The following Architectural Planning Criteria shall apply to any and all Proposed Improvements, provided however, all Proposed Improvements must be submitted to and approved by the ARB and mere compliance with the following criteria shall not be deemed sufficient to waive submission to and approval by the ARB. In addition, the specific reference to ARB approval in some of the following subsections shall not be construed to exclude the required ARB approval with respect to all provisions.

(a) **Building Type.** No Dwelling Unit shall be erected, altered, placed or permitted to remain on any Lot, which is in Unit Three other than one detached single-family residence containing not less than two thousand two hundred (2200) square feet; and on Lots in Units One and Five, no Dwelling Unit shall be erected, altered, placed or permitted to remain in such Lot other than a single family residence containing not less than three thousand two hundred (3200) square feet. The calculation of such square footage shall include only liveable, enclosed, heated floor area (exclusive of open or screen porches, patios, terraces, and garages) not to exceed thirty-five (35) feet in height and having a private and enclosed garage for not less than two (2) nor more than four (4) cars. Unless approved by the ARB as to use, location and architectural design, no tool or storage facility may be constructed separate and apart from the Dwelling Unit nor can any such structure(s) be constructed prior to construction of the main residential Dwelling Unit.

(b) **Layout.** No foundation for a Proposed Improvement shall be poured, nor shall construction commence in any manner or respect, until the layout for the Proposed Improvement is approved by the ARB. It is the purpose of this approval to assure that no trees are unnecessarily disturbed and that the Proposed Improvement is placed on the Lot in its most advantageous position as determined by the ARB. The ARB requires that the layout reflect adequate provisions to protect remaining trees on the Lot, such as, barricades, spraying and topping.

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(c) **Set Back Restrictions.** The set-back restrictions are established with respect to the construction of the liveable, enclosed, heated floor area of any Dwelling Units shall be made by the ARB in accordance with any applicable governmental regulations. The minimum set back lines shall be:

- (1) **Units One and Five**
  - (A) Front Set Back Lines - 35 feet measured from the front Lot Line;
  - (B) Side Set Back Lines - 15 feet from side Lot lines;
  - (C) Back Set Back Lines - 30 feet from rear Lot line or from top of bank on lake Lots or from Wetland boundary on marsh Lots abutting Wetland Preserves;
  - (D) Corner Lots - 25 feet on each side of the Dwelling Unit which faces the roads, as measured from the Lot lines;
- (2) **Unit Three**
  - (A) Front Set Back Lines - 25 feet measured from the front Lot Line;
  - (B) Side Set Back Lines - one side of the dwelling Unit shall be at least 2 feet from side Lot line, the other shall be at least 12 feet from the side Lot line and there shall be a total of 15 feet between the foundations of each Dwelling Unit;
  - (C) Back Set Back Lines - a minimum of 30 feet from rear Lot line which abuts a wetland boundary, marsh or Wetland Preserve; for Lots which do not abut the foregoing, the back set back line will be established by the ARB taking into consideration the Dwelling Unit and size of Lot;
  - (D) Corner Lots - 25 feet on each side of the Dwelling Unit which faces the roads, as measured from the Lot lines;

The ARB may grant waivers of a set back restriction for an individual Lot (provided it is permitted under governmental regulations) where in its opinion and sole discretion taking into consideration the preservation of trees, the maintenance of overall aesthetics in the area, or such other reasons as the ARB may deem beneficial or advisable, and may consider the overall effect if the building plot incorporates more than one Lot.

(d) **Exterior Color Plan.** The ARB shall have final approval of all exterior color plans and each Owner must submit to the ARB prior to initial construction and development upon any Lot a color plan showing the color of the roof, exterior walls, shutters, trims, etc. The ARB shall consider the extent to which the color plan is consistent with the Dwelling Units in the surrounding areas and the extent to which the color plan conforms with the natural color scheme of and for the Property.

(e) **Roofs.** All roofs on Dwelling Units in Unit Three shall be covered by hard tile roofing materials. All roofs on Dwelling Units in Unit One and Five will be hard tile or cedar shake. Flat roofs shall not be permitted unless approved by the ARB. Minimum pitch of roof will be 8/12. Protrusions through roofs for power ventilators or other apparatus, including the color and location thereof, must be approved by the ARB.

(f) **Floor Level Elevations.** As is common to most areas of the Southeastern coastal plain, the St. Johns County Building Code requires that the elevation of the first finished floor of any residence be above the level of possible flood waters based upon U.S. Corps of Engineers criteria for storms that would occur once every 100 years. This level has been established for the Property as 5.0 feet mean above sea level. The ARB therefore, has established eight (8) feet mean above sea level as the minimum floor elevation for all habitable rooms. The ARB recommends that on any Lot where the floor elevations of the main living area are to be constructed 18 inches or more above existing grade, that pilings or foundation walls be used. It is suggested that the vertical plane of these pilings or walls shall be recessed a minimum of 6 inches behind the vertical plane of the exterior wall of the living area. In all cases, this lower structural element will be architecturally screened or treated. Foundation planting alone will not be accepted.

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(g) **Lot Level Elevation.** Lots adjacent to the marshes with unrestricted flow from tidal waters may be affected several times per year by unusually high "spring tides". That portion of the Lot with an elevation less than 3.1 feet, which is the peak tide elevation, may experience standing water for short durations. In certain cases, on rear yards of Lots bordering tidal marshes and canals, the ARB may allow use of fill material, if in its judgment the fill will not adversely affect drainage, trees or aesthetics provided that Owner shall obtain all necessary Permits for any such fill activity prior to undertaking such fill activity.

(h) **Garages and Automobile Storage.** In addition to the requirements stated in Paragraph V.6(a) above, all garages shall have a minimum width of twenty (20) feet and a minimum length of twenty (20) feet as measured from the inside wall of the garage. All garages must have either a single overhead door with a minimum door width of eighteen (18) feet for a two-car garage, or two (2) eighteen (18) foot doors for a four-car garage, or two (2), three (3), or four (4) individual overhead doors, each a minimum of ten (10) feet in width, and a service door. Front entry garages shall have no more than three (3) doors which shall be individual doors. All overhead doors shall be electrically operated and shall be kept closed when not in use. No carports will be permitted unless approved by the ARB. The ARB recommends side entry garages. However, where side entry is impractical, the ARB will consider for approval front entry garages. Automobiles shall be stored in garages when not in use.

(i) **Driveway Construction.** All Dwelling Units shall have a paved driveway of stable and permanent construction of at least eighteen (18) feet in width at the entrance to the garage. All driveways must be constructed with an approved material. Natural colored concrete will not be permitted. The location of driveways with respect to the side set back lines will be carefully reviewed by the ARB and landscaping and berming between driveways on adjacent Lots will be encouraged.

(j) **Dwelling Unit Quality.** The ARB shall have final approval of all exterior building materials. Exposed concrete block shall not be permitted on the exterior of any building or detached structure unless prior approval is obtained from the ARB.

(k) **Games and Play Structures.** All basketball backboards, tennis courts and play structures shall be located at the rear of the Dwelling Unit, or on the inside portion of corner Lots within the setback lines. Any basketball back-board shall be constructed of "clear" plexi-glass or similar material. No platform, doghouse, tennis court, playhouse or structure of a similar kind or nature shall be constructed on any part of a Lot located in front of the rear line of the Dwelling Unit constructed thereon, and in reviewing any of the Proposed Improvements described in this section, the ARB shall carefully review the extent to which the foregoing will or may constitute nuisances to adjoining Lot Owners.

(l) **Fences and Walls.** Fences, walls or hedges are not permitted to define property lines. Fences, hedges or screens may be used to enclose service areas, patios, pools, or other approved areas requiring privacy. The composition, location and height of any fence or wall to be constructed on any Lot shall be subject to the approval of the ARB. The ARB shall require the composition of any fence or wall to be consistent with the material used in the surrounding Dwelling Units and other fences, if any. Wire or chain link fences are prohibited.

(m) **Landscaping.** A basic landscaping plan as prepared by a licensed landscape architect for each Lot will be submitted to and approved by the ARB prior to initial construction and development therein. The ARB may, in its sole discretion, require posting a deposit or other assurance of completion of the landscaping as a part of its architectural approval. The plan shall call for landscaping improvements, exclusive of sodding and sprinkling systems. It shall be the goal of the ARB in the approval of any landscape plan and layout plan to preserve all natural vegetation where possible. The Architectural Planning Criteria shall set forth a formula for determining the minimum expenditure and level of landscaping for a Lot. These minimums and specifications may be changed from time to time and all Owners shall be required to carefully review such Architectural Planning Criteria as are in effect at the time of construction of a Dwelling Unit.

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(n) **Swimming Pools and Tennis Courts.** Any swimming pool or tennis court to be constructed on any Lot shall be subject to the requirements of the ARB, which include, but are not limited to, the following:

- (1) Composition to be of material thoroughly tested and accepted by the industry for such construction;
- (2) The outside edge of any pool wall may not be closer than four (4) feet to a line extended and aligned with the side walls of Dwelling Unit;
- (3) No screening of pool areas may stand beyond a line extended and aligned with the side walls of the Dwelling Unit and all screening shall be of a design and material consistent with the Dwelling Unit and approved by the ARB;
- (4) Pool screening may not be visible from the street in front of the Dwelling Unit;
- (5) Location and construction of tennis or badminton courts must be approved by the ARB;
- (6) Any lighting of a pool or other recreation area shall be designed so as to buffer the surrounding Dwelling Units from the lighting; and
- (7) Tennis court lighting shall not be permitted.

If one Owner elects to purchase two (2) adjoining Lots and use one for recreation purposes, the Lot used for recreation purposes must be adequately screened by landscaping and/or walls or fences on both the front and side as required by the ARB. It shall be the intent of the ARB to screen any such use from public view.

(o) **Garbage and Trash Containers.** No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash or other waste. All trash, garbage and other waste shall be kept in sanitary containers which shall be kept within an enclosure constructed with each Dwelling Unit in a location approved by the ARB. All Lots shall be maintained during construction in a neat nuisance-free condition and each construction site shall utilize a dumpster for the disposal of all trash and debris during the construction period. Without limiting any other remedies set forth herein, Owner agrees that the ARB shall have the discretion to enter onto a Lot and rectify any violation of this subsection, with or without notice, and that Owner shall be responsible for all expenses incurred by the ARB thereby, which expenses shall constitute a Specific Special Assessment against the Lot enforceable as provided herein.

(p) **Temporary Structures** No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any Lot at any time as a residence either temporarily or permanently.

(q) **Removal of Trees.** In reviewing plans for Proposed Improvements, the ARB shall take into account the natural landscaping such as trees, shrubs and palmettos, and encourage the Owner to incorporate them in his landscaping plan. No tree of six (6) inches in diameter or two (2) feet above natural grade shall be cut or removed without approval of the ARB, which approval may be given when such removal is necessary for the construction of a Dwelling Unit or other improvement.

(r) **Window Air Conditioning Units.** No window or wall air conditioning units shall be permitted. All air conditioner compressors shall be screened from view and insulated by a fence, wall or shrubbery so as to minimize noise.

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(s) Mailboxes. No mailbox or paperbox or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected on any Lot other than the standard uniform design approved by the Developer. If and when the United States mail service or the newspaper or newspapers involved shall indicate a willingness to make delivery to wall receptacles attached to Dwelling Units, each Owner, on the request of the ARB, shall replace the boxes or receptacles previously employed for such purpose or purposes with wall receptacles attached to Dwelling Units.

(t) Sight Distance at Intersection. No fence, wall, hedge, or shrub planting which obstructs sight lines and elevations between two (2) and six (6) feet above the roadways shall 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 points twenty-five (25) feet from the intersection of the street lines, or in case of rounded property corner, from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(u) Utility Connections. Building connections for all utilities, including, but not limited to, water, electricity, telephone and television, shall be run underground from the proper connection points to the building structure in such a manner to be acceptable to the governing utility authority. Water to air heat pumps will not be allowed unless approved by the ARB. Approval of water to air heat pumps will not be considered unless excess water can be dispelled directly into a storm drainage structure.

(v) Antenna. No aerial or antenna or satellite receptor dishes shall be placed or erected upon any Lot, or affixed in any manner to the exterior of any building on the Property or upon any Lot. Provided however, VHS antennas to provide for communications with vessels shall be permitted subject to the approval of the ARB, which shall assure that the visual impact thereof shall be minimized to the extent possible.

(w) Artificial Vegetation. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ARB.

(x) Shutters. Window shutters are appropriate only where sized to match the window openings.

(y) Fire Wood. All fire wood shall be stored in a screened service area; screening shall consist only of approved materials such as stained woods, stucco or accent brick.

## VI. USE RESTRICTIONS AND EASEMENTS

VI.1 Use. All Lots shall be used exclusively for single family residential purposes. No Lot shall be subdivided so as to reduce its size without approval of the Developer. No commercial activity shall be carried on any Lot with the exception of the Developer's or its designees sales, model home, marketing and construction activities. The Developer reserves the right, without the consent of any Owner or Mortgagee, except the Mortgagee, if any, holding a mortgage on the lands to be replatted, to plat or partially replat any Lot, Tract or combination of Lots and Tracts for any purpose, including without limitation, to create additional Lots or Common Property or to establish additional Common Roads, provided that the Developer owns all such Lots or Tracts at the time of such replat or partial replat,

VI.2 Maintenance. All Lots, including vacant Lots and any improvements placed thereon, and all property immediately contiguous to said Lots along drainage ditches, canals, easements and rights-of-way, shall at all times be maintained in a neat and attractive condition and landscaping shall be maintained substantially as shown on the approved plans. Owners of improved Lots shall install and maintain their lawns to the edge of the paving, including any property located within the right-of-way. All vessels and vessels moored in the Lagoon System shall



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be maintained in sea worthy condition, is in good order and repair. In order to implement effective control of this obligation, Developer reserves the right for itself, its agents, the Association and the ARB, after ten (10) days' written notice to any Owner, to enter upon any Lot for the purpose of mowing, pruning, removing, clearing, or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of Developer, the Association or the ARB detracts from the overall beauty and safety of the Property. Such entrance upon a Lot for such purposes shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday and shall not be a trespass. Developer, the Association or the ARB may charge the Owner a reasonable cost of such services, which charge shall constitute a Specific Special Assessment upon the Lot enforceable by appropriate proceeding at law or equity. The provisions of this paragraph shall not be construed as an obligation on the part of Developer, the Association or the ARB to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted.

In addition, should any yacht or vessel become unsightly, fail to be maintained in good repair and condition or become a hazard to the health or safety of others, the Developer reserves the right to be for itself, its agents, the Association and the ARB, after ten (10) days' written notice to any Owner, to perform such maintenance or repair necessary to return the yacht or vessel to good repair and condition or to remove the yacht or vessel from the Lagoon System.

**VI.3 Pets.** No animals, except dogs, cats and domestic animals which may be kept totally within the Dwelling Unit, shall be kept on any Lot. No more than four (4) four-footed pets will be permitted in any one Dwelling Unit. No household pet may be kept on any Lot for breeding or commercial purposes. Without limiting the foregoing, it is specifically acknowledged that animals which are generally considered farm animals of any and all types including, without limitation, horses, ponies, pigs, chickens, barn yard fowl, ducks, swans are specifically prohibited on or about the Property.

**VI.4 Minerals.** No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot.

**VI.5 Signs.** All signs, billboards and advertising structures of any kind, including, but not limited to, signs advertising a Lot or vessel for sale or lease, are prohibited except where approved by the ARB. The Board reserves the right at any time to totally prohibit such signs including but not limited to "For Sale" or "For Rent" signs. The foregoing restriction shall not apply to any signs erected by or on behalf of the Developer or its specified designees with respect to the sale, construction or marketing of Lots, Dwelling Units or Yacht Mooring Slips.

**VI.6 Vehicles.** No passenger vehicle, boat or boat trailer, house trailer, camper, recreational vehicle, commercial vehicle, truck or similar vehicle shall be parked or stored on any road, street, driveway, yard or Lot for any period of time in excess of 24 hours except totally enclosed within garages. No mechanical or maintenance work of any kind shall be performed on any of the above vessels or vehicles or any other motor vehicle except in garages.

**VI.7 Personal Property.** Exterior clothes lines must be temporary and screened from view at all times and shall be removed when not in use. Above ground water softener units, pool equipment and other above ground equipment shall require adequate screening to meet ARB approval; all other tanks shall be placed underground; in strict accordance with the rules and regulations of any governmental authority.

**VI.8 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

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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.

**VI.9 Nuisances.** Nothing shall be done or maintained on any Lot or Yacht Mooring Slip 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 a Yacht Mooring Slip or in a Dwelling Unit which interferes with televisions, cable or radio reception on another Lot, Dwelling Unit or Yacht Mooring Slip 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 and the written decision of the Board shall be dispositive of such dispute of question.

**VI.10 Additional Use Restrictions.** The Board may adopt reasonable additional use restrictions, rules or regulations, applicable to all or any portion or portions of the Property and may waive or modify application of the foregoing use restrictions with respect to any Lot(s) or Dwelling Unit(s) or Yacht Mooring Slips as the Board, in its sole discretion, deems appropriate.

## **VII. EASEMENTS**

### **VII.1. Utility Easements.**

(a) Developer reserves for itself, its successors and assigns, a right-of-way and easement to erect, maintain and use utilities, electric and telephone poles, wires, cables, conduits, storm sewers, drainage swales, sanitary sewers, water mains, gas and water lines or other public conveniences or utilities, on, in and over each Lot as follows:

- (1) on all Lots in Units One and Five, the foregoing reserved easement for utilities shall lie five (5) feet on either side of each side Lot line.
- (2) on all Lots in Unit Three the foregoing reserved easement for utilities shall lie ten (10) feet from the side lot line which has the larger side set back line. For example, if one side set back line on such Lot is two (2) foot and the other is twelve (12) feet, the reserved easement shall be within the twelve (12) foot set back.
- (3) In either of the foregoing cases, Owners may be permitted to encroach upon such easements with landscaping, driveways, fences, sidewalks, paths and other improvements so long as, in the sole judgment of the ARB, such improvements shall not interfere with the provision, operation, repair and replacement of the utilities, if any, contained within the reserved easements.

(b) Developer reserves the right to impose further restrictions and to grant, dedicate, relocate or release additional easements and rights-of-way on any Lots owned by Developer. In addition, Developer hereby expressly reserves the right to grant, relocate or release easements and rights-of-way over, under and through the Common Property so long as Developer shall own any portion of the Property. The easements granted by Developer shall not structurally weaken any improvements or unreasonably interfere with enjoyment of the Common Property.

**VII.2. Developer's Easement to Correct Drainage.** For so long as the Developer is a Class B member, Developer hereby reserves the blanket easement on, over and under the ground within the Property for itself and its designees to maintain and correct drainage of surface waters and other erosion controls provided however, Developer's exercise of this easement shall not adversely affect Improvements on the Property.

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**VII.3. Central Telecommunication Receiving and Distribution System.** The Developer hereby reserves to itself, its successors and assigns, an exclusive easement for installing, maintaining and supplying the services of any central telecommunications receiving and distribution system ("Cable Television Service") serving the Property. Developer reserves to itself, its successors and assigns, the right to connect to any Cable Television Service to such source as Developer may, in its sole discretion, deem appropriate including, without limitation, companies licensed to provide Cable Television Service in the County. The Developers, its successors and assigns shall have the right to charge the Association and/or individual Owners a reasonable fee not to exceed any maximum allowable charge for Cable Television Services to single family residences as from time to time defined by the Code of Laws and Ordinances of the County.

**VII.4. Easements Granted to Governmental Entities.** In connection with the rights and obligations of the Developer of Association in connection with the Permits, authorized agents of such governmental entities issuing Permits, upon presentations of proper credentials, shall be permitted access to the Property at reasonable times, for the purpose of

- (a) having access to and copying any records that must be kept under the conditions of the Permit;
- (b) inspecting the facility, equipment and practices or operations regulated or required under the Permit; and
- (c) sampling or monitoring any substances or parameters at any location reasonable necessary to assure compliance with the Permits.

**VII.5 Encroachments.** All Lots in Unit Three are hereby subjected to an easement for encroachment of not more than thirty (30) inches by the eaves and other similar projections of Dwellings 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 it stands. Provided however, Owners shall install gutters or other diversionary devices to minimize the stormwater drainage into the adjacent Lots.

The Owner of the burdened Lot hereby grants to the Owner of the Lot benefitted by the encroachment a perpetual non-exclusive easement together with appurtenant air rights, drainage rights and right of access for maintenance as may be necessary and convenient to repair, restore and maintain the portion of the Dwelling encroaching upon the 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 of the rights contained herein results in any damage to the burdened Lot or the improvements thereon, the Owner exercising his rights shall repair or restore the damage at his cost and expense.

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

**VII.6 Water and Sewer Service and Easements.** St. Johns Service Company or its successors has the sole and exclusive right to provide all water and sewage facilities and service to the Property. No well of any kind shall be dug or drilled on any one of the Lots or tracts to provide water for use within the structures to be built, and no potable water shall be used within said structure except potable water which is obtained from St. Johns Service Company, or its successors or assigns. Nothing herein shall be construed as preventing the digging of a well to be used exclusively for irrigation of any yard or garden of any Lot or tract or to be used exclusively for air-conditioning, if permitted from time to time. All sewage from any Dwelling Unit must be disposed of

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through sewage lines and disposal plant owned and controlled by St. Johns Service Company, or its successors or assigns. No water from air-conditioning systems, ice machines, swimming pools or any other form of condensate water shall be disposed of through the lines of the sewer system. St. Johns Service Company has a non-exclusive perpetual easement and right in and to, over and under the Utility Easement for the purpose of installation and/or repair of water and sewage facilities.

**VII.7 Conservation Easement.** From time to time the Developer may record a conservation easement over a portion of the Property. Such land may be determined by the St. Johns River Water Management District, Department of Environmental Regulation and/or the Army Corps of Engineers, to be mitigation areas shall be subject to the jurisdiction of such agencies in that it constitutes "wetlands" and such land is herein referred to as "Restricted Land". The use of such Restricted Land is hereby restricted as follows:

- (a) There shall be no construction or placing of buildings, roads, signs, billboards or other advertising, utilities or structures above the ground in the Restricted Land.
- (b) No soil or other substance or material used as land fill, and no trash, waste, unsightly or offensive materials may be dumped or placed on the Restricted Land.
- (c) No trees, shrubs or other vegetation on the Restricted Land may be removed or destroyed.
- (d) There shall be no excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such a manner as to affect the surface of the Restricted Land.
- (e) There shall be no surface use of the Restricted Land except for purposes that permit the land or water to remain predominantly their natural condition.
- (f) There shall be no activities within the Restricted Land which are detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish or wildlife habitat preservation.
- (g) There shall be no use made of the Restricted Land and no act shall be undertaken which is detrimental to the retention of land or water areas or which are detrimental to the preservation of structural integrity or physical appearance of sites or properties of historical, architectural, archaeological or cultural significance.

Upon the recording of a conservation easement, the foregoing restrictions shall be deemed covenants running with the Restricted Land, will be binding upon the Owners of the Restricted Land, their successors and assigns and inure to the benefit of the St. Johns River Water Management District ("SJRWMD").

Notwithstanding any other provisions hereof, the terms of this Section VII.7 shall not be amended or modified without the written consent of the SJRWMD. Further, in addition to the provisions of Section XVII.1, this Section VII.7 may be enforced by SJRWMD, its successors and assigns.

**VII.8 Tieback Easements.** The Developer hereby reserves for itself and the Association an easement measuring twenty five (25') feet from the Lagoon Bulkhead over and across each Lot abutting the Lagoon for the installation, repair and maintenance of "tieback" structure securing the Lagoon Bulkhead.

No swimming pool or other subsurface improvement or vertical structure shall be constructed within such easement area. Decks, patios, walks may be permitted, subject to ARB approval, provided however, the Owner shall pay all costs and expenses of repair of such permitted improvement, in the event that they are damaged or removed in exercising this reserved easement.

### VIII. STORMWATER MANAGEMENT SYSTEM

**VIII.1. Drainage Facilities.** The Plats for the development of the Property include the lakes, retention areas, swales and drainage easements jointly referred to herein as "Stormwater Management System". The Plats also depict the marina and canals with the appurtenant docking facilities which will provide recreation and access to the Intracoastal Waterway jointly referred to herein as the "Lagoon System". Additional provisions covering the Lagoon System are more fully set forth in Article IX.

The Association shall have the obligation, at its cost and expense, to maintain the Stormwater Management System to the extent and in the manner hereinafter set forth. In addition, certain drainage easements or swales which are a part of the Stormwater Management System may be a part of a Lot and the Developer may reserve, dedicate or grant a non-exclusive easement over such portion of the Lot for drainage and for access for maintenance, either pursuant to the Plat or by separate instrument. Provided however, access to such Lot and the drainage easements or swales located thereupon shall be limited to such access as is necessary or convenient for maintenance and shall not result in other Owners having a right of access onto the Lot.

**VIII.2 Maintenance of Stormwater Management System.** The Association shall be responsible for the maintenance, operation and repair of the Stormwater Management System all in accordance with the applicable Permits and such cost shall be a part of the Annual Assessments. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the Stormwater Management System to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by SJRWMD. The Association shall keep the Stormwater Management System in proper and operational order, including all routine maintenance activities and any special repair activities for any portion of the Stormwater Management System lying outside of a Lot. The Association shall maintain and control the water level and quality of the Stormwater Management System and shall maintain the bottoms of any lakes or wet retention areas in the Stormwater Management System. The Association shall have the power, right, obligation and responsibility, as is required by any Permits, to control and eradicate the plants, fowl, reptiles, animals, fish and fungi in and on any portion of the Stormwater Management System.

The Owner of the land adjacent to any water edge of the Stormwater Management System ("Adjacent Owner") shall maintain the embankment to the water edge as such level shall rise and fall from time to time irrespective of whether such Owner owns the underlying land. Maintenance of the embankment shall be conducted so that the grass, planting or other lateral support of the embankment shall exist in a clean and safe manner and so as to prevent erosion. If the Adjacent Owner shall fail to maintain the embankment, the Association shall have the right, but not the obligation, to enter onto the Adjacent Owner's property and perform the maintenance at the expense of the Owner, which expense shall be a Specific Special Assessment against the Owner and his Lot or Dwelling Unit.

The Association will be responsible for the routine mowing of all portions of the Stormwater Management System which are not filled with water, including swales and dry retention areas, except those swales or dry retention areas located within a Lot, and the maintenance of adequate vegetation cover for erosion and sediment control in all land surfaces exposed or disturbed by construction or alteration within the Common Properties. The Association has the responsibility for the routine removal and disposal of trash which may accumulate within the systems of the Stormwater Management System which are not a part of the Lot. If certain portions of the Stormwater Management System are contained within a Lot, then the Owner of such Lot shall provide routine maintenance as a part of the Owner's maintenance of his Lot. In the event the Owner fails to provide such maintenance then the Association shall perform or cause such maintenance to be performed at the Owner's cost and expense as a Specific Special Assessment as described in Section IV.5(b).

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**VIII.3 Improvements to the Stormwater Management System.** In the event that Developer, an entity designated by the Developer or the Association shall construct any bridges, docks, bulkheads or other improvements which may extend over or into the lakes or retention areas in the Stormwater Management System or construct any similar retention areas in the Stormwater Management System, the Association shall maintain any and all improvements in good repair and condition in accordance with the applicable Permits. No Owner, except the Developer, its designee or the Association, shall be permitted to construct any improvement, permanent or temporary, on, over or under any portion of the Stormwater Management System without the written consent of the ARB, which consent may be withheld for any reason. Any improvements to the Stormwater Management System permitted by the ARB and installed by an Owner shall be maintained by such Owner in accordance with the maintenance provisions in this Declaration.

**VIII.4 Easements.** The Owners' use and access to any lakes or retention areas within the Stormwater Management System shall be subject to and limited by the rules and regulations of the Association and the Permits. The Association is hereby granted a non-exclusive easement for ingress and egress over the Stormwater Management System and a parcel of land extending landward five (5) feet from any water's edge of a lake or wet retention area and over such land as is necessary to obtain access, whether located on a separate tract or on a Lot, for the purpose of providing the maintenance required herein and the Adjacent Owners are hereby granted a non-exclusive easement over the Stormwater Management System for the purpose of providing any maintenance to the embankment or Adjacent Lot.

**VIII.5 Stormwater Management System Restrictions and Covenants.** In connection with the use of any portion of the Stormwater Management System, the following restrictions shall apply:

(a) No motorized or power vessels shall be permitted on any lake within the Stormwater Management System with the exception of vessels used for maintenance thereof.

(b) No bottles, trash, cans or garbage of any kind or description shall be placed in any portion of the Stormwater Drainage System.

(c) No activity shall be permitted on any portion of the Stormwater Management System which may become an annoyance or nuisance to the adjacent Property and the Owner thereof. The Association's determination whether any activity constitutes an annoyance or nuisance shall be dispositive.

(d) No person or entity, except Developer or the Association shall have the right to pump or otherwise remove any water from any portion of the Stormwater Management System for the purpose of irrigation or other use.

(e) There shall be no fishing permitted from bridges, streets or right of ways. Only Owners shall be permitted to fish in any portion of the Stormwater Management System and only in areas so designated.

(f) The Board shall be entitled to establish, amend, or modify rules and regulations governing the use of the Stormwater Management System as the Board deems necessary or convenient.

**VIII.6 Indemnification.** In connection with the platting of the Property or obtaining the Permits, the Developer may assume or may be required to assume certain obligations of the maintenance of the Stormwater Management System. The Developer hereby assigns to the Association and the Association hereby assumes all the obligations of the Developer under the Plats, the Permits or under any applicable governmental regulations and for any and all obligations for the maintenance of Stormwater Management System (except for maintenance of the portion thereof which is contained within a Lot which shall be the responsibility of the Adjacent Owner). The Association further agrees that subsequent to the recording of this Declaration, it shall indemnify and hold Developer harmless from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury

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or property damage arising from or out of occurrence, in, upon, at or from the maintenance of the Stormwater Management System occasioned wholly or in part by any act or omission of the Association or its agents, contractors, employees, servants or licensees, but not including any liability occasioned wholly or in part by the acts of the Developer, its successors, assigns, agents or invitees.

**VIII.7 Amendment.** No amendment or modification to this Article may be made unless SJRWMD gives prior approval thereof.

**VIII.8 Enforcement.** In addition to the rights described in Section XVII.1, the SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the rights, obligations, terms and conditions contained in this Article.

## IX. LAGOON SYSTEM

**IX.1 Lagoon System Components.** The Lagoon System consists or will consist of tracts of land as depicted on the Plats which are designated with the letter "L" and such other parcels of land within the plats as may be conveyed by the Developer to the Association and designated as a part of the Lagoon System. Further, if when finally constructed, any parcels of the "L" tracts are not improved as a part of the Lagoon System such parcels may be conveyed to the Adjacent Owner. The tracts so designated with the letter "L" will be conveyed to the Association upon completion subject to the following:

- (a) The reserved easement of the Developer, its successors, assigns, designees, Mortgagees and Lenders for ingress, egress, use and enjoyment of the Lagoon System on such conditions and on such terms as Developer specifies;
- (b) An easement for ingress and egress, use and enjoyment of the Lagoon System for all Owners, their families and tenants subject to the restrictions hereinafter set forth and the Rules and Regulations of the Association;
- (c) A perpetual easement for the use of a Yacht Mooring Slip which are granted to specific Owners as hereinafter more fully described.

**IX.2 The Lagoon Permits.** The construction and operation of the Lagoon System which permits entry to the Intracoastal Waterway is subject to a number of Permits, easements and other approvals issued by various governmental agencies which, by reference hereto, are incorporated herein to the same extent as if they were set forth in their entirety. It is the obligation of the Developer to construct the Lagoon System in accordance with the Permits. Upon completion of the Lagoon System, the Association shall be the entity responsible for the ongoing maintenance of the Lagoon System and for assurance that its operation remains in full compliance with the Permits. The Developer shall assign the Permits together with all applicable documentation to the Association. The Association shall then undertake the responsibility of renewing the Permits as is necessary. This Declaration contains a description of some of the conditions and requirements of the Permits; to the extent that the terms of the Permits are modified or the provisions herein are deemed to be inconsistent with the terms of the Permits, the terms of the Permits as modified from time to time shall prevail.

**IX.3 Water Quality Monitoring Program.** Upon the completion of the construction of the Lagoon System, the Association shall set up a quality assurance plan which is in compliance with the Permits.

Upon request, the Association shall furnish all records and plans required by appropriate governmental agencies. The retention period for all records will be extended automatically unless otherwise stipulated by the appropriate governmental agencies during the course of any unresolved enforcement action. The Association shall retain, at its offices, all of the monitoring information, copies of all reports required by the Permits and records of all data used to obtain the Permits. The time period of retention shall be at least three years from the date of the

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sample, measurement report or application unless otherwise specified by agency rule. Monitoring shall be undertaken pursuant to the Permits.

**IX.4 Use Restrictions.** Owners shall be permitted to use the Lagoon System and store their vessels therein. The following restrictions shall apply to any and all watercraft using the Lagoon System.

- (a) No activities constituting major repair or maintenance of watercraft, including major engine repair, sanding and painting, shall be permitted within the Lagoon System.
- (b) The discharge of sewage, bilge, fuel or other contaminants from watercraft in the Lagoon System is prohibited.
- (c) The use of detergents containing phosphates for the purpose of cleaning watercraft within the Lagoon System is prohibited. All detergents used for such purpose shall be approved by the Association and a list of approved detergents shall be maintained by the Association for distribution to interested owners and operators.
- (d) All watercraft shall be operated a "no wake/dead idle speed" while in the Lagoon System.
- (e) No swimming or bathing shall be permitted in the Lagoon System.
- (f) No personalized, motorized watercraft, including without limitation, jet skis or similar equipment, shall be permitted in the Lagoon System.

**IX.5 Manatee Protection.** Developer shall initially install and the Association shall repair, replace and maintain manatee awareness signs at permanent locations at the docking and launching facilities as required by the Permits. A permanent informational display must be installed and maintained in accordance with the Permits at the Marina. All such signs and informational displays must be maintained in accordance with the Permits in a manner which is approved by the Department of Natural Resources.

All Owners are hereby advised that there are civil and criminal penalties for harming, harassing, or killing manatees and to the extent that the Developer or Association are held responsible for a manatee harmed, harassed or killed as a result of the actions of the Owners, their families, guests and invitees, the Owner shall indemnify and hold the Developer and/or Association harmless from any and all costs and expenses in connection therewith, including without limitation, reasonable attorney's fees.

**IX.6 Control of Lagoon System.** At such time as the Marina is completed, the Association shall employ qualified personnel whose job it shall be to control the use of the Lagoon System. The Developer reserves the right, but no obligation, to construct such marina related facilities upon the Property adjacent to the Marina, if it is constructed, as Developer deems necessary, feasible or convenient, including without limitation, restaurant, marina sales, pool, real estate sales office and any other activities permitted under the zoning. Developer reserves the right to operate such Marina related facilities on such basis as Developer, in its sole judgment determines, and shall have the right to receive income arising from any such activities for its own account. Provided however, Developer reserves the right, but not the obligation, in its sole discretion, to convey any lands so developed to the Association and upon such conveyance, the Association shall operate and maintain the marina related improvements in accordance with the Permits and the Association shall be entitled to all income therefrom.

**IX.7 Fuel and Spill Prevention.** The Association shall maintain and review a Fuel Spill Cleanup and Contingency Plan ("Plan") in accordance with the terms of the Permits. With respect thereto, the Association shall contract with or employ a qualified personnel who shall be responsible for the operation of the Lagoon System, the supervision of all other personnel and the implementation of the Plan. Such personnel shall have complete control,



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authority and responsibility for any fueling activities. The Association shall assure that all personnel are fully cognizant of the entire Plan and that the Plan is immediately implemented whenever necessary.

**X. YACHT MOORINGS SLIPS**

**X.1 Use of Yacht Mooring Slips.** As a part of the acquisition of a Lot, each Owner is intended to receive a perpetual exclusive easement of use and enjoyment of an Appurtenant Yacht Mooring Slip in the manner more fully set forth hereinafter and as set forth in the deed conveying the Lot or in a separate instrument. This easement is or will be an appurtenance running with the ownership of the Lot and may not be separated therefrom. Once conveyed to an Owner, any attempt to transfer, convey, sell, lease or occupy the Appurtenant Yacht Mooring Slip separate from a conveyance, transfer, sale, lease or occupation of the Lot to which is appurtenant shall be void and the Developer and the Association may pursue any and all legal and equitable remedies it may have to eject such unpermitted use of the Appurtenant Yacht Mooring Slip. The Lot Owner's interest in such Appurtenant Yacht Mooring Slip is a use easement only, the Association shall own the bottom of the Lagoon System. Provided, however, once conveyed, no person or entity including without limitation, the Developer or Association may terminate this easement without the consent of the Owner, which consent may be withheld for any reason. The Owner may mortgage or encumber the easement. It is understood and acknowledged that during the construction of the Lagoon System, there may not be Yacht Mooring Slips completed for all developed Lots and in such event Owners of Lots which do not abut the Lagoon System may be temporarily assigned a Yacht Mooring Slip or may not be assigned a Yacht Mooring Slip. Upon completion of the Yacht Mooring Slip to be appurtenant to such Lot, the use right for the Yacht Mooring Slip shall be transferred to such Owner and shall thereafter by a nontransferable appurtenance to the Lot.

Within the Lagoon System there are three (3) types of Appurtenant Yacht Mooring Slips:

(a) For the Lots, the rear boundary of which abut the Lagoon System, the Appurtenant Yacht Mooring Slip will consist of a portion of the Lagoon System lying within an extension of the side lot lines, for a width which shall be established from time to time by the Developer. The width and extension will be determined by the Association based upon the width of the Lagoon and the size of the Owner's vessel.

(b) For the Lots abutting the Intracoastal Waterway which consist of the Lot together with a tract of land described with same lot number and the letter "A" on the applicable Plat, the Appurtenant Yacht Mooring Slip will consist of a portion of the Lagoon System lying within the side lot lines of the Tract designated with an "A", for a width which shall be established from time to time by the Developer. The width and extension will be determined by the Association based upon the width of the Lagoon and the size of the Owner's vessel.

(c) For the remainder of Lots, the Appurtenant Yacht Mooring Slips will be a tract of land in the Lagoon System including certain Yacht Mooring Slips within the Marina described on the plat thereof with the letter "S".

(d) The precise width of the Appurtenant Yacht Mooring Slips shall be based upon the width of the channel and no vessel shall be stored within the Lagoon System which obstructs passage of other vessels.

**X.2 Marina Yacht Mooring Slips.** The Developer reserves the right to retain ownership of certain Marina Yacht Mooring Slips located within the Marina, if it is constructed. If constructed, the Marina will be that portion of the Lagoon System which may be used for the docking of vessels owned by non-owners as well as Owners. The owners of Marina Yacht Mooring Slips will be Class C members of the Association and shall pay Assessments as elsewhere provided herein. The Developer may lease, convey, transfer any or all of its right to the Marina Yacht Mooring Slips to such persons or entities it may deem necessary or convenient. In addition, it is understood and acknowledged that the Developer, may at its sole discretion and option, convert and convey the

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ownership of such Marina Yacht Mooring Slips to a fee simple ownership, including without limitation, a "dockominium" or other similar form of ownership.

**X.3 Maintenance of the Yacht Mooring Slips.** The Developer shall construct a floating dock and appurtenant mooring piling(s) in connection with each Yacht Mooring Slip. Each Owner shall maintain, at its cost and expense, the dock and appurtenant moorings as constructed, in good repair and condition. In the event that the Owner fails to maintain his Yacht Mooring Slip in good repair and condition, the Association, after giving written notice of its intent to do so may enter onto the Yacht Mooring Slip and perform the repair and maintenance, the cost of which shall be assessed against the Owner as a Specific Special Assessment. The Association shall maintain the Lagoon System and the Intracoastal Waterway bulkhead, but the Lagoon bulkhead maintenance shall be a part of the Annual Assessment and the Intracoastal Waterway bulkhead shall be subject to the Intracoastal Waterway Bulkhead Special Assessment.

No change or modification to the Yacht Mooring Slips or the permitted improvements thereto may be made without the consent of the ARB.

**X.4 Use Restrictions.** Each Owner shall use his Yacht Mooring Slip so as to maintain the community standards and so as not to create any nuisance or disturbance to Adjacent Owners. Each Owner shall observe boating safety rules and regulations and operation, secure and maintain its vessel in accordance therewith and in accordance with all applicable governmental and quasi governmental rules and regulations.

All equipment not stored within the vessel must be stored in a "dock box".

All vessels operating within the Lagoon System will operate at a dead idle speed/"no wake" speed at all times.

## **XI. MASTER ASSOCIATION**

**XI.1 Master Association.** Marsh Landing at Sawgrass Master Association, Inc. (the "Master Association") represents residents of the Marsh Landing at Sawgrass development, including all Lot Owners, and its members are those persons designated in its Articles of Incorporation and Bylaws. The Master Association, acting through its board of directors, shall have the powers, rights and duties with respect to this Property and Marsh Landing at Sawgrass which are set forth in its Articles of Incorporation, Bylaws and the Master Declaration.

**XI.2 Assessments.** The Master Association is entitled to a lien upon a Lot for any unpaid assessment for expenses incurred or to be incurred by the Master Association in the fulfillment of its maintenance, operation and management responsibilities with respect to roadways, bridges, drainage facilities, rights-of-way, medians, bike-paths, entrance ways, irrigation systems, traffic control systems, arterial street lighting, roving patrols, fences and other facilities, lakes, lighting system, wildlife preserve, marshes, athletic fields, gate houses and other Common Areas (as defined in the Master Declaration) used or to be used in common with all residents of Marsh Landing at Sawgrass, and the payment of real estate ad valorem taxes assessed against such Common Areas, the oversight of the Architectural Review Board and other services, all of which are more particularly set forth in the Master Bylaws and recorded in the Master Declaration.

**XI.3 Rights of Master Association.** If for any reason the Association or any Owner refuses or fails to perform the obligations imposed on it hereunder or under its Articles and Bylaws, the Master Association shall be, and is hereby, authorized to act for and in behalf of the Owner or Association in such respect that the Association or Owner has refused or failed to act, and any expenses thereby incurred by the Master Association shall be reimbursed by the Association or Owner, as the case may be.

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**XI.4 Limitations on Amendments.** Notwithstanding anything herein to the contrary, this Declaration shall not be amended in any manner so as to affect the rights of the Master Association without the written approval of the board of directors of the Master Association. Any such approval shall be evidenced by a recordable instrument executed by the president and attested by the secretary of the Master Association.

**XI.5 Rights of Ingress and Egress.** The Master Association shall have the right of ingress and egress to the Property for the purpose of preserving, maintaining or improving marsh areas, lakes, hammocks, wildlife preserves or other similar areas (whether within or without the Property), and for the purpose of patrolling and maintaining limited access within all of Marsh Landing at Sawgrass. Provided, however, this grant shall not be deemed to grant to members of the Master Association such right of ingress and egress

## **XII. MARSH LANDING COUNTRY CLUB**

**XII.1 Ownership and Use of Club Facilities.** All persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Developer or any other person or entity with regard to the continuing ownership or operation of Marsh Landing Country Club ("Club"). Further, the ownership or operational duties of the Club may change at any time and from time to time by virtue of, but without limitation, (a) a sale or assumption of operations of the Club to or by an independent person or entity, (b) the conversion of the Club membership structure to an "equity" club or similar arrangement whereby the members of the Club or an entity owned or controlled thereby become(s) the owner or operator of the Club, or (c) conveyance, pursuant to contract, option or otherwise, of the Club to one or more affiliates, shareholders, employees or independent contractors of Developer without consideration and subject to or free and clear of mortgages or other encumbrances. In connection with any such transfer, no consent of any Owner, or the Association or the Master Association shall be required. In addition, the Owners shall have no right, title or interest in the Club by virtue of their ownership of a Lot or Yacht Mooring Slip, or on any other basis.

**XII.2 Rights of Club Members.** The Club, its owners and mortgagees and its members (irrespective of whether such members are Owners hereunder), employees, agents, contractors and designees shall at all times have a right and non-exclusive easement of access and use over the Common Roads of the Master Association as is necessary and convenient to travel to and from the entrance to the Property to the Club facilities and such other portions of the Property as are necessary and convenient to the operation, maintenance, repair and replacement of the Club facilities. Without limiting the generality of the foregoing, members of the Club and permitted invitees shall have the right to park their vehicles on the Common Area of the Master Association and Common Roads owned by the Master Association at reasonable times before, during and after tournaments, and other approved functions at the Club.

**XII.3 Limitations on Amendments.** In recognition of the fact that the provisions of this Section are for the benefit of the Club, no amendment to this Section and no amendment in derogation hereof to any other provisions of this Declaration, may be made without the written approval thereof by the owner(s) of the Club or, in the case of a corporate owner, by its board of directors. The foregoing shall not apply, however, to amendments made by the Developer.

**XII.4 Jurisdiction and Cooperation.** It is Developer's intention that the Association and the Club shall cooperate to the maximum extent possible in the operation of the Property and the Club.

## **XIII. LIABILITY - GENERALLY**

**XIII.1 General Provisions.** Notwithstanding anything contained in this Declaration, the Articles, Bylaws or rules and regulations of the Association or any other document governing or binding the Association ("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.

**XIII.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 St. Johns or any other jurisdiction or to prevent tortious activities by Owners or third parties.

(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 safety or welfare of the persons even if such funds are used for such purposes.

**XIII.3 Owner Covenant.** Each Owner, his heirs, successors and assigns (by virtue of his acceptance of title 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 Section 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.

**XIV. 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.

**XIV.1 Mortgagee Requests for Notice.** Upon written request to the Association identifying the name and address of an Institutional Mortgagee and specifying the Lot or Marina Yacht Mooring Slip encumbered by an Institutional Mortgage, Institutional Mortgagee 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 or Yacht Mooring Slip on which there is an Institutional Mortgage held, insured or guaranteed by such Institutional Mortgagee;

(b) Any delinquency in the payment of Assessments owed by an Owner of a Lot or Marina Yacht Mooring Slip subject to an Institutional Mortgage held, insured or guaranteed by such Institutional 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 on a specified bond maintained by the Association which would require the consent of the Institutional Mortgagees.

**O. R. 997 PG 1301**

**XIV.2 Mortgagee Information.** The Association will make available to Owners and Institutional Mortgagees 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.

**XIV.3 Financial Statements.** Upon written request of holder of an Institutional Mortgage, the Association will obtain and deliver to such Institutional Mortgagee the most recent financial statements of the Association.

**XIV.4 Consent of Lenders.** For so long as the lien of the Mortgages held by the Lenders, encumber any Property subject to this Declaration, the Developer shall obtain the written consent of the Lenders prior to undertaking any of the following:

(a) The exercise of any of the reserved rights of the Board of Directors of the Association or the Developer as set forth in Subsection II.2(a)-(e) and Section II.5.

(b) If a Lot or Tract has not been released from the lien of the Lenders' Mortgages, Developer shall not change the use of a Lot or Tract, resubdivide or replat a Lot or Tract as provided in Section VI.1, without the Lenders' consent.

(c) The exercise by Developer of the reserved rights set forth in Subsection VII.1(b), Section VII.7, Subsection VIII.5(f), Section VIII.7, provided however, to the extent that the actions under such sections are required by the St. Johns River Water Management District, the requirements of the District shall prevail.

(d) The exercise by the Developer of the reserved rights set forth in Section IX.6.

(e) The exercise by the Developer of the reserved right to lease, convey, transfer any or all ownership of the Marina Yacht Mooring Slips or to create a "Dockominium" as set forth in Section X.2.

(f) The exercise by the Developer of the reserved rights set forth in Sections XVI.1, XVI.2, XVI.5 and XVII.3.

**XIV.5 Lenders' Requirements.** Upon the request of the Lenders, any insurance proceeds or condemnation awards in excess of \$10,000 resulting from damage or condemnation of the Common Property shall be placed with an Insurance Trustee and disbursed in accordance with the written approval or direction of the Developer, if the Developer owns any of the Property, the Association and the Lenders, if the lien of the Lenders' mortgages encumbers any of the Property. The Insurance Trustee shall be a bank or institution with trust powers or an attorney approved by the foregoing described parties.

Further, Developer agrees that Developer shall provide to the Lenders notice of the matters set forth in Article XIV.1(a)-(d), without the requirement of written consent therefor.

## **XV. INSURANCE, CONDEMNATION AND RECONSTRUCTION**

**XV.1 Damage to or Condemnation of Common Property.** If 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 General 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.

**XV.2 Damage to or Condemnation of the Lots or Yacht Mooring Slips.** In the event of damage or destruction to any portion of the improvements on a Lot or Yacht Mooring Slip, due to casualty, natural events, condemnation or conveyance in lieu thereof, the improvements will be promptly repaired or restored by the Owner as expeditiously as possible. In the case of damage to a Yacht Mooring Slip, the Owner shall restore the Yacht Mooring Slip to substantially its condition and in accordance with the original plans and specifications as expeditiously as possible.

**XV.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 Specific Special Assessment against such Owner.

**XV.4 Insurance.** The Association will obtain and maintain insurance policies insuring the interests of the Association. A policy of property insurance will cover all the Common Property and improvements thereto (excluding land, foundations, 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 Board, 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 Board, provided that funds to cover the deductible will be included in the Association reserve accounts.

(d) If any of the insurance requirements contained herein become unavailable and/or prohibitively expensive or the Institutional Mortgagees modify the insurance requirements, the Board, in its discretion, may determine to modify the coverages contained herein in such a manner as the Board, using its business judgment, deems prudent and reasonable. The policy will provide that it may not be cancelled or

**O.R. 997 PG 1303**

substantially modified without at least thirty (30) days' prior written notice to the Association. The Board may obtain such additional insurance as it in its sole discretion deems reasonable, convenient or necessary. In the event that any of the coverage required herein becomes unavailable or prohibitively expensive, the Association may make such changes in coverage as it deems reasonable and prudent provided such coverage is consistent with the then applicable requirements of the Institutional Mortgagees.

#### **XVI. ADDITION OF ADDITIONAL PROPERTY TO BE ENCUMBERED BY THIS DECLARATION**

Additional Property may be subjected to this Declaration, and owner thereof may become members of the Association, as provided in this Section.

**XVI.1 Addition by Developer.** The Developer may, without the consent of either the Association, any Owner or Institutional Mortgagee being required, make Additional Property a part of the Property, subject to this Declaration, and the owners of Lots included in the Additional Property members of the Association. The Developer is not obligated to add any Additional Property to the Property.

**XVI.2 Additions by Others.** With written approval of the Developer, but, without the consent of either the Association or any Lot Owner or Institutional Mortgagee being required, any other owner of the Additional Property, including, without limitation, the Association may make the Additional Property a part of the Property, subject to this Declaration, and the owners of Lots included in the Additional Property members of the Association in the manner provided in this Section.

**XVI.3 Manner of Adding Additional Property.** Additional Property may be added to the Property and the owners of Lots within the Additional Property made members of the Association by the Developer (and other owner, if applicable) by filing in the public records of St. Johns County, Florida, a supplement to this Declaration with respect to the Additional Property committing and declaring such to be the case (the "Supplemental Declaration"). The execution and recording of a Supplemental Declaration with respect to the Additional Property will extend the operation and effect of this Declaration to the Additional Property and to the owners of its Lots and Marina Yacht Mooring Slips, if any, to membership in the Association,

**XVI.4 Content of the Supplemental Declaration.** The Supplemental Declaration may contain such additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or convenient in the judgment of the Developer, to reflect the different character, if any, of the other Additional Property.

**XVI.5 Termination.** The Developer may, without the consent of the Association, any Owner or Institutional Mortgagee being required, terminate the effect of this Declaration upon any land owned by Developer by recording a Termination of Declaration. Upon recording of such termination, the land described therein may be held, occupied, transferred and conveyed free and clear of the terms and conditions of this Declaration.

**XVI.6 Effect on Additional Property.** Provided however, until such time as the Developer subjects the Additional Property to the Declaration as provided herein, the inclusion of land as a part of the Additional Property shall in no way encumber the title to the Additional Property which may be held, conveyed, mortgaged and occupied free and clear of this Declaration.

#### **XVII. GENERAL PROVISIONS**

**XVII.1 Enforcement.** The covenants, conditions, restrictions and other provisions of this Declaration will be enforceable by the Developer, the Association or a Lot or Yacht Mooring Slip Owner. Compliance herewith may be enforced in any manner permitted in law or in equity. In the event of violation by a Lot or Yacht Mooring

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Slip 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 Owner.

**XVII.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.

**XVII.3 Amendment.** As long as the Developer owns a Lot, the Developer reserves the right, without consent or joinder of any Owner, 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, (e) to accommodate the requirements of any entity issuing Permits in connection with the development of the Property and (f) 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 St. Johns 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.

**XVII.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.

**XVII.5 Duration.** The restrictions contained in this Declaration will run with the Property and be binding upon the Owners, inuring to the benefit of and enforceable by the Developer, 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, 2040, after which they will be automatically extended for successive periods of ten (10) years each unless an instrument terminating them is (i) executed by Lot Owners owning not less than two-thirds (2/3) of the Lots and if applicable, Marina Yacht Mooring Slips and (ii) recorded in within the public records of St. Johns County, Florida.

**XVII.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 (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition of Assessments as provided, (c) proceedings involving challenges to ad valorem taxation or (d) counterclaims brought by the Association in proceedings instituted against it. Notwithstanding the provisions of Section XVI.3, this Section XVI.6 shall not be amended unless such amendment is made by the Developer and is approved by the percentage vote and pursuant to the same procedures, necessary to institute proceedings as above.



O. R. 997 PG 1305

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:

FLETCHER REALTY III, INC

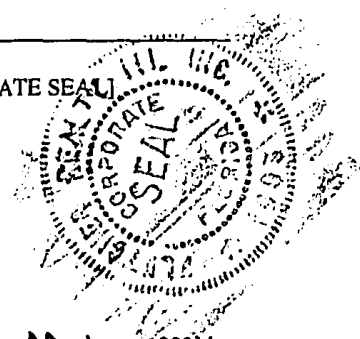
Frances F. Hutchinson  
Print Name Frances F. Hutchinson

Lori E. Rigdon  
Print Name Lori E. Rigdon

By: Stephen D. Melching  
Its Vice President

[CORPORATE SEAL]

Whose Address is:  
4400 Marsh Landing Boulevard  
Ponte Vedra Beach, Florida 32083



STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of APRIL, 1993 by STEPHEN D. MELCHING, the VICE President of Fletcher Realty III, Inc., a Florida Corporation, on behalf of the corporation, who is personally known to me and who did not take an oath.

Frances F. Hutchinson  
Print Name Frances F. Hutchinson  
Notary Public State of Florida  
My Commission expires: 12/3/96  
Commission Number \_\_\_\_\_  
(SEAL)

OFFICIAL NOTARY SEAL  
FRANCES F HUTCHINSON  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC241961  
MY COMMISSION EXP. DEC. 3, 1996

**O. R. 997 PG 1306****EXHIBIT A****LEGAL DESCRIPTION OF PROPERTY**

Lots 1, 2, 82 and 83 **THE HARBOUR AT MARSH LANDING UNIT ONE**, according to plat thereof recorded in Map Book 24, pages 71 - 87 of the public records of St. Johns County, Florida.

Lots 15 - 19 **THE HARBOUR AT MARSH LANDING UNIT THREE**, according to plat thereof recorded in Map Book 24, pages 88 - 92 of the public records of St. Johns County, Florida.

Lots 1 - 25 **THE HARBOUR AT MARSH LANDING UNIT FIVE**, according to plat thereof recorded in Map Book 24, pages 98 - 102 of the public records of St. Johns County, Florida.

EXHIBIT B

O. R. 997 PG 1307

## ADDITIONAL PROPERTY

Any and all of the land within the planned unit development known as Marsh Landing at Sawgrass, including without limitation the lands contained within the plats of

THE HARBOUR AT MARSH LANDING UNIT ONE according to plat thereof recorded in Map Book 24, pages 71-87 of the public records of St. Johns County, Florida;

THE HARBOUR AT MARSH LANDING UNIT THREE according to plat thereof recorded in Map Book 24, pages 88-92 of the public records of St. Johns County, Florida;

THE HARBOUR AT MARSH LANDING UNIT FOUR according to plat thereof recorded in Map Book 24, pages 93-97 of the public records of St. Johns County, Florida;

THE HARBOUR AT MARSH LANDING UNIT FIVE according to plat thereof recorded in Map Book 24, pages 98-102 of the public records of St. Johns County, Florida;

Less and except those lands described in Exhibit A attached hereto and made a part hereof.

JAX-44746.8

O.R. 997 PG 1308

CONSENT BY MORTGAGEE TO DECLARATION

The Daiwa Bank, Limited, the holder of a certain mortgage encumbering the lands encumbered by this Declaration, which mortgage is more fully described in that certain Mortgage by and between Marsh Landing Venture, Ltd. and Marsh Landing Business Park, Ltd. and Lloyds Bank Plc, securing the amount of \$12,000,000.00, dated January 19, 1989, and recorded in Official Records Book 809, page 459, assigned to The Daiwa Bank, Limited by that certain Assignment of Mortgage and Interests Under Other Real Estate Instruments recorded in Official Records Book 852, page 98; further assigned by Assignment of Mortgage and UCC Financing Statement as recorded in Official Records Volume 852, page 1081; modified by Mortgage Modification and Receipt for Future Advance as recorded in Official Records Volume 852, page 1157; modified by Second Mortgage Modification, Receipt for Future Advance and Assumption Agreement as recorded in Official Records Book 985, page 260, all in the public records of St. Johns County, Florida. The undersigned hereby consents to the recording of the Declaration of Covenants, Restrictions, Conditions and Easements of Harbour Island at Marsh Landing dated April 22, 1993 and hereby subordinates the lien of its Mortgage to the terms and conditions thereof, provided, however, that no term, covenant, condition or restriction contained in the Declaration shall be construed or interpreted so as to alter, amend, modify, or lessen the covenants, representations, warranties and obligations of Mortgagor (as that term is defined in the Mortgage) under the Mortgage or under the Facility C Loan Agreement dated March 17, 1993 entered into among Mortgagor, The Daiwa Bank, Limited, Fletcher Land Corporation, Fletcher Industries, Inc., Jerome S. Fletcher and Paul Z. Fletcher (the Loan Agreement) and, in the event of any discrepancy between the Declaration and either the Mortgage or the Loan Agreement, then the terms, covenants and conditions of the Mortgage and the Loan Agreement shall control.

In Witness Whereof, this Consent has been executed and delivered this 9<sup>th</sup> day of June, 1993.

Witnesses to Mortgagee:

*[Handwritten signatures of witnesses to mortgagee]*

THE DAIWA BANK, LIMITED

By: *[Handwritten signature]*  
 Its VICE PRESIDENT

By: *[Handwritten signature]*  
 Its VICE PRESIDENT

[acknowledgment on next page]

O.R. 997 PG 1309

STATE OF Florida

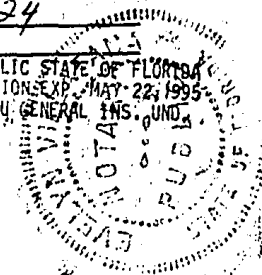
COUNTY OF DADE

The foregoing Consent by Mortgagee to Declaration was acknowledged before me the 9th day of JUNE, 1993, by JULIO C. VARONA, as VICE PRESIDENT of The Daiwa Bank, Limited, a Japanese banking corporation, on behalf of the company, who is personally known to me or who produced \_\_\_\_\_ as identification, and who did not take an oath.

Evelyn Villafana  
Print Name EVELYN VILAFANA  
Notary Public, State of FLORIDA  
Commission Number CC111924  
My Commission Expires: \_\_\_\_\_

(Notarial Seal)

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. MAY 22, 1995  
BONDED THRU GENERAL INS. UND.



STATE OF FLORIDA

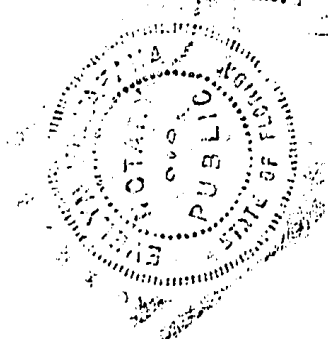
COUNTY OF DADE

The foregoing Consent by Mortgagee to Declaration was acknowledged before me the 9th day of JUNE, 1993, by ROGER N. ARSHAM, as VICE PRESIDENT of The Daiwa Bank, Limited, a Japanese banking corporation, on behalf of the company, who is personally known to me or who produced \_\_\_\_\_ as identification, and who did not take an oath.

Evelyn Villafana  
Print Name EVELYN VILAFANA  
Notary Public, State of FLORIDA  
Commission Number CC111924  
My Commission Expires: \_\_\_\_\_

(Notarial Seal)

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. MAY 22, 1995  
BONDED THRU GENERAL INS. UND.



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O.R. 997 PG 1310

CONSENT BY MORTGAGEE TO DECLARATION

Marsh Landing Investors, Ltd., the holder of a certain mortgage encumbering the lands encumbered by this Declaration, which mortgage is more fully described in that certain Mortgage by and between Fletcher Realty III, Inc. to Marsh Landing Investors, Ltd., securing the amount of \$4,000,000.00, dated March 17, 1993, and recorded in Official Records Book 985, page 318, as subordinated by Subordination and Standstill Agreement as recorded in Official Records Book 985, page 362, in the public records of St. Johns County, Florida. The undersigned hereby consents to the recording of the Declaration of Covenants, Restrictions, Conditions and Easements of Harbour Island at Marsh Landing dated April 22, 1993 and hereby subordinates the lien of its Mortgage to the terms and conditions thereof, provided, however, that no term, covenant, condition or restriction contained in the Declaration shall be construed or interpreted so as to alter, amend, modify, or lessen the covenants, representations, warranties and obligations of Mortgagor (as that term is defined in the Mortgage) under the Mortgage or under the Credit Agreement or other Loan Documents dated March 17, 1993 entered into between Mortgagor and Mortgagee (collectively, the "Loan Agreements"), and, in the event of any discrepancy between the Declaration and either the Mortgage or any of the Loan Agreements, then the terms, covenants and conditions of the Mortgage and such Loan Agreements shall control.

IN WITNESS WHEREOF, this Consent has been executed and delivered this 17th day of JUNE, 1993.

Witnesses to Mortgagee:

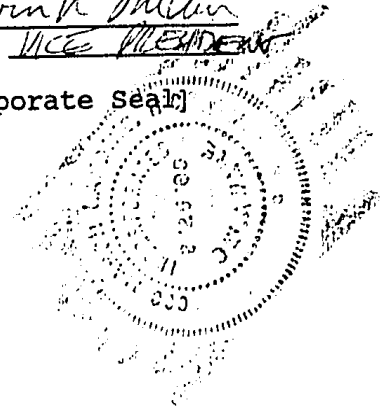
Mary M. Moore  
 MARY M. MOORE  
Vicky Ziehl  
 VICKY ZIEHL

MARSH LANDING INVESTORS, LTD.

By: GGC Marsh Landing, Inc.

By: Edwin Miller  
 Its: VICE PRESIDENT

[Corporate Seal]



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 05/27/93

O.R. 997 PG 1311

STATE OF Florida )  
COUNTY OF St. Johns ) SS

The foregoing Consent by Mortgagee to Declaration was acknowledged before me on the 11th day of JUNE, 1993, by Edwin R. Mimm, President of GGC Marsh Landing, Inc., a Delaware corporation, general partner of Marsh Landing Investors, Ltd., a California limited partnership, on behalf of the Partnership, who is personally known to me or who produced \_\_\_\_\_ as identification, and who did not take an oath.

Ruth C. Mann

Print Name Ruth C. Mann  
Notary Public, State of Florida

Commission Number 019630  
My Commission expires: \_\_\_\_\_

Notary Public, State of Florida  
My Commission Expires July 6, 1994  
Bonded Thru Troy Fain - Insurance Inc.

