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200 - J. Hill

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

**COPY**  
Declaration of Conditions, Covenants,  
Easements and Restrictions

for

**FISCHER LAKE ISLAND**

a subdivision

**COPY**

Prepared by:

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**DECLARATION OF CONDITIONS, COVENANTS,  
EASEMENTS, AND RESTRICTIONS  
FOR  
FISCHER LAKE ISLAND  
A SUBDIVISION**

**COPY**

THIS DECLARATION is made this 21<sup>st</sup> day of January, 1999, by Henry Anthony Fischer, also known as Henry A. Fischer, who declares hereby that "the Property" described in Article II of this Declaration is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I  
DEFINITIONS**

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

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(a) "Assessment" means and refers to a share of the funds required for payment of the expenses of the Association, which funds shall be assessed against a lot owner from time to time.

(b) "Association" means and refers to the FISCHER LAKE ISLAND PROPERTY OWNERS ASSOCIATION, INC., a Florida corporation not for profit.

(c) "Common Areas" means and refers to the property as shown on the Plat, including but not limited to: i) Tracts A, C and D which are park and recreation area and ii) Tract B which is the clubhouse site, as depicted upon the Plat, as well as the street rights-of-way as shown on the Plat. All property designated as Common Areas in any future recorded supplemental Declaration recorded in the Public Records of Indian River County, Florida, shall be included with the Common Areas.

**COPY**

(d) "Community" means and refers to the Fischer Lake Island Homeowners Community, which shall include all lots in the initial phase of development as well as all lots in all future phases of Fischer Lake Island. The initial lots comprising the Fischer Lake Island Homeowners Community are identified on Exhibit "A" attached hereto and made a part hereof.

(e) "Declaration" means and refers to this Declaration of Conditions, Covenants, Easements and Restrictions for Fischer Lake Island, a subdivision as recorded in the Public Records of Indian River County, Florida, and as the same may be amended from time to time.

(f) "Developer" means and refers to Henry Anthony Fischer, his successors and such of his assigns as to which the rights of Developer hereunder are specifically assigned by written instrument recorded in the Public Records of Indian River County, Florida. The Developer may assign only a portion of his rights, hereunder, or all or a portion of such rights in connection with appropriate portions of the Property. In the event of such a partial assignment of its rights, the assignee shall not be deemed the Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis. A lot purchaser, lot owner or a lot mortgagee shall not be deemed to be the Developer by the mere act of purchase or mortgage of a lot.

(g) "Entitled to Vote" means and refers to that lot owner entitled to a vote for a lot at an Association meeting. If more than one person or legal entity shall own a lot, the owners thereof shall determine among themselves who shall be the member entitled to vote. Said determination shall be manifested upon a voting certificate, signed by all owners of said lot, and given to the Association Secretary for placement in the Association records. Notwithstanding anything contained herein, all lot owners whether entitled to vote or not are assured of all other privileges, rights, and obligations of Association membership and shall be members of the Association.

(h) "Family" means any number of individuals, related by blood, marriage or adoption, or up to four (4) individuals not so related living together as a single house-keeping unit and utilizing common kitchen facilities within the dwelling.

(i) "Institutional Lender" or "Institutional Mortgagee" means and refers to a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, pension trust, or any other generally recognized institutional-type lender or its loan correspondent, the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), or any agency of the United States Government or any lender providing funds to the Developer for the purpose of constructing improvements upon the Property (and such lender's successors and assigns) or any other lender approved by the Association Board of Directors as an "Institutional Lender" or "Institutional Mortgagee."

(j) "Lot" means and refers to any lot on the Plat (excluding Tracts) of portions of the Property, or by any other recorded plat to be subject to this Declaration (and to the extent the Developer is not the owner thereof, then designated by the Developer joined by the owner thereof), any lot shown upon any resubdivision of any such Plat, and any other property hereafter declared as a lot by the Developer and thereby made subject to the

**Declaration.** To the extent the Developer is not the owner thereof, then such declaration shall be made by the Developer joined by the owner thereof.

(k) "Member" means and refers to all those owners who are members of the Association as provided in Article III hereof.

(l) "Nuisance" means any activity which arises from unreasonable, unwarranted or unlawful use by a person of his own property, working obstruction or injury to the rights of another, or to the public, and producing such material annoyance, inconvenience and discomfort that law will presume resulting damage; that which annoys and disturbs one in possession of his property, rendering its ordinary use or occupation physically uncomfortable to him, especially a continuing or repeated invasion or disturbance; any smoke, odors, noise (including continuously barking dogs), vibration or any debris, garbage, junk, trash, weeds, unserviceable vehicles, or any other substance or material which, by nature of its location, is considered a health or safety hazard, and/or which is considered obnoxious and offensive to the general public.

(m) "Owner" means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated upon the Property.

(n) "Plat" means and refers to the plat of Fischer Lake Island, a subdivision, recorded in Plat Book 15, Page ~~5365A, 538~~ Public Records of Indian River County, Florida, together with any plat of additional land made subject to this Declaration and to the jurisdiction of the Association.

(o) "The Property" means and refers to all such existing properties as described in Article II, Section 1 of this Declaration, and additions (phases) thereto, as are now or hereafter made subject to the Declaration and to the jurisdiction of the Association, except such as are withdrawn from the provisions hereof in accordance with the procedures hereinafter set forth.

(p) "Residence" means and refers to any residential building constructed on a lot.

(q) "Surface Water or Stormwater Management System" means and refers to a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, Florida Administrative Code. All drainage areas located on the Property are declared to be part of the Surface Water or Stormwater Management System.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION:**  
**ADDITIONS THERETO**

Section 1. **Legal Description.** The real property which, initially, is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Sebastian, Indian River County, Florida, and is more particularly described as follows:

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All of Fischer Lake Island, a subdivision, according to the plat thereof, as recorded in Plat Book 15, Page 55-55B of the Public Records of Indian River County, Florida and all of the Association Property, all of which property is collectively referred to as "the Property". The Property is also described in Exhibit "B" attached hereto and by this reference made a part hereof.

To the extent all or any portion thereof is not owned by the Developer the respective owners thereof shall have joined in this Declaration for the purpose of subjecting that portion of the Property owned by each of them to this Declaration.

Section 2. **Phasing.** The development of Fischer Lake Island will be phased. The Developer reserves the right, at his sole discretion, from time to time to bring other land under the provisions hereof by recording in the Public Records of the Clerk of the Circuit Court for Indian River County, Florida, amendments or supplemental declarations (which shall not require the consent of then existing owners or the Association, or any mortgagee, except in the case of property not then owned by the Developer but proposed to be added to the Property, in which case the owner thereof shall join in the applicable supplemental declaration) and thereby add to the Property. To the extent that additional real property shall be made a part of the Property as a common scheme, reference herein to the Property should be deemed to be a reference intended to include property other than that legally described above. Nothing herein, however, shall obligate the Developer to add to the initial portion of the Property, to develop any such future portions under such common scheme, nor to prohibit the Developer from rezoning and changing the development plans with respect to such future portions and/or the Developer from adding additional or other property to the Property under such common scheme. All owners, by acceptance of a deed to their rezoning, change, addition or deletion thereafter made by Developer and shall evidence such consent in writing if requested to do so by the Developer at any time.

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**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. **Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any lot shall be a member of the Association. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as



security for the performance of an obligation shall not be member of the Association. Membership in the Association shall be appurtenant to each lot and may not be separated from ownership of said lot . The record title holder to each lot shall automatically become a member of the Association and shall be assured of all rights and privileges thereof upon presentation of a photographically or otherwise reproduced copy of said owner's deed recorded in the Public Records of Indian River County, Florida to the Association Secretary for placement in the records of the Association. To the extent that said deed shall pass title to a new lot owner from an existing lot owner, membership in the Association shall be transferred from the existing lot owner to the new lot owner.

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

**Class A.** Class A members shall be all those owners as defined in Section 1 with the exception of the Developer (as long as the Class B membership shall exist, and thereafter, the Developer shall be a Class A member to the extent it would otherwise qualify). Except as provided below, Class A members shall be entitled to one (1) vote for each lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any lot, all such persons shall be members, but the vote for such lot shall be exercised only by that one person who is entitled to vote. In no event shall more than one vote be cast with respect to any such lot.

**Class B.** The Class B member shall be the Developer. The Class B member shall be entitled to one (1) vote, plus three (3) votes (for a total of four (4) votes) for each lot owned by the Developer. The Class B membership shall cease and terminate: 1) at such time as 90% of all lots to be ultimately subject (including future phases) to Association membership within the Property have been sold and conveyed by the Developer; or 2) fifteen (15) years from the date of the first conveyance by Developer of a lot; or 3) sooner at the election of the Developer, whichever event shall first occur, whereupon the Class A members shall be obligated to elect the Board and assume control of the Association. Upon termination of the Class B membership as provided for herein, the Class B membership shall convert to Class A membership with voting strength as set forth above for Class A membership.

**Section 3. General Matters.** When reference is made herein, or in the Association Articles of Incorporation or By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of members entitled to vote and not of the members themselves.

**Section 4. Board of Directors Compensation.** No member of the Board of Directors of the Association shall receive any compensation for services rendered in such capacity. The Developer shall be entitled to elect a majority of the Board of Directors until three (3) months after ninety percent (90%) of the lots in all phases of the Community have been conveyed, notwithstanding the

number of votes available to the Developer or any contrary provision in the Articles of Incorporation or Bylaws of the Association. The Developer is entitled to elect at least one member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the lots in all phases of the Community, notwithstanding the number of votes available to the Developer, or any contrary provision in the Articles of Incorporation or Bylaws of the Association.

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ARTICLE IV  
PROPERTY RIGHTS IN THE COMMON AREAS; OTHER EASEMENTS

Section 1. Members Easements. Each member, and each tenant, agent and invitee of such member or tenant, shall have a nonexclusive permanent and perpetual easement over and upon the Common Areas for the intended use and enjoyment thereof in common with all other such members, their tenants, agents and invitees, in such manner as may be regulated by the Association. If any lot owner's sole ingress to or egress from his lot is through the Common Areas, any transfer or conveyance thereof herein or hereafter made or made on the Plat shall be subject to such lot owner's ingress and egress rights.

Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

(a) The right and duty of the Association to levy Assessments against each lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration, and with the restrictions on the Plat of portions of the Property from time to time recorded.

(b) The right of the Association to suspend the owner's (and his permittees') voting rights and right to use the recreational facilities (e.g. - parks and clubhouse) for any period during which any Assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations.

(c) The right of the Association to adopt at any time and from time to time and to enforce rules and regulations governing the use of the lots and Common Areas and all facilities at any time situated thereon, including the right to fine members as hereinafter provided. Any rule and/or regulation so adopted shall apply until rescinded or modified as if originally set forth at length in this Declaration.

(d) The right to the use and enjoyment of the Common Areas and facilities thereon shall extend to all permitted user's immediate family who reside with him, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

Section 2. Easements Appurtenant. The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each lot.

Section 3. Maintenance.

(a) The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Areas and community facilities on the Common Areas, including the clubhouse, paving, drainage structures, landscaping, irrigation systems, entrance markers, signs, improvements, and other structures situated on the Common Areas, if any, all such work to be done as ordered by the Board of Directors of the Association. Without limiting the generality of the foregoing, the Association shall assume all of the Developer's responsibility to the City of Sebastian with respect to the Common Areas and shall indemnify and hold the Developer harmless with respect thereto.

As hereinafter provided, the Association may at its option, maintain, repaint, and repair other portions of the lots and improvements constructed thereon, in the manner hereinafter contemplated, and easements over, under, and across such lots are hereby reserved in favor of the Association and its designees to effect such maintenance, painting, and repair. The owner shall be responsible, however, for maintaining, replacing, and repairing all landscaping, structures and improvements located on his lot in a neat, orderly, workmanlike manner and in a first-class condition, except to the extent that the Association shall elect to effectuate any or all maintenance, replacement, and repair of any or all items, pursuant to Article V hereof.

All work pursuant to this Section and all expenses incurred hereunder shall be paid for by the Association through Assessments (either general or special) imposed in accordance herewith. No owner may waive or otherwise escape liability for Assessments by non-use of the Common Areas, lots or by abandonment of the right to use the Common Areas.

(b) Surface Water or Stormwater Management System. The Association shall be responsible for the maintenance, operation and repair of the Surface Water or Stormwater Management System. Maintenance of the Surface Water or Stormwater Management System(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or Stormwater Management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be accomplished consistent with any required permit of the St. Johns River Water Management District, or if the Surface Water or Stormwater Management System is modified as approved by the St. Johns River Water Management District. The Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the Surface Water or Stormwater Management System.

**Section 4. Utility Easements.** The Developer (during any period that the Developer shall own at least one (1) lot) and the Association shall have the right to grant permits, licenses, and easements over the Common Areas for utilities including but not limited to cable television, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property. Use of the Common Areas for utilities, as well as use of the other utility easements as shown on the Plat, shall be in accordance with the applicable provisions of this Declaration. Perpetual, nonexclusive easements are reserved over, under, and across the Common Areas to the Developer and the Association, or such utility, security, and cable television companies to which the Developer or Association may convey easement rights, for and on behalf of the Developer, the Association, and the grantee utility companies, as may be required for the entrance upon, construction, connection to, disconnection from, replacement of, maintenance, and operation of utility services, surface and Stormwater Management and drainage facilities, cable television system, security, and such other equipment as may be required to adequately serve the Property, any other lands subject to ownership by the Association or the Developer, it being expressly agreed that the Developer and any of its successors or assigns, the Association, utility companies and any other person benefitted hereby making the entry shall restore the property as nearly as practicable to the condition which existed prior to commencement of construction of such utility or Stormwater management and drainage facilities. An easement is reserved over, under, and across each of the lots for the placement and operation of electric utility meters and lines connected to the meters serving any and all lots upon the Property, all of which lots are depicted upon the Plat. The easements herein reserved shall include, but shall not be limited to, an easement for purposes of construction, maintenance, restoration, connection to or disconnection from and when appropriate, deactivation of such utilities, security, or cable television within the Common Areas. In addition, easements are reserved to the Association and the Developer, and may be created from time to time by the Developer during any period that the Developer shall own at least one (1) lot, for such further utility, egress, ingress, or drainage easements over and across the Property as may be required from time to time to serve any of the Communities, and/or any other or additional lands during the course of development of same, whether such additional lands become subject to the jurisdiction of the Association and part of the Property or not. Regarding any easement conveyed by the Developer, the joinder of the Association or any lot owner or lot owner's mortgage shall not be required.

**Section 5. Public Easements.** Fire, police, health and sanitation, park maintenance and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

**Section 6. Ownership.** As shown on the Plat, the Common Areas are hereby dedicated free and clear of all liens, non-exclusively to the joint and several use, in common, of the Owners of all lots that may from time to time constitute part of the Property and to such owners' tenants, guests and invitees. The Common Areas (or appropriate portions thereof) shall, upon the later of completion of the improvements thereon or the date when the last lot within the Property has been conveyed to a purchaser (or at any time and from time to time sooner at the sole election of the Developer), be conveyed to the Association, which shall accept such conveyance. The Association is hereby granted an easement over, under, and across all lots for access of personnel and equipment

to maintain, repair, renovate or construct improvements upon, or achieve the objectives of Article IV, Section 3 hereof, upon all parts and parcels of the Common Areas. Beginning from the date these covenants are recorded, the Association shall be responsible for the maintenance of such Common Areas (whether or not then conveyed or to be conveyed to the Association) and shall have the option to be responsible for the maintenance of lot landscaping. It is intended that all real estate taxes, if any, assessed against that portion of the Common Areas owned or to be owned by the Association shall be proportionally assessed against and payable as part of the taxes of the applicable lots within the Property. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date these covenants are recorded, and such taxes shall be prorated between Developer and the Association as of the date of such recordation. The Developer shall have the right from time to time to enter upon the Common Areas and other portions of the Property for the purpose of construction, reconstruction, repair, connection to, disconnection from, replacement and/or alteration of any improvements or facilities on the Common Areas or elsewhere on the Property that Developer elects to effect, and to use the Common Areas and other portions of the Property for sales, displays and signs or for any other purpose during the period of construction or sale of any portion of the Property. Without limiting the generality of the foregoing, the Developer shall have the specific right to maintain upon any portion of the Property sales, administrative, construction or other offices without charge, and appropriate easements of access and use are expressly reserved unto the Developer and its successors, assigns, employees and contractors, for this purpose. Any obligation to complete portions of the Common Areas shall, at all times, be subject and subordinate to these rights and easements and to the above-referenced activities. Accordingly the Developer shall not be liable for delays in such completion to the extent resulting from the above-referenced activities. The Common Areas cannot be mortgaged.

**Section 7. Other Easements.**

(a) The owner of each lot shall have an easement of access over and upon the Common Areas, and the Association, its agents and employees, shall have a perpetual easement over and across all lots for access and for the purpose of allowing such owner or the Association to: mow a lot lawn and maintain landscaping. Easements are reserved over each lot and the Common Areas in favor of each other lot, each Community, and the Common Areas in order to permit drainage and run-off from one lot (and its improvements) to another or to the Common Areas or from the Common Areas to any lots(s).

(b) Utility easements, as depicted upon the Plat is hereby dedicated to and reserved to the Association and for use by public utilities, including but not limited to cable television, gas, street lighting, electric, telephone, sewer, water, and reclaimed water, all for the purposes of building, repairing, removing, connecting to, disconnecting from, maintaining, and replacing said underground utilities. Said easement shall be considered a part of the Common Areas subject to the jurisdiction, control, and maintenance of the Association through Assessments to all lots.

Section 8. Additional Easements. The Developer, during any period in which there are any unsold lots on the Property as now or hereafter defined, and thereafter the Association, each shall have the right to grant such additional electric, reclaimed water, sewer, water, security, telephone, gas, cable television or other utility easements, and to relocate any existing easements in any portion of the Property, and to grant access easements and relocate any existing access easements in any portion of the Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property of, or for the general health or welfare of the lot owners, or for the purpose of carrying out any provisions of this Declaration; provided, that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the lots for their intended purposes. The joinder of the Association or any lot owner or lot owner's mortgage shall not be required in the event the Developer declares an additional easement pursuant to the provisions hereof.

Section 9. Easement for Access and Drainage. The Association shall have a perpetual non-exclusive easement over all areas of the Surface Water or Stormwater Management System for access to operate, maintain or repair the System. By this easement, the Association shall have the right to enter upon any portion of any lot which is a part of the Surface Water or Stormwater Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water or Stormwater Management System as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water or Stormwater Management System. No person shall alter the drainage flow of the Surface Water or Stormwater Management System, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

Section 10. Easements with respect to the Stormwater Management Tract. The "Stormwater Management Tract" (which shall also be referred to in this section as "Fischer Lake") is that single body of water lying on the western or eastern portions, as the case may be, of lots 1-26 in Block A, lots 1-32 in Block B, and Clubhouse Tract B, all as show on the Plat (the foregoing lots are referred to in this section as "waterfront lots"). The following easements are established with respect to said Fischer Lake:

- (a) ~~Reciprocal and cross easements are granted among and between said waterfront lots as follows:~~  
For private recreation, boating (as provided in this Declaration), and fishing from boats on and upon the waters of said Fischer Lake pursuant to such Rules and Regulations as may be set forth in Article VI hereof or subsequently adopted by the Board of Directors of the Association; provided that, said easement for recreation, boating and fishing shall be only for the private enjoyment of each lot owner and a small number of such lot owner's invitees (not to exceed 3); provided further that none of said waterfront lot owners may obstruct navigation in said Fischer Lake or construct or install any barriers to access to or navigation, including fences, docks, piers and boathouses, except as

permitted and authorized by the Architectural Control Committee under Article VII of this Declaration and by the Rules and Regulations. Except as provided in paragraph (c) of this Section, this section shall not entitle anyone to fish or otherwise use or access said Fischer Lake from the shoreline of another waterfront lot owner's property.

(b) An easement in favor of said waterfront lots and lots 1-5 of Block C for access to said Fischer Lake to be recorded or provided in a future Plat by the Developer at a later date at which time lots 1-5 of Block C shall also have an easement for private recreation, boating (as provided in this Declaration), and fishing from boats on and upon the waters of said Fischer Lake pursuant to the Rules and Regulations for such use; provided that, said easement for recreation, boating and fishing shall be only for the private enjoyment of each lot owner and a small number of such lot owner's invitees (not to exceed 3).

(c) Reserving to the Association and granting to the St. Johns River Water Management District and any other cognizant governmental agency with jurisdiction over said Fischer Lake a 20 feet wide nonexclusive easement along the entire shoreline of said Fischer Lake for the purposes of accessing and operating, maintaining and repairing said Fischer Lake from time to time as necessary."

**Section 11. General.** All easements, of whatever kind or character, whether heretofore or hereafter created, shall constitute a covenant running with the land and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in a way which would unreasonably interfere with its proper and intended use and purpose. The lot owners do hereby designate the Developer and/or the Association as their lawful attorneys-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

**ARTICLE V**  
**ASSOCIATION-COVENANT**  
**FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of the Assessments.** Except as provided elsewhere herein, the Developer (and each party joining in this Declaration or in any supplemental declaration), for all lots within the Property, hereby covenants and agrees, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association annual Assessments or charges for the maintenance, management, operation and insurance of the Common Areas and the maintenance of lot landscaping, including such reasonable reserves as the Association may deem necessary, capital improvement Assessments, as provided elsewhere herein, Assessments for maintenance as provided in Section 4 hereof and all other charges and Assessments hereinafter referred to, all such Assessments to be fixed, established and collected from time to time as herein

provided. In addition, special Assessments may be levied against particular owners and lots for fines, expenses incurred against particular lots and/or owners to the exclusion of others and other charges against specific lots or owners as contemplated in this Declaration. The annual, special and other Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, including interest at the then highest lawful rate, court costs, and attorneys' fees (including the costs of paralegals and support staff whether as a result of negotiation, arbitration, litigation, or appeal) shall be a charge on the land and shall be a continuing lien upon the lot against which each such Assessment is made. Each such Assessment, together with such interest thereon, fees, and costs of collection thereof as herein provided, shall also be the personal obligation of the person who is the owner of such lot. Except as provided herein with respect to special Assessments which may be imposed on one or more lots and owners to the exclusion of others, all Assessments imposed by the Association shall be imposed as follows:

(a) With regard to reserves, maintenance, improvement, construction, paving, repaving, work on utilities, demolition, reconstruction, or repair of improvements or landscaping on the Common Areas, Assessments against all lots subject to the Association's jurisdiction shall be assessed equally, in proportion to the number of lots within the Community.

(b) With regard to reserves, maintenance, improvement, construction, paving, repaving, work on utilities, demolition, reconstruction, or repair of improvements of the common or easement areas referred to herein or maintenance of landscaping on the lots, Assessments against all lots subject to the Association's jurisdiction shall be assessed equally, in proportion to the number of lots within the Community.

Reference herein to Assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

**Section 2. Purpose of Assessments.** The regular Assessments levied by the Association shall be used exclusively for maintenance, repair, renovation, and construction upon the Common Areas, for maintenance of the Surface Water or Stormwater Management System, for maintenance of lot landscape and lawn care, for capital improvements, reserves and to promote the health, safety, welfare and aesthetics of the members of the Association and their families residing with them, their guests and tenants, all as provided for herein.

(a) **Reserves for Replacement.** The Association shall be required to establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas. The reserve fund shall be maintained from annual Assessments.

**Section 3. Specific Damage.** Owners (on their behalf and on behalf of their children and guests) causing damage to any portion of the Common Areas as a result of misuse, negligence, failure to maintain or otherwise shall be directly liable to the Association, and a special Assessment

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may be levied therefor against such owner or owners. Such special Assessments shall be subject to all of the provisions hereof relating to other Assessments, including, but not limited to, the lien and foreclosure procedures.

**Section 4. Exterior Maintenance.** The Association, through action of the Board of Directors or the Architectural Control Committee taken by favorable vote of the majority of such Board present at a meeting at which a quorum exists, shall maintain and improve, as the Association may deem appropriate, all landscaping, fences, paving, and improvements, including the clubhouse and other buildings, as initially placed by the Developer or later placed or erected by the Association on the Common Areas. All expenses of the Association under this section shall be a lien and Assessment charged against all of the lots on an equal basis. Said Assessment shall be the personal obligation of all owners of such lots.

**Section 5. Swale Maintenance.** The Developer has constructed a Drainage Swale upon each lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. Each lot owner, including builders, shall be responsible for the maintenance, operation and repair of the swales on the lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other Stormwater Management capabilities as permitted by the St. Johns River Water Management District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the Drainage Swale shall be authorized and any damage to any Drainage Swale, whether caused by natural or human-induced phenomena, shall be repaired and the Drainage Swale returned to its former condition as soon as possible by the owner(s) of the lot(s) upon which the Drainage Swale is located.

**Section 6. Date of Commencement of Annual Assessments Due Dates.** The annual Assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31 of such year. Each subsequent annual Assessment shall be imposed for the year beginning January 1 and ending December 31. The annual Assessments shall be payable in advance in monthly installments, quarter-annual installments or any other installment basis if and as so determined by the Board of Directors of the Association. The Assessment amount (and applicable installments) may be changed at any time by said Board from that originally stipulated or from any other Assessment that is in the future adopted. The original Assessment for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, every six (6) months), but the amount of any revised Assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year. The due date of any special Assessment shall be fixed in the Board resolution authorizing such assessment.

**Section 7. Duties of the Board of Directors.**

**(a) BUDGETS.** - The Board of Directors shall prepare an annual budget. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Developer, or another person. The Board of Directors shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within ten (10) business days after receipt of a written request for a copy of the budget.

**(b) FINANCIAL REPORTING.** - The Board of Directors shall prepare an annual financial report within 60 days after the close of the fiscal year. The Board of Directors shall, provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The copy must be provided to the member within ten (10) business days after receipt of a written request for a copy of the annual financial report. The financial report must consist of either:

(1) Financial statements presented in conformity with generally accepted accounting principals; or

(2) A financial report of actual receipts and expenditures, cash basis, which report must show:

1. The amount of receipts and expenditures by classification; and
2. The beginning and ending cash balances of the Association.

**(c)** The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessment against each lot subject to the Association's jurisdiction for each assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the Assessment shall thereupon be sent to every owner subject thereto thirty (30) days prior to payment of the first installment thereof, except as to emergency Assessments. In the event no such notice of a change in the Assessments for a new Assessment period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein. Subject to other provisions hereof, the Association shall upon demand at any time furnish to any owner liable for an Assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular lot. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid. The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or

agreements from time to time with one or more persons, firms or corporations (including affiliates of the Developer) for management services. The Association shall have all other powers provided in its Articles of Incorporation and By-Laws.

**Section 8. Effect of Non-Payment of Assessment: the Personal Obligation; the Lien; Remedies of the Association.** If the Assessments (or installments), whether general or special, are not paid on the date(s) when due (being the date(s) specified herein), then such Assessments (or installments) shall become delinquent and shall, together with late charges, interest and the cost of collection thereof as herein provided, thereupon become a continuing lien on the lot which shall bind such property in the hands of the then owner, his heirs, personal representatives, successors and assigns. Each Assessment against a lot shall also be the personal obligation of the owner at the time the Assessment fell due. Such personal obligation of the then owner to pay such Assessment shall bind successor owners jointly and severally.

If any installment of an Assessment is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge not greater than the amount of such unpaid installment may be imposed (provided that only one late charge may be imposed on any one unpaid installment and if such installment is not paid thereafter, it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges; provided further, however, that each other installment thereafter coming due shall be subject to one late charge each as aforesaid) or the next twelve (12) months' worth of installments may be accelerated and become immediately due and payable in full and all such sums shall bear interest from the dates when due until paid at the highest lawful rate and the Association may bring an action at law against the owner(s) personally obligated to pay the same or may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the lot on which the Assessments and late charges are unpaid or may foreclose the lien against the lot on which the Assessments and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively. Any lien placed on a lot may provide that it shall automatically increase for each future period for which the assessment is not paid. Attorneys' fees and costs of preparing and filing the claim of lien and the complaint, if any, in such action shall be added to the amount of such Assessments, late charges and interest. In the event a Judgment is obtained, such Judgment shall include all such sums as above provided and reasonable attorneys' fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorneys' fees in connection with any appeal of any such action.

In the case of an acceleration of the next twelve (12) months' worth of installments, each installment so accelerated shall be deemed, initially, equal to the amount of the then most current delinquent installment; provided, that if any such installment so accelerated would have been greater in amount by reason of a subsequent increase in the applicable budget, the owner of the lot whose installments were so accelerated shall continue to be liable for the balance due by reason of such increase. Special Assessments against such lot shall be levied by the Association for such purpose.

In addition to the rights of collection of Assessments stated in this Section, any and all persons acquiring title to or an interest in a lot as to which the Assessment is delinquent, including

without limitation persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such lot or the enjoyment of the Common Areas until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid, and no sale or other disposition of lots shall be permitted until an estoppel letter is received from the Association acknowledging payment in full of all Assessments and other sums due; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 9 of this Article.

It shall be the legal duty and responsibility of the Association to enforce payment of the Assessments hereunder. Failure of the Association to send or deliver bills shall not, however, relieve owners from their obligations hereunder. It shall not be the duty of any mortgagee of any part or all of the Property to collect Assessments. All Assessments, late charges, interest, penalties, fines, attorney's fees and other sums provided for herein shall accrue to the benefit of the Association. Owners shall be obligated to deliver the documents originally received from the Developer, containing this and other declarations and documents, to any grantee of such owner.

**Section 9. Subordination of the Lien.** The lien of the Assessments provided for in this Article shall be subordinate to tax liens and to the lien of any first mortgage to any Institutional Lender and which is now or hereafter placed upon any property subject to Assessment; provided, however, that any such mortgagee when in possession or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject only to the liability and lien of any Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Upon an Institutional Lender, receiver, or other person, holding a first mortgage acquiring title by a deed in lieu of foreclosure to a lot, the Association shall release its lien for unpaid Assessments accruing prior to the date that said Institutional Lender, receiver, or other person acquired title to said lot. Any unpaid Assessment which cannot be collected as a lien against any lot by reason of the provisions of this Section shall be deemed to be an Assessment divided equally among, payable by and a lien against:

(a) all lots subject to Assessment by the Association, including the lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place, with regard to services rendered exclusively to the Common Areas; and

(b) all lots subject to Assessment by the Association, including the lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place, with regard to services rendered exclusively to the lots.

**Section 10. Access at Reasonable Hours.** For the purpose solely of performing the lot and exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees or independent contractors, shall have the right, after reasonable notice to the owner, to enter upon any lot at reasonable hours on any day to accomplish such work.

Section 11. Collection of Assessments. The Association shall collect the Assessments of the Association.

Section 12. Effect on Developer. Notwithstanding any provision that may be contained to the contrary in this instrument, for so long as Developer is the owner of any lot, the Developer shall not be liable for Assessments against such lots; provided that Developer funds any deficit in operating expenses (exclusive of reserves and management fees) of the Association. The Developer may at any time and from time to time commence paying such Assessments as to lots that it or they own and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association, or at any time and from time to time elect again to fund deficits as aforesaid. When all lots within the Property are sold and conveyed to purchasers, the Developer shall not have further liability of any kind to the Association for the payment of Assessments or deficits.

Section 13. Trust Funds. The portion of all regular Assessments collected by the Association for reserves for future expenses, and the entire amount of all special Assessments, shall be held by the Association for the owners of all lots, as their interests appear, and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks or savings and loan institutions the deposits of which are insured by an agency of the United States.

ARTICLE VI  
CERTAIN RULES AND REGULATIONS

Section 1. Applicability. The provisions of this Article VI shall be applicable to all of the Property but shall not be applicable to the Developer or lots/property owned by the Developer.

Section 2. Land Use and Building Type. No lot shall be used except for residential purposes. No building constructed on a lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one Residence. Temporary uses by Developer for model homes, sales displays, parking lots, sales offices and other offices, or any one or combination of such uses, shall be permitted until permanent cessation of such uses takes place. No changes may be made in any buildings erected by the Developer (except if such changes are made by the Developer) without the consent of the Architectural Control Committee as provided herein. Use of a lot and structure thereon for Association management purposes shall not be prohibited.

Section 3. Opening Blank Walls; Removing Fences. No Owner shall make or permit any opening to be made in any Developer or Association erected blank wall, or masonry wall or fence, except as such opening is installed by Developer. No such building wall or masonry wall or fence shall be demolished or removed without the prior written consent of the owner of the adjoining lot and the Developer or the Architectural Control Committee. The Developer shall have the right but shall not be obligated to assign all or any portion of its rights and privileges under this Section to the Association.

**Section 4. Easements.** Easements for installation, replacement, connection to, disconnection from, and maintenance of utilities, including but not limited to cable television and reclaimed water, are reserved as shown on the recorded Plat covering the Property and as provided herein. Within these easements, no structure, planting or other material may be placed or permitted to remain that will interfere with or prevent the maintenance of utilities or cable television facilities, unless said structure, planting or other material has been so placed by the Developer or the Association or with the permission of the Architectural Control Committee. The area of each lot covered by an easement and all improvements in the area shall be maintained continuously by the owner of the lot, except as provided herein to the contrary and except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company, the Association, and Developer and their respective successors and assigns, shall have a perpetual easement for the installation, replacement, connection to, disconnection from, and maintenance, all underground, of water lines, sanitary sewers (if any), storm drains, and electric, telephone, cable television, and security lines, cables and conduits, under and through the utility easements as shown on the Plat. The Developer and its designees, successors and assigns, shall have a perpetual easement for the installation and maintenance of cable and community antennae, radio television and security lines within Platted utility easement areas. All utilities and lines within the Communities, whether in street rights-of-way or utility easements, shall be installed and maintained underground.

**Section 5. Nuisances.** No noxious, offensive or unlawful activity shall be carried on upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other owners.

**Section 6. Temporary Structures.** No structure of a temporary character, or trailer, tent, mobile home, motor home, or recreational vehicle, shall be permitted on the Property at any time or used at any time as a residence, either temporarily or permanently, except by the Developer during construction. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any Residence or on or about any ancillary building, except for such gas container as may be intended solely to provide gas to a gas grill for cooking or to be used for the heating of a pool or outdoor spa. No gas container to service a gas grill shall when completely filled weigh more than fifty (50) pounds. All gas containers to be used for the heating of a pool or spa shall be placed entirely underground and not visible whatsoever.

**Section 7. Signs.** No signs of any kind shall be displayed to the public view on the Property, except any sign used by the Developer to advertise the sale of lots and any Developer owned company during the construction and sales period or any sign erected by the Association to advertise or notify individuals on matters of general interest to residence of any one of the Communities. No sign of any kind shall be permitted to be placed inside a Residence or on the outside walls of the Residence building or on any fences on the Property, nor on the Common Areas, nor on dedicated areas, if any, nor on entryways or any vehicles within the Property, except such as are placed by the Developer or the Association. Owner identification and address signs approved by the Association shall be allowed on the lot. The restriction herein which prohibit or restrict signs advertising the sale

or listing of property shall be inapplicable to an institutional mortgagee which becomes the owner of a lot through foreclosure or deed in lieu of foreclosure for as long as the institutional lender owns the lot.

Section 8. Oil and Mining Operation. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in The Properties, nor on dedicated areas, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any portion of the land subject to these restrictions.

Section 9. Pets, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that no more than two (2) household pets may be kept on a lot; provided it is not kept, bred or maintained for any commercial purpose, and provided that it does not become a nuisance or annoyance to any neighbor. No dogs or other pets shall be permitted to have excretions on any Common Areas, and owners shall be responsible to clean-up any such improper excretions. For purposes hereof, a "household pet" means a dog, a cat or two (2) domestic birds. Pets shall also be subject to applicable rules and regulations.

Section 10. Visibility at Intersections. No obstruction to visibility at street intersections or Common Area intersections shall be permitted.

Section 11. Trucks, Trailers, Campers and Boats. No trucks or commercial vehicles, or campers, mobile home, motor homes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on the Property, nor in dedicated areas unless they are stored entirely within owner's closed garage and are not visible from outside the closed garage. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up and delivery and other commercial services, nor to vans for personal use which are in acceptable condition in the sole opinion of the Board (which favorable opinion may be changed at any time), nor to any vehicles of the Developer. No on-street parking shall be permitted. Boats may be kept at approved docks, either in the water or on davits.

Section 12. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited, except as permitted by the Association. The requirements from time to time of the applicable governmental authority for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Containers must be rigid plastic, no less than 20 gallons or more than 32 gallons in capacity, and well sealed. Such containers may not be placed out for collection sooner than 24 hours prior to scheduled collection and must be removed within 12 hours of collection.

Section 13. Fences. No fence, wall or other structure shall be erected in the front yard, back yard, or side yard setback areas, except as originally installed by the Developer or except as approved by the Architectural Control Committee as hereafter provided.

Section 14. Outside Drying. Outside clotheslines or drying stands shall be located so as not to be visible from any street or other lots or from the water area.

Section 15. Exterior Antennas. No exterior antennas, including satellite dishes, in excess of 24 inches in diameter, shall be permitted on any lot or improvement thereon, except as approved by the Architectural Control Committee, except that the Developer or the Association shall have the right to install and maintain community antenna, microwave antenna, dishes, satellite antenna and radio, television and security lines.

Section 16. Chain Link Fences. No chain link fences shall be permitted on any Lot or portion thereof, unless installed by Developer during construction periods or approved by the Architectural Control Committee.

Section 17. Post Lamp. Each lot on which there is a Residence shall have a post lamp located in the front yard. The post lamp shall be installed prior to the issuance of the Certificate of Occupancy for the Residence. The post lamp shall be operated by either a photo cell or light switch or both. The post lamp is required to be lighted during all non-daylight hours. The location and intensity of the light shall be subject to approval of the Architectural Control Committee.

Section 18. Small Portable Boats. Small boats that do not exceed twelve (12) feet in length (no restrictions on the length of canoes) may be utilized within the Property water areas provided, that they are not powered by combustion engines. Combustion engines are prohibited in all water areas. Such craft are to be owned and operated only by the owners of waterfront lots. In no event shall the craft be repaired or maintained in the lake, or material infused thereof in the lake water. The waterside area of a lot and maintenance thereof is the responsibility of the lot owner, and it shall be maintained in conformance with reasonably established standards for the whole of their perimeters as to appearance, condition and uniformity. Waterside docks with davits thereon shall be allowed in accordance with uniform standards to be set by the Architectural Control Committee and the dock shall not exceed two hundred (200) square feet in area and must run parallel to the shoreline. A covered dock or covered boat house is prohibited. The ability of a lot owner to have a dock is subject to review, approval and issuance of all of the necessary permits from those governmental agencies that have jurisdiction over the construction of docks.

Section 19. Owner's Responsibility. All maintenance of the lot shall be the responsibility of the owner of such lot. Each owner shall maintain in good repair and appearance all improvements and landscaping within his lot and any easement or drainage areas located therein. No changes can be made to the existing slope, contour or depth of the water bodies.



**Section 20. Leases and Time Shares.** No portion of a lot and Residence (other than an entire lot and Residence) may be rented. Each owner wishing to lease said owner's lot and Residence must give prior written notice to the Association of such fact and the names and addresses (and such other information required from time to time by the Association) of the occupants under such lease. The Association has the right (but not the obligation) to promulgate standard provisions to be included in all lease forms, in which case all leases must include such standard provisions or be deemed to include same. Furthermore, the Association reserves the right to reject for reasonable cause any proposed lease for a lot and Residence, and if so rejected, no such lease shall be permitted. The sale of any time share or interval ownership interest in a lot and Residence is strictly prohibited.

**Section 21. Division of Lot and Assessments.** Once a lot is sold by the Developer, it shall not be subdivided, divided or split in any manner. Two or more contiguous lots, if owned by the same owner, may be combined as one larger lot of the purpose of applying this Declaration of Covenants, provided that the record owner makes such election in writing, and a Unity of Title or other appropriate instrument irrevocably combining such lots is duly recorded in the public records of Indian River County, Florida. Provisions to the contrary notwithstanding, where a Residence is constructed on two or more lots, for any fine or assessment purposes, one lot will be assessed in the normal way, but each additional lot included within the building site shall be assessed on the basis of 50% of the fine or assessment levied per lot, that is to say, that each additional lot in excess of one, included within one building site shall be treated as 1/2 of a lot for fine or assessment purposes. The lien for fines or assessments as to such multiple lot building sites shall be deemed to attach to and encumber all lots within the building site. The recording of a Unity of Title combining any two or more contiguous lots shall not relieve the owner from the provisions of this Section 22.

**Section 22. Additional Rules and Regulations.** Attached as Exhibit "C" are certain additional rules and regulations of the Association which are incorporated herein by this reference and which, as may the foregoing, may be modified, in whole or in part, at any time by the Board of Directors of the Association without the necessity of recording an amendment hereto or thereto in the public records. The Association may promulgate rules and regulations governing the Property, may adopt Assessment schedules and rates for the Property or for each lot therein, and will set up a separate budget for the Property.

## ARTICLE VII ARCHITECTURAL CONTROL

**Section 1. Acknowledgment.** Each owner of a lot on the Property, by virtue of his acceptance of the warranty deed to said owner's lot, acknowledges the necessity of maintaining the physical appearance and image of the Property as a quality residential community and, additionally, that the success of the Developer in developing and selling the remaining portions of the Property is closely related to the physical appearance and image of the completed portions of the development.

Section 2. Set Standards: Committee Membership. Accordingly, there is established a committee known as the "Architectural Control Committee." The Architectural Control Committee shall be composed of three (3) members who shall be members of the Association. Architectural Control Committee members shall be appointed for terms of one (1) year each and shall be appointed by the Developer for as long as the Developer owns any lots within the Property. Therefore the committee shall be appointed by the Association Board of Directors. The Board of Directors is encouraged, but shall not be required, to appoint a committee membership which includes individuals with a background in building and landscape architecture, contracting, and subcontracting. The Architectural Control Committee is empowered to adopt and promulgate from time to time minimum standards for maintenance of the physical appearance of the exterior Common Areas and structures on lots, all of which are herein after referred to as "areas to be maintained." The standards established by the Architectural Control Committee shall relate particularly to the exterior painting and appearance of the improvements, landscaping, paving, trash and litter removal, and repair of exterior building surfaces. The minimum standards however, shall not be applicable to the interior of any structure on a lot.

Section 3. Right of Inspection. The Architectural Control Committee shall have the right to inspect, from time to time, the areas to be maintained in order to determine whether the maintenance of same meets the minimum standards.

Section 4. Deficiencies Report. If the Architectural Control Committee shall find that the areas to be maintained are not being maintained in accordance with the minimum standards, it shall issue a report to the Association Board of Directors particularizing the deficiencies. Unless the Board of Directors rejects the report, within ninety (90) days of receipt of the report, the Association shall commence the maintenance or painting work specified in the report and shall diligently pursue completion of same in an expeditious manner.

Section 5. Architectural Control. No building, dock, wall, fence or other structure or improvement of any nature (including landscaping or exterior paint or finish) shall be erected, placed or altered on the Common Areas, or any lot, until the construction plans and specifications and a plan showing the location of the structure and landscaping or of the materials as may be required by the Architectural Control Committee have been approved in writing by the Architectural Control Committee named below and all necessary governmental permits are obtained. Each building, wall, fence or other structure or improvement of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved and applicable governmental permits and requirements. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Control Committee is sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, including but not limited to the color of paint used, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Control Committee shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. The address of said

Board shall be the address of the Association's registered agent. The Architectural Control Committee shall act on submissions to it, or request further information thereon, within thirty (30) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved.

**Section 6. Building Design and Specifications.**

(a) Residences, garages and utility buildings shall have roofs of 5/8" sheathing with fiberglass, asbestos or asphalt dimensional shingles (as approved by the Architectural Control Committee, minimum 240# weight), concrete tile, clay tile, wood shingle or poured masonry.

(b) Residences, garages and utility buildings shall have exterior surfaces of painted stucco over masonry concrete block walls. All colors shall be subject to approval of the Architectural Control Committee. Roofs shall be of "hip" or "gable" design, with a minimum pitch of 5/12, unless specifically otherwise approved for architectural reasons. Lower pitches for porches or decks will be considered. Variations of this requirement may be permitted in the discretion of the Committee if a lot owner desires to architecturally conform the garage or utility building to the design of the residence to which the intended construction is appurtenant; provided, however, that in every event of residential construction, there shall be constructed concurrently therewith an enclosed garage with a capacity for no less than two (2) automobiles. All garage doors shall be either wood or approved steel and shall have electronic openers. Garages may not have entrances facing the street.

(c) Height: No dwelling or improvements erected within the Property shall exceed three (3) stories in height. No exposed concrete block shall be visible above grade.

(d) Mailboxes: Mailboxes must be of a standard design approved by the Committee.

(e) Floor Living Area: No dwelling being constructed or reconstructed on any lot or combination of lots may contain floor living area of less than 2,000 square feet or more than 5,000 square feet and, in the event of two or three-story construction, the living area of the ground floor shall contain no less than 1,200 square feet. This reference to square footage shall be exclusive of garages, unglazed porches, screen patios, loggias, spaces or unroofed areas.

(f) No construction of a residence, garage or utility building shall be commenced without a landscape plan approved by the Committee. Landscape and associated plans shall include underground irrigation of sodded and planted areas. Any cleared area shall be either planted and mulched or sodded, using only Floratan Sod. Preservation of natural planting is encouraged. The owner shall expend at least \$5,000.00 on the lot's landscaping which

shall include at least eight (8) trees of eight foot (8') height each, distributed upon the entire lot. Costs expended in installing any irrigation systems or wells are not to be considered as offsetting or reducing any part of the landscaping funds required to be expended by owner for landscaping purposes. Building elevations visible from the street shall be complemented by an acceptable planting of shrubbery. Air conditioners shall be screened by approved fences or plantings.

**Section 7. Fences.** No wall (other than dwelling walls) or fence shall be constructed to a height of more than six feet (6') feet above ground level of adjoining lots. No wall or fence of any height shall be constructed on any lot until the height, type, design, construction material and approximate location thereof shall have been approved in writing by the Architectural Control Committee. No wall or fence shall be erected or placed within the front setback area of any lot unless the wall or fence is ornamental and a desirable feature and in no event will impair the general scheme or theme of the Property. The Architectural Control Committee, in its discretion, may approve minor projections above the restricted heights for architectural features and may also authorize the erection of a fence, construction of a wall, or maintenance of a hedge having a height in excess of six feet (6') on the condition that the Architectural Control Committee determines, in its discretion, that such additional height shall not serve to unreasonably restrict or block the view of adjoining or adjacent lot owners or otherwise materially impair the landscaping theme for the Property or the property rights of other owners.

**Section 8. Exterior Appearances and Landscaping.** The paint, coating, stain and other exterior finishing colors on all Residences on all lots may be maintained as that originally installed, without prior approval by the Architectural Control Committee, but prior approval by the Architectural Control Committee shall be necessary before any such exterior finishing color is changed.

**Section 9. Unit Air Conditioners and Reflective Materials.** No air conditioning units may be mounted through windows or walls except as part of a central air-conditioning/heat unit. No building shall have any aluminum foil placed in any window or glass door or any reflective substance or other materials (except standard window treatments) placed on any glass, except such as may be approved by the Architectural Control Committee for energy conservation purposes.

#### ARTICLE VIII ENFORCEMENT

**Section 1. Compliance by Owners.** Every owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

**Section 2. Enforcement.** Failure of an owner to comply with such restrictions, covenants or rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof.

The Association shall have the right to suspend use of Common Areas (except for legal access, including the right to park) of defaulting owners. The offending lot owner shall be responsible for all costs of enforcement, including attorneys' fees actually incurred and court costs.

**Section 3. Fines and Suspension of Use of Common Areas.** In addition to all other remedies, suspension of use of the Common Areas and/or a fine or fines may be imposed upon an owner for failure of an owner, his family, guests, invitees or employees, to comply with any covenant, restriction, rule or regulation; provided the following procedures are adhered to:

(a) **Notice:** The Association shall notify the owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a hearing before a committee of at least three (3) members appointed by the Board of Directors, who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The owner has the right to present reasons why penalties should not be imposed. At least fourteen (14) days' notice of such meeting shall be given.

(b) **Hearing:** The alleged non-compliance shall be presented to the committee during which the committee shall hear reasons why penalties should not be imposed. A written decision of the committee shall be submitted to the owner by not later than twenty-one (21) days after the committee's meeting. The owner shall have a right to be represented by counsel and to cross examine witnesses.

(c) **Penalties:** The committee (if by a majority vote, its findings are made against the Owner) may suspend use of the Common Areas and/or may impose a fine by special assessment against the lot owned by the owner in an amount not to exceed Fifty Dollars (\$50.00) per violation.

(d) **Payment of Penalties:** Fines shall be paid not later than five (5) days after notice of the imposition or assessment of the penalties.

(e) **Collection of Fines:** Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth herein.

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

(g) **Non-exclusive Remedy:** These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled, including but not limited to injunctive relief; provided, however, any penalty paid by the offending owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such owner.

(h) Non-Applicability: The requirements of this Section 3. do not apply to the imposition of suspension of use of the Common Areas or fines upon any member because of the failure of the member to pay assessments or other charges when due. The above procedures do not apply where there is a failure to pay assessments or other charges. The Board of Directors, in it's sole discretion, may impose the suspension of use of the Common Areas, or fines upon any member because of the failure of the member to pay assessments or other charges when due.

**ARTICLE IX  
GENERAL PROVISIONS**

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Developer, the Association, the Architectural Control Committee and the owner of any land or lot subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then owners of 75% of all the lots subject hereto has been recorded, agreeing to revoke said covenants and restrictions. Provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken and further provided that any amendment or termination of any covenant or restriction that affects the Surface Water or Stormwater Management System or Conservation Easement Areas must have the prior approval of the St. Johns Water Management District.

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

Section 3. Enforcement.

(a) Enforcement of this Declaration may be by any lot owner, the Association, the Association Board of Directors, or the Architectural Control Committee, and may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain a violation or to recover damages, and against the lot to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System, as set forth in Article IV, Section 3(b) and Article IX, Sections 5(b) and 12(b).

**Section 4. Severability.** Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

**Section 5. Amendment.**

(a) In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed or added to at any time and from time to time upon the execution and recordation of an instrument executed by the Developer alone, (without the consent of any other owner(s) or the Association) until three months after ninety percent (90%) of the lots in all phases of the Community have been conveyed to members; or alternatively by approval at a meeting of members holding not less than 66 2/3% vote of the membership in the Association; provided, that until three months after ninety percent (90%) of the lots in all phases of the Community have been conveyed to members, the Developer's consent must be obtained if such amendment, in the sole opinion of the Developer, affects his interest. In addition, the Developer reserves the right to enter into agreements with the owner of any lot (without the consent of the owner of any other lot(s) or the Association) to modify the conditions, restrictions, limitations and agreements set forth in this Declaration, and any such deviation or variance shall be evidenced by agreement in writing. Such variance shall not constitute a waiver of any such condition, restriction, limitation or agreement as to the remaining lots, and the same shall remain fully enforceable as to all other lots located on the Property, except as against the lot where such deviation is permitted. The Developer reserves the right to add additional restrictions in the conveyance of title to any lot or lots. The foregoing provisions of this Section 5(a) may not be amended.

(b) Any amendment to this Declaration which alters the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Areas, must have the prior approval of the St. Johns River Water Management District.

**Section 6. Effective Date.** This Declaration shall become effective upon its recordation in the Indian River County Public Records.

**Section 7. Withdrawal.** The Developer reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Property then owned by the Developer or the Association from the provisions of this Declaration to the extent included originally in error or as a result of reasonable changes in the plans for the Property desired to be effected by the Developer. Any such amendment or termination of any covenant or restriction that affects the Surface Water or Stormwater Management System must have the prior approval of the St. Johns Water Management District.

Section 8. Conflict. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Association and the Articles shall take precedence over the By-Laws.

Section 9. Standards for Consent, Approval, Completion, Other Action and Interpretation. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Developer, the Association or the Architectural Control Committee, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or to take such action, and all matters required to be completed or substantially completed by the Developer or the Association shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Developer or Association, as appropriate. This Declaration shall be interpreted by the Board of Directors and an opinion of counsel to the Association rendered in good faith that a particular interpretation is not unreasonable shall establish the validity of such interpretation.

Section 10. Easements. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the owners designate hereby the Developer and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

Section 11. Covenants Running With The Land. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY (AND SUBJECT TO THE LIMITATIONS) OF SECTION I HEREOF, IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY (AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) THAT THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTIES. WITHOUT LIMITING THE GENERALITY OF SECTION I HEREOF, IF ANY PROVISION OR APPLICATION OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISION AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER WHICH WILL ALLOW THESE COVENANTS AND RESTRICTIONS TO SO RUN WITH THE LAND; BUT IF SUCH PROVISION AND/OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND/OR APPLICATION



SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THESE COVENANTS AND RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

**Section 12. Dissolution of Association.**

(a) In the event of a permanent dissolution of the Association, all assets of the Association shall be conveyed to a non-profit organization with similar purposes. Failing the ability to find a non-profit organization to succeed to the Association within ninety (90) days of dissolution of the Association, all Association assets may, upon approval of and at the sole option and in the sole discretion of the City of Sebastian be dedicated to said local government. Said successor non-profit organization or governmental entity shall pursuant to this Declaration provide for the continued maintenance and upkeep thereof.

(b) In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water or Stormwater Management System must be transferred to and accepted by an entity which would comply with Rule 40C-42.027, Florida Administrative Code, and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

**ARTICLE X  
INFORMATION AND FINANCIAL STATEMENT**

**Section 1. Information.** The Association shall make available to owners and any Institutional Lender granted a first mortgage on any lot, and to holders, insurers or guarantors of any first mortgage on any lot, current copies of the Declaration, rules and regulations for Fischer Lake Island subdivision, Articles of Incorporation and Bylaws of Fischer Lake Island Property Owners Association, Inc., and the books, records and financial statements of the Association. The term "available" as used in this section, means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

**Section 2. Financial Statement.** Any holder of a first mortgage on a lot is entitled, upon written request, to a financial statement of the Association for the immediately preceding fiscal year.

COPY

**ARTICLE XI  
CONTRACTS**

The Association, prior to assumption of control of the Association by the Class A members as provided in Article III, Section 2, is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control, upon not more than ninety (90) days' notice to the other party.

**ARTICLE XII  
INSURANCE AND LENDER'S NOTICES**

**Section 1. Insurance.** The Association shall obtain and maintain in effect liability insurance and casualty insurance.

**Section 2. Lender's Notices.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the lot number or address, any mortgage holder, insurer or guarantor shall be entitled to timely written notice of:

- (a) any condemnation or casualty loss that affects either a material portion of the Property or the lots securing its mortgage;
- (b) any sixty (60) day delinquency in the payment of Assessments or charges owed by the owner of any lot on which it holds the mortgage;
- (c) a lapse, cancellation, or material modification of any insurance policy or fidelity bond, maintained by the Association; and
- (d) any proposed action that requires the consent of a specified percentage of mortgage holders.

**ARTICLE XIII  
LIMITATIONS ON ASSOCIATION**

**Section 1. Limitations on Actions of Association.** Unless at least two thirds of the first mortgagees of lots (based on one vote for each first mortgage owned) or two thirds of the members entitled to vote (other than the Class B member) have given their prior written approval, the Association shall not be entitled to take any of the following actions:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. The granting of easements for public utilities or other public

purposes consistent with the intended use of the Common Areas by the members is not a transfer in the meaning of this clause.

(b) Change the method of determining the obligations, Assessments or other charges that may be levied against owner.

(c) By act or omission, change, waiver or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, the maintenance of and landscaping of lots, the maintenance of the Common Areas, walks, fences, and driveways, and the upkeep of lawns and plantings in the Property.

(d) Fail to maintain fire and extended coverage on insurable Common Areas on a current replacement cost basis in an amount of at least 100% of the insurable value (based on current replacement costs).

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

**ARTICLE XIV**  
**PAYMENT OF CHARGES BY FIRST MORTGAGEES**

Section 1. Payment of Charges by First Mortgagees. First Mortgagees of lots may:

(a) Jointly or singularly pay taxes or other charges that are in default and that may or have become charges against any Common Areas; and

(b) Pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Areas in the case of lapse of a policy.

First Mortgagees making such payments are due immediate reimbursements from the Association. The Association shall duly execute an agreement reflecting such entitlement to reimbursement.

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OR 1254PG 0163

in the presence of:  
WITNESSES:

(signature) Doris J. Grant  
(print name) Doris J. Grant

By: [Signature]  
Henry Anthony Fischer

(signature) [Signature]  
(print name) Sheryl A. Foy

COPY

Signed, sealed and delivered  
in the presence of:  
WITNESSES:

(signature) Doris J. Grant  
(print name) Doris J. Grant

FISCHER LAKE ISLAND PROPERTY OWNERS  
ASSOCIATION, INC., a Florida Not-for-Profit  
Corporation:

(signature) [Signature]  
(print name) Sheryl A. Foy

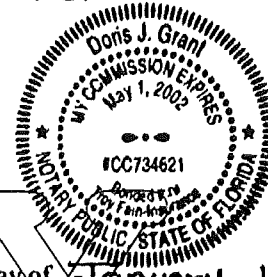
By: [Signature]  
Henry Andrew Fischer, as President

COPY "SEAL"

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 21 day of January, 1999,  
by HENRY ANTHONY FISCHER, who is personally known to me or produced \_\_\_\_\_  
\_\_\_\_\_ as identification.

[Signature]  
Notary Public  
State of Florida at Large  
My Commission Expires:



STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 21 day of January, 1999,  
by HENRY ANDREW FISCHER, as President of the Fischer Lake Island Property Owners Association, Inc.,  
a Florida Not-for-Profit Corporation, who is personally known to me or has produced \_\_\_\_\_  
\_\_\_\_\_ as identification.

[Signature]  
Notary Public  
State of Florida at Large  
My Commission Expires:



OR 1254 PC 0164

MORTGAGEE'S JOINDER

The undersigned being the holder of that certain interest arising by virtue of its mortgage recorded in the Official Records Book 1149, Page 2669, Public Records of Indian River County, Florida, does hereby consent, ratify and join in the execution of the Declaration of Conditions, Covenants, Easements and Restrictions for Fischer Lake Island to which this Joinder is attached for the purposes herein expressed and agrees that its mortgage shall be subordinated to the Declaration of Conditions, Covenants, Easements and Restrictions for Fischer Lake Island.

IN WITNESS WHEREOF, the undersigned (national banking association) has caused this Joinder to be signed by its AVP and its seal to be affixed by and with the authority of its Board of Directors this 21st day of January, 1999.

(Sign) Marilyn M. Waldis  
(Print Name) MARILYN M. WALDIS

(Sign) Denise Fortner  
(Print Name) DENISE FORTNER  
Patricia A. Ground  
PATRICIA A. GROUND

INDIAN RIVER NATIONAL BANK,  
A FLORIDA CORPORATION

By: Marilyn M. Waldis  
(Print Name) MARILYN M. WALDIS  
Title: AVP

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 21st day of January, 1999 by MARILYN M. WALDIS, the A.V.P. of INDIAN RIVER NATIONAL BANK, on behalf of the association. He/she is personally known to me or who has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public  
State of Florida at Large  
My Commission Expires: 1-27-2000

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OR 1254 PG 0165

**EXHIBIT "A"**

**COMMUNITIES**

**The following lots comprise the Fischer Lake Island Property Owners Community as shown on the Plat:**

**Lots 15,16,17, 18, 19, 20, 21, 22 and 23.**

**COPY**

**COPY**

**COPY**

EXHIBIT "B"

PORTIONS OF THE NORTHWEST QUARTER OF SECTION 23 AND THE SOUTHWEST QUARTER OF SECTION 14, BOTH SITUATE IN TOWNSHIP 31 SOUTH, RANGE 38 EAST, INDIAN RIVER COUNTY, FLORIDA LYING NORTH AND WESTERLY OF THE FOLLOWING DESCRIBED LINE 1, AND EASTERLY AND SOUTH OF THE FOLLOWING DESCRIBED LINE 2:

**LINE 1:**

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF AFORESAID SECTION 23, RUN SOUTH 89° 39' 21" EAST, ALONG THE QUARTER SECTION LINE, 800.00 FEET; THENCE NORTH 00° 20' 39" EAST, 300.00 FEET; THENCE SOUTH 89° 37' 21" WEST, 120.00 FEET; THENCE NORTH 00° 19' 30" EAST 378.44 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 220.00 FEET; THENCE RUN NORTHERLY 77.32 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 20° 08' 11"; THENCE NORTH 20° 27' 41" EAST, 58.43 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 255.00 FEET; THENCE RUN NORTHERLY 112.52 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25° 16' 57"; THENCE NORTH 4° 49' 16" WEST, 212.81 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 120.00 FEET; THENCE RUN NORTHERLY 68.93 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 32° 54' 43"; THENCE NORTH 28° 05' 27" EAST, 121.83 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 355.00 FEET; THENCE RUN NORTHERLY 102.17 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 16° 29' 21"; THENCE NORTH 11° 36' 06" EAST, 355.44 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 2430.00 FEET; THENCE RUN NORTHERLY 478.26 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 16' 36"; THENCE NORTH 00° 19' 30" EAST, 428.54 FEET; THENCE NORTH 89° 24' 25" WEST, 113.19 FEET TO A POINT ON A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 570.00 FEET AND THROUGH WHICH A RADIAL LINE BEARS SOUTH 55° 38' 26" WEST; THENCE RUN NORTHWESTERLY 284.82 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28° 37' 47"; THENCE NORTH 5° 43' 42" WEST, 138.58 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 300.00 FEET; THENCE RUN NORTHWESTERLY 188.94 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 32° 48' 15" TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 270.00 FEET; THENCE RUN NORTHWESTERLY 91.49 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20° 47' 42" TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 580.00 FEET; THENCE RUN NORTHWESTERLY 250.39 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24° 44' 07"; THENCE NORTH 42° 28' 22" WEST, 264.79 FEET; THENCE NORTH 68° 04' 50" EAST, 260.00 FEET, MORE OR LESS, TO THE MEAN HIGH WATER LINE OF THE SEBASTIAN RIVER AND THE POINT OF TERMINATION OF AFOREDESCRIBED LINE 1.

**LINE 2:**

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF AFORESAID SECTION 23, RUN NORTH 00° 19' 30" EAST ALONG THE WEST SECTION LINE, 2656.24 FEET TO THE NORTHWEST CORNER OF SAID SECTION 23, AND THE SOUTHWEST CORNER OF AFORESAID SECTION 14; THENCE NORTH 00° 10' 49" EAST, ALONG THE WEST SECTION LINE, 735.95 FEET TO A POINT ON A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 236.00 FEET AND THROUGH WHICH A RADIAL LINE BEARS NORTH 66° 00' 48" WEST; THENCE RUN NORTHEASTERLY 96.97 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 23° 32' 26"; THENCE NORTH 47° 31' 38" EAST, 263.66 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 12.85 FEET; THENCE RUN NORTHERLY 20.18 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL

FISCHER LAKE ISLAND, PHASE ONE, A SUBDIVISION (Continued)

ANGLE OF 90 00' 00"; THENCE NORTH 36 06' 56" WEST, 109.38 FEET TO A POINT ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 50.00 FEET AND THROUGH WHICH A RADIAL LINE BEARS SOUTH 00 13' 00" WEST; THENCE RUN NORTHWESTERLY AND NORTHERLY 147.87 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 169 26' 53" TO A POINT ON A CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 25.00 FEET AND THROUGH WHICH A RADIAL LINE BEARS SOUTH 22 58' 52" WEST; THENCE RUN EASTERLY 24.98 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 57 14' 26"; THENCE NORTH 55 44' 26" EAST, 13.84 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 25.00 FEET; THENCE RUN NORTHEASTERLY 18.69 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 42 50' 00" TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 50.00 FEET; THENCE RUN EASTERLY 71.54 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 42 50' 00"; THENCE NORTH 6 47' 44" WEST, 30.00 FEET; THENCE NORTH 42 53' 44" EAST, 145.00 FEET, MORE OR LESS, TO THE MEAN HIGH WATER LINE OF THE SEBASTIAN RIVER; THENCE MEANDER SOUTHEASTERLY ALONG SAID MEAN HIGH WATER LINE N. 70 04' 18" E., 121.25 FEET; THENCE N. 50 00' 32" E., 64.27 FEET; THENCE S. 62 00' 15" E., 68.96 FEET; THENCE S. 08 41' 20" E., 77.43 FEET; THENCE S. 27 37' 57" E., 106.62 FEET TO THE INTERSECTION WITH THE TERMINAL POINT OF AFOREDESCRIBED LINE 1, FOR THE TERMINATION POINT OF LINE 2.

ALL THE ABOVE LESS THE FOLLOWING DESCRIBED TRACT:

FISCHER LAKE ISLAND, PHASE ONE, A SUBDIVISION  
STORM WATER MANAGEMENT EASEMENT LOCATION

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 23, RUN NORTH 00 19' 30" EAST, ALONG THE WEST SECTION LINE, 409.45 FEET; THENCE SOUTH 89 40' 30" EAST, 50.00 FEET TO THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING CONTINUE SOUTH 89 40' 30" EAST, 291.36 FEET; THENCE SOUTH 00 36' 43" WEST, 289.56 FEET; THENCE SOUTH 89 39' 21" EAST, 197.10 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 25.00 FEET; THENCE RUN NORTHEASTERLY 12.51 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28 39' 40"; THENCE NORTH 61 40' 59" EAST, 79.85 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 25.00 FEET; THENCE RUN NORTHERLY 26.77 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 61 21' 29"; THENCE NORTH 00 19' 30" EAST, 496.66 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 280.00 FEET; THENCE RUN NORTHERLY 95.22 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20 08' 11"; THENCE NORTH 20 27' 41" EAST, 58.43 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 195.00 FEET; THENCE RUN NORTHERLY 86.05 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 25 16' 57"; THENCE NORTH 4 49' 16" WEST, 212.81 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 180.00 FEET; THENCE RUN NORTHERLY 81.26 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 32 54' 43"; THENCE NORTH 28 05' 27" EAST, 121.83 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 295.00 FEET; THENCE RUN NORTHEASTERLY 84.71 FEET

Exhibit "B"

to

Declaration of Conditions, Covenants, Easements & Restrictions  
for Fischer Lake Island, a Subdivision

Page 2 of 3

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FISCHER LAKE ISLAND, PHASE ONE, A SUBDIVISION (Continued)

ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 16 27' 22"; THENCE NORTH 11 36' 06" EAST, 254.16 FEET; THENCE NORTH 78 23' 54" WEST, 219.08 FEET; THENCE NORTH 83 58' 54" WEST, 158.13 FEET; THENCE NORTH 5 24' 09" EAST, 323.78 FEET; THENCE NORTH 1 07' 56" EAST, 290.57 FEET; THENCE NORTH 11 37' 24" WEST, 225.05 FEET; THENCE NORTH 73 45' 58" EAST, 137.93 FEET; THENCE NORTH 65 19' 55" EAST, 191.54 FEET TO A POINT ON A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 630.00 FEET AND THROUGH WHICH A RADIAL LINE BEARS SOUTH 61 49' 20" WEST; THENCE RUN NORTHWESTERLY 246.83 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 22 26' 53"; THENCE NORTH 5 43' 42" WEST, 138.58 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 270.00 FEET; THENCE RUN NORTHWESTERLY 154.58 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 32 48' 15" TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 330.00 FEET; THENCE NORTH- WESTERLY 119.77 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 20 47' 42" TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 520.00 FEET; THENCE RUN NORTHWESTERLY 224.49 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 24 44' 07" THENCE NORTH 42 28' 22" WEST, 161.45 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 23.00 FEET; THENCE RUN WESTERLY 36.13 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90 00' 00"; THENCE SOUTH 47 31' 38" WEST, 253.68 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 186.00 FEET; THENCE RUN SOUTHWESTERLY 66.48 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20 28' 48"; THENCE SOUTH 00 10' 49" WEST, 724.72 FEET; THENCE SOUTH 00 19' 30" WEST 2246.95 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT FROM ALL THE ABOVE DESCRIBED LANDS A 60 FEET WIDE RIGHT OF WAY RECORDED IN OFFICIAL RECORD BOOK 1134, PAGE 1300, PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA.

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OR 1254 PG 0169

Exhibit "B"  
to  
Declaration of Conditions, Covenants, Easements & Restrictions  
for Fischer Lake Island, a Subdivision  
Page 3 of 3

EXHIBIT "C" TO:

DECLARATION OF CONDITIONS, COVENANTS,  
EASEMENTS AND RESTRICTIONS FOR FISCHER LAKE ISLAND,  
A SUBDIVISION

**RULES AND REGULATIONS**

1. The Common Areas and facilities shall not be obstructed nor used for any purpose other than the purposes intended therefor. No carts, bicycles, carriages, chairs, tables or any other similar objects shall be stored therein.

2. The personal property of owners must be stored in their respective Residences or in outside storage areas (if any are provided by Developer).

3. No garbage cans, supplies, milk bottles or other articles shall be placed on the exterior portions of any Residence or lot and no linens, cloths, clothing, curtains, rugs, mops, or laundry of any kind, or other articles, shall be shaken or hung from or on the Residence, the lot or any of the windows, doors, fences, balconies, patios or other portions of the Residence or lot, except as provided in the Declaration with respect to refuse containers.

4. No Owner shall permit anything to fall, nor sweep or throw, from the Residence any dirt or other substance onto the lot or Common Areas.

5. Employees of the Association are not to be sent out by owners for personal errands. The Board of Directors shall be solely responsible for directing and supervising employees of the Association.

6. No motor vehicle which cannot operate on its own power or unlicensed motor vehicles, boats, recreational vehicles or trailers shall be permitted to be parked or to be stored at any place on the Property unless they are stored entirely within owner's closed garage and are not visible from outside the closed garage. No portion of the Common Areas, including but not limited to the internal road system and grassy areas, may be used for parking purposes, except those portions specifically designed and intended therefor and designated as parking areas by proper signage. Areas designated, if any, for guest parking shall be used only for this purpose and neither owners nor occupants of Residences shall be permitted to use these areas. Vehicles which are in violation of these rules and regulations shall be subject to being towed by the Association as provided in the Declaration.

7. No owner shall make or permit any disturbing noises in the Residence or on the lot by himself or his family, servants, employees, agents, visitors or licensees, nor permit any conduct by such persons that will interfere with the rights, comforts or conveniences of other owners. No owner shall play or permit to be played any musical instrument, nor operate or permit to be operated a phonograph, television, radio or sound amplifier or any other sound equipment in his Residence or on his lot in such a manner as to disturb or annoy other residents. No owner shall conduct, nor permit to be conducted, vocal or instrumental instruction at any time which disturbs other residents.

8. No electronic equipment may be permitted in or on any Residence or lot which interferes with the television or radio reception of another Residence.

9. No awning, canopy, shutter, enclosure or other projection shall be attached to or placed upon the outside walls or roof of the Residence or on the lot, except as approved by the Architectural Control Committee.

10. No owner may alter in any way any portion of the Common Areas, including, but not limited to, landscaping, without obtaining the prior written consent of the Architectural Control Committee.

11. No vegetable gardens shall be permitted except in fully enclosed patio areas.

12. No commercial use, except any management or lot sales office, shall be permitted in the Development even if such use would be permitted under applicable zoning ordinances.

13. No flammable, combustible or explosive fluids, chemicals or substances shall be kept in any Residence, on a lot or on the Common Areas, except as may be intended solely to service a gas cooking grill or in order to heat a pool or outdoor spa, in which case all such containers shall be stored completely underground.

14. An owner who plans to be absent during the hurricane season must prepare his Residence and lot prior to his departure by designating a responsible firm or individual to care for his Residence and lot should the Residence suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of the Association. There shall be no "boarding up" of houses in excess of thirty (30) total days or 10 consecutive days within any twelve (12) month period while homes are vacant. There shall be allowed storm protection, only in the event of and during the period of time a storm is likely to cause damage to a Residence.

15. An owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Residence.

16. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Property and including full compliance by them with these Rules and Regulations and all other rules and regulations of the Association. Loud noises will not be tolerated.

17. Pets and other animals shall neither be kept nor maintained in or about the Property except in accordance with the Declaration and with the following:

(a) Under no circumstances shall more than two (2) household pets be permitted for each lot. No pet shall be permitted outside of its owner's Residence unless attended by an adult and on a leash of reasonable length. Said pets shall only be walked or taken upon those

portions of the Common Areas designated by the Association from time to time for such purposes.

(b) Any pet deemed to be objectionable by the Board of Directors for any reason shall be removed promptly by the owner on fifteen (15) days' notice.

18. An owner shall not permit its garage door(s) to remain open during time periods other than when necessary for the ingress or egress of an automobile or while cleaning or painting the interior area of the garage.

19. Solar collectors shall be located on the solar user's lot so as not to be seen from the street and so as not to unreasonably or unnecessarily restrict or interfere with the users of other lots within the Property. The plans and specifications for all solar collection devices shall be submitted to the Architectural Control Committee. Written approval of the Architectural Control Committee must be received before constructing or installing any solar collector. Among other things, the Architectural Control Committee must consider when reviewing any request for a solar collection device, the size, design and location of the collector, as well as the reflection or glare that may be cast upon lots within the Property.

20. Every owner and occupant shall comply with these rules and regulations as set forth herein, any and all rules and regulations which from time to time may be adopted, and the provisions of the Declaration, By-Laws and Articles of Incorporation of the Association, as amended from time to time. Failure of an owner or occupant to so comply shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend voting rights and use of recreation facilities, if any, in the event of failure to so comply. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an owner for failure of an owner, his tenants, family, guests, invitees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, or Articles of Incorporation or By-Laws, as provided in the Declaration.

21. These rules and regulations shall not apply to the Developer, nor its affiliates, agents or employees and contractors (except in such contractors' capacity as owners), nor to institutional first mortgagees, nor property while owned by either the Developer or its affiliates or such mortgagees. All of these rules and regulations shall apply, however, to all other owners and occupants even if not specifically so stated in portions hereof. The Board of Directors shall be permitted (but not required) to grant relief to one or more owners from specific rules and regulations upon written request therefor and good cause shown in the sole opinion of the Board.

22. The Stormwater Management Tract (Fischer Lake) is an unsupervised body of water. No lifeguards or water safety equipment or monitoring for natural and wildlife hazards is provided by the Developer or the Property Owner's Association with respect to Fischer Lake, the responsibility for such matters being completely and entirely upon the lot owners. Any recreation, whether it be swimming, boating, fishing or other use of Fischer Lake by the owners and their guests and invitees, specifically including children of all ages, is allowed only on an *AT-YOUR-OWN-RISK*

basis. The Developer and the Property Owner's Association specifically disclaim any responsibility or liability therefor. Any lot owner using Fischer Lake or who allows their guests and invitees, specifically including children of all ages, to use Fischer Lake, by such use agrees at such lot owner's own cost and expense to hold harmless, defend and indemnify the Developer, the Association, and the other lot owners from any and against liability of any kind whatsoever which may arise from such use whether occasioned by alleged error or omissions or otherwise.

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**BY-LAWS**  
**OF**  
**FISCHER LAKE ISLAND PROPERTY OWNERS ASSOCIATION, INC.**

*A Corporation Not for Profit Under the Laws of the State of Florida*

**ARTICLE I**  
**DEFINITIONS**

Section 1, **Definitions**. The following words when used in these By-Laws (unless the context shall prohibit) shall have the following meanings:

- (a) "Assessment" means and refers to a share of the funds required for payment of the expenses of the Association, which funds shall be assessed against a lot owner from time to time.
- (b) "Association" means and refers to the Fischer Lake Island Property Owners Association, Inc., a Florida corporation not for profit.
- (c) "Declaration" means and refers to the Dedication and Declaration of Restrictions for Fischer Lake Island, a subdivision, as recorded in the Public Records of Indian River County, Florida, and as the same may be amended from time to time.
- (d) "Developer" means and refers to Henry Anthony Fischer, his successors and such of his assigns as to which the rights of Developer hereunder are specifically assigned by written instrument recorded in the Public Records of Indian River County, Florida. The Developer may assign only a portion of its rights, hereunder, or all or a portion of such rights in connection with appropriate portions of the Property. In the event of such a partial assignment of its rights, the assignee shall not be deemed the Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis. A lot purchaser, lot owner or a lot mortgagee shall not be deemed to be the Developer by the mere act of purchase or mortgage of a lot.
- (e) "Entitled to Vote" means and refers to that lot owner entitled to a vote for a lot at an Association meeting. If more than one person or legal entity shall own a lot, the owners thereof shall determine among themselves who shall be the member entitled to vote. Said determination shall be manifested upon a voting certificate, signed by all owners of said lot, and given to the Association Secretary for placement in the Association records. Notwithstanding anything contained herein, all lot owners whether entitled to vote or not are assured of all other privileges, rights, and obligations of Association membership and shall be members of the Association.
- (f) "Member" means and refers to all those owners who are members of the Association as provided in the Declaration.

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Return To: Warren W. Dill, Esq.

(g) "Owner" means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated upon the property, but excluding anyone having an interest in a lot as security for the performance of an obligation. Owner shall include Developer as to each and every lot owned by Developer.

(h) "Plat" means and refers to the plat of Fischer Lake Island, a subdivision, recorded or to be recorded in the Public Records of Indian River County, Florida, together with any plat of additional land made subject to this Declaration and to the jurisdiction of the Association.

(i) "Property" means and refers to the real property described in the Declaration, and such additions thereto, as are now or hereafter made subject to the Declaration and to the jurisdiction of the Association.

(j) "Surface Water or Stormwater Management System" means and refers to a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40 or 40C-42, Florida Administrative Code.

**ARTICLE II  
LOCATION AND POWERS**

Section 1. Principle Office. Until changed by vote of the Association Board of Directors, the principle office of the Association shall be located at 10729 U.S. (Highway 1), Sebastian, FL 32958.

Section 2. Association Powers. The Association shall have all powers granted to it by law, the Declaration, and the Articles of Incorporation, all of which powers shall be exercised by its Board of Directors, unless the exercise thereof is otherwise restricted by the aforesaid Declaration, the Articles of Incorporation, these By-Laws, or by law. The aforementioned powers of the Association shall include, but not be limited to the following:

- (a) All of the powers specifically provided for in the aforesaid Declaration and Chapter 617, Florida Statutes, as the same as be amended from time to time;
- (b) The power to levy and collect assessments or fees as provided in the Articles of Incorporation, these By-Laws, and the Declaration;
- (c) The power to expend monies collected for the purpose of paying the expenses of the Association;

- (d) The power to purchase equipment, supplies and material required in the maintenance, repair, replacement, operation and management of the common areas;
- (e) The power to purchase liability and casualty insurance, including the power to insure and keep insured any buildings or improvements on the common areas;
- (f) The power to employ the personnel required for the maintenance, repair, replacement, operation and management of the common areas and the Association;
- (g) The power to pay utility bills for utilities serving the common areas;
- (h) The power to contract for the management of the common areas and the Association;
- (i) The power to make reasonable rules and regulations applicable to any or all of the property, to amend the rules and regulations from time to time, and to see that all members are notified of such changes in the rules and regulations as many be enacted;
- (j) The power to enforce by any legal means the provisions of the Articles of Incorporation, the By-Laws, the Declaration, and the rules and regulations duly promulgated by the Association;
- (k) The power to collect delinquent assessments or fees by suit or otherwise, to abate nuisances, and enjoin or seek damages from lot owners for violation of the provisions of the Declaration;
- (l) The power to pay all taxes and assessments which are liens against the common areas or other property owned by the Association, as the case may be, and to assess the same against the members and their lots;
- (m) The power to select depositories for the Association funds, to determine the manner of receiving, depositing and disbursing Association funds, and to determine the form of check and the person or persons by whom the same shall be signed, when not signed as otherwise provided by these By-Laws;
- (n) The power to possess, enjoin and exercise all powers necessary to implement, enforce and carry into effect the powers above described, including the power to acquire, hold, mortgage, convey and deal in real and personal property;
- (o) The power to enter into, ratify, modify and amend each and every of the agreements and undertakings contemplated by and contained within the Declaration;
- (p) The power to subscribe to and enter into a contract with any person, firm, corporation or real estate management agent of any nature or kind to provide for the maintenance,



operation, repair and upkeep of the Association owned property and common areas. Said contract may provide that the total operation of said managing agent, firm, or corporation shall be at the cost of this Association. Said contract may further provide that the managing agent shall be paid from time to time a reasonable fee, either stated as a fixed fee or as a percentage of the total cost of maintenance, operation, repair and upkeep, or of the total funds of this Association handled and managed by the managing agent;

- (q) The Association shall have such powers as may be outlined in the Declaration; and
- (r) The Association shall accept jurisdiction over, and have the powers and duties imposed with respect to any lands subject to the Declaration, and any additional lands which may hereafter be subjected to the jurisdiction of the Association by any amendment to the Declaration.

**ARTICLE III**  
**MEMBERSHIP**

Section 1. Membership of the Association is as set forth in Article III of the Articles of Incorporation of the Association.

Section 2. The rights of membership are subject to the payment of regular and special assessments levied by the Association, the obligation of which assessments are imposed against each owner of, and becomes a lien upon, that portion of the property against which such assessments are made as provided in the Declaration.

**ARTICLE IV**  
**BOARD OF DIRECTORS**

Section 1. The Directors of the Association shall be elected at the annual meeting of the members, except as otherwise specified in the Articles of Incorporation. The election shall be decided by majority vote of all members entitled to vote who are either present in person or by proxy.

Section 2. Any Director may be removed from office at any time with or without cause by the affirmative majority vote of the Association members entitled to vote.

Section 3. The first meeting of the duly elected Board of Directors, for the purposes of organization, shall be held immediately after the annual meeting of members, provided the majority of the members of the Board elected are present. Any action taken at such meeting shall be by a majority of the whole Board. If the majority of the members of the Board elected shall not be present at the time, or if the directors shall fail to elect officers, the meeting of the Board to elect officers shall then be held within thirty (30) days after the annual meeting of the Board so elected, stating the time, place and object of such meeting.

Section 4. Regular meetings of the Board of Directors may be held at any place or places within Indian River County, Florida, on such days and at such hours as the Board of Directors may, by resolution, designate.

Section 5. Except in case of an emergency, at least forty-eight (48) hours notice shall be required to be given of any special or regular meeting of the Board of Directors to the general Association membership by posting a copy of the proposed agenda, date, time, and place of the meeting in a conspicuous place on the property. Alternatively, if notice is not posted, notice of each meeting must be mailed and delivered to each member at least seven (7) days before a meeting. Notice of any Board meeting at which assessments are to be established shall include a statement that Assessments shall be considered and a statement of the nature of said assessments. Directors may not vote by proxy or secret ballot, except secret ballots may be used to elect officers. All members may attend any meeting of the Board of Directors, except for meetings between the Board and its attorney, with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by attorney-client privilege.

Section 6. Special meetings of the Board of Directors may be called at any time by the President or by any two (2) members of the Board and may be held any place or places within Indian River County, Florida, and at any time.

Section 7. Notice of each special meeting of the Board of Directors, stating the time, place and purpose or purposes thereof, shall be given by or on behalf of the President or by or on behalf of the Secretary or by or on behalf of any two (2) members of the Board to each member of the Board not less than three (3) days by mail, or one (1) day by telephone or telegraph, held at any place and time without notice by unanimous waiver of notice by all the Directors.

Section 8. Minutes shall be kept of all meetings of the Association Board of Directors, and the minutes shall be available for inspection by members or their authorized representatives at reasonable times. A vote or abstention from voting on each matter voted upon by each director present at the meeting must be recorded in the minutes. The Association shall retain said minutes for at least seven (7) years.

Section 9. Except as otherwise specified in the Articles of Incorporation, Directors (including affiliates of the Developer) shall have the absolute right to resign at any time and the remaining directors in office shall then fill the vacancies, provided that if all directors resign, a special meeting of members shall be called as soon as possible for the purpose of electing new directors and the resignations of such directors shall not be effective until such election is held and new directors are elected. After two (2) attempts to call and hold such meeting, the resignations shall become effective simultaneously with the date and time of the scheduled second meeting, whether held or not or whether new directors are elected or not.

Section 10. The Board of Directors shall have the authority to establish any committee it deems appropriate and to appoint the members thereof, including a committee to review the

qualifications of building contractors to construct homes within the property. All committees shall be required to conduct their meetings (regular or special), in accordance with the same notice, quorum (majority of committee members), voting and minutes of meeting requirements as those established for the Board of Directors, as contained within these By-Laws.

**ARTICLE V  
OFFICERS**

**Section 1.** There shall be a President, at least one Vice President, and a Secretary-Treasurer. Any officer may be removed at any time by the affirmative vote of a majority of the Board of Directors at any duly called regular or special meeting of the Board.

**Section 2. President.** The President shall:

- (a) Act as presiding officer at all meeting of the members of the Association and of the Board of Directors;
- (b) Call special meetings of the Board of Directors and of members;
- (c) Sign all checks, contracts, promissory notes, deeds, and other instruments on behalf of the Association, except those which the Board of Directors specifies may be signed by other persons;
- (d) Perform all acts and duties usually required of an executive to insure that all orders and resolutions of the Board of Directors are carried out; and
- (e) Appoint committees and have an ex-officio membership status on all committees, and render an annual report at the annual meeting of members.

**Section 3. Vice President.** The Vice President shall:

- (a) Act as presiding officer at all meetings of the membership of the Association and of the Board of Directors when the President is absent;
- (b) Perform other acts and duties required of the President, in the absence of the President;
- (c) Perform such other duties as may be required by the Board; and
- (d) Sign checks on behalf of the Association in the absence of the President.

**Section 4. Chairman at Meetings In Absence of President or Vice President.** Should the President and Vice President be absent from any meeting, the remaining Directors shall select a

person to act as chairman of the meeting.

Section 5. Secretary. The Secretary shall:

- (a) Attend all regular and special meetings of the members of the Association and of the Board of Directors and maintain all records and minutes of proceedings thereof or cause the same to be done;
- (b) Have custody of the corporate seal and affix same when necessary or required; and
- (c) Attend to all correspondence on behalf of the Board of Directors, prepare and serve notices of meetings, keep membership books.

Section 6. Treasurer. The Treasurer shall:

- (a) Have custody of all property of the Association, including funds, securities, and evidences of indebtedness;
- (b) Keep the books of the Association in accordance with good accounting practices;
- (c) Provide for collection of assessments; and
- (d) Perform all other duties incident to the office of Treasurer.

The duties of the Treasurer may be fulfilled by an assistant treasurer appointed by the Treasurer.

## **ARTICLE VI MEETINGS OF MEMBERS**

Section 1. The regular annual meeting of the members shall be held in the month of October in each year at such time and place as shall be determined by the Board of Directors.

Section 2. Special meetings of the members for any purpose may be called at any time by the President or Treasurer, or by any two (2) or more members of the Board of Directors, or upon written request of the members entitled to vote who have a right to vote 30% of all the votes of the entire membership. All business conducted at a special meeting shall be limited to the purposes described in the notice of the meeting.

Section 3. Notice may be given to the members entitled to vote either personally, or by sending a copy of the notice through the mail, postage thereon fully paid, to the addresses appearing on the records of the Association. Each member shall register his address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice of any meeting, regular or special, shall be mailed or personally delivered at least ten (10) days in advance of the meeting and for

regular meetings, shall set forth the general nature of the business to be transacted and for special meetings, shall set forth the purpose or purposes for which the meeting is called; provided however, that if any business of any meeting shall involve any action governed by the Articles of Incorporation, notice of such meeting shall be given or sent as therein provided.

Section 4. The presence in person or by general or limited proxy at the meeting of members entitled to vote 30% of the votes of the membership shall constitute a quorum for any action governed by these By-Laws.

Section 5. Proxies must be in writing, dated, state the date and place of the meeting for which it was given and must be signed by all record owners of a lot or the person designated in a voting certificate signed by all such owners as the person authorized to cast the vote attributable to such lot.

Any proxy must be filed with the Secretary before the appointed time of each meeting, and such proxy will be valid only for the particular meeting designated in the proxy and as may be lawfully adjourned and reconvened from time to time. In no event shall such proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given, and every proxy shall be revocable, at any time, at the pleasure of the member exercising it. The proxy may be any individual that the member entitled to vote desires to designate whether a member of the Association or not. Proxies may be used to form a quorum.

Section 6. Meetings shall be governed by Roberts Rules of Order (latest edition). The individual designated by these By-Laws to preside at a meeting and who is present at that membership meeting or Board of Directors meeting, may select another individual to chair the meeting in that individual's place. The individual asked to chair the meeting may be a member or non-member of the Association. During such time period as the Developer shall control by power of appointment a majority of the Board of Directors, the chairman of any meeting of the Board of Directors or general members may adjourn said meeting upon said chairman's own motion and without a vote of the members entitled to vote or the Directors, as the case may be.

Section 7. Nothing herein shall be construed to prevent a member from waiving notice of a meeting or acting by written agreement without a meeting, on any matter concerning operation of the Association and common areas, and such waiver and action by written agreement are hereby expressly permitted.

Section 8. Minutes shall be kept of all meetings of the Association, and the minutes shall be available for inspection by members or their authorized representatives at reasonable times. The Association shall retain said minutes for at least seven (7) years.