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CFN 2012255945, OR BK 6761 PAGE 2899,
Recorded 12/20/2012 at 11:24 AM, Mitch Needelman, Clerk
of Courts, Brevard County
Pgs 54

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR RIVERWALK OF MELBOURNE
(FORMERLY KNOWN AS "RIVERWALK CLUB TOWNHOMES")**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVERWALK OF MELBOURNE, made and executed as of this 5th day of ~~November~~ 2012, by EVERBANK, a federal savings bank, successor in title to Preferred Builder/Developer, LLC (hereinafter referred to as the "Original Developer"), whose address is 501 Riverside Avenue, 9th Floor, Jacksonville, Florida 32202, hereinafter referred to as "Declarant", joined by RIVERWALK OF MELBOURNE HOME OWNERS ASSOCIATION, INC., whose address is 501 Riverside Avenue, 9th Floor, Jacksonville, Florida 32202, hereinafter referred to the "Association".

WHEREAS, the Original Developer previously executed the Original Declaration (as defined in Section 1.1. (v) below) by which the Original Developer subjected all of the Property (as defined in Section 1.1. (aa) below) to the covenants, conditions and restrictions contained in the Original Declaration; and

WHEREAS, the Property was originally developed as an unplatted townhome subdivision known as Riverwalk Club Townhomes; and

WHEREAS, the Original Developer previously conveyed ownership of certain Lots (as defined in the Original Declaration), to certain Owners (as defined in the Original Declaration); and

WHEREAS, the City (as defined in Section 1.1.(g)) has informed the Declarant that it is the City of Melbourne's position that the Property was developed in violation of the City of Melbourne's Subdivision Code; and

WHEREAS, a violation of the City's Subdivision Code would result in the development of the Property no longer conforming to the requirements of the Federal National Mortgage Association ("FNMA"); and

WHEREAS, the Declarant and the Owners have voluntarily agreed to plat the Property as a single family residential townhome subdivision because (i) it will provide for an improved plan of development for the Property, (ii) improve the marketability of the Property, and (iii) bring the Property into conformance with the requirements of the FNMA; and

WHEREAS, the Declarant and the Owners desire to modify, amend and restate the Original Declaration in its entirety in order to ensure that the covenants, conditions and restrictions for the Property are consistent with the City's Subdivision Code, the Plat (as defined in Section 1.1.(x)), and the requirements of FNMA; and

WHEREAS, pursuant to Section 10a of the Original Declaration, the Declarant has the absolute and unconditional right, so long as it owns any Lot, to amend the Original Declaration to conform to the requirements of FNMA or to amend the Original Declaration in any respect.

WHEREAS, the Owners have consented to and joined in this Declaration pursuant to a separate Consent and Joinder of Owner recorded separately in the Public Records of Brevard County, Florida.

NOW, THEREFORE, Declarant hereby declares that the Original Declaration is hereby modified, amended and restated in its entirety and Declarant hereby declares that all of the Property shall be held, sold, conveyed, leased, encumbered and otherwise dealt with subject to the easements, restrictions, covenants, and conditions, reservations, charges and lien rights hereinafter set forth, all of which are for the purpose of protecting the value, desirability and attractiveness of and which shall run with, the Property and be binding upon and inure to the benefit of, all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

ARTICLE 1 DEFINITIONS

Section 1.1. Defined Terms. The following words and phrases, when used in this Declaration or any supplemental declaration hereto, shall have the following meanings:

(a) "Additional Property" shall mean real property, other than the Property, which may in the future be brought within the jurisdiction of the Association and this Declaration by amendment or supplement to this Declaration.

(b) "Architectural Review Committee" and "ARC" shall refer to the committee established and described in Article V hereof.

(c) "Articles" shall mean the Articles of Incorporation of the Association as they may exist from time to time.

(d) "Association" shall mean **RIVERWALK OF MELBOURNE HOME OWNERS ASSOCIATION, INC.**, formerly known as **THE RIVERWALK CLUB TOWNHOMES HOMEOWNERS ASSOCIATION, INC.** a Florida not for profit corporation, its successors and assigns. The amended Articles of Incorporation of the Association are attached hereto as Exhibit "B" and incorporated herein by reference.

(e) "Board" shall mean the Board of Directors of the Association.

(f) "By-Laws" shall mean the By-Laws of the Association as they may exist from time to time. The initial By-Laws are attached hereto as Exhibit "C", and incorporated herein by reference.

(g) "City" shall mean the City of Melbourne, a Florida municipal corporation.

(h) "Common Area" shall mean and refer to those areas of land shown on the Plat intended to be devoted to the common use and enjoyment of the owners of the Properties; all real property, including any improvements thereon, owned by the Association for the common use and enjoyment of the Owners; any real property subsequently deeded by the Declarant to the Association for the common use and enjoyment of the Owners; the Surface Water Management System, all stormwater detention/retention areas, if any, as hereafter defined; walls, entry features, entrance gates, signs, street lights, and central irrigation system; and any Conservation Areas. The Common Area shall include specifically, but not by way of limitation, the Tracts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T and U, inclusive, Streets, walkways, sidewalks, and the recreation areas (e.g., clubhouse and pool). The Common Area shall also include the Fire Protection System, the Water Distribution System, and Sewer System. The Lots and the improvements constructed thereon are expressly excluded from the definition of Common Area.

(i) "Common Expenses" shall mean expenditures for maintenance, operation and other services required or authorized to be performed by the Association with respect to the Common Area, Surface Water Management System, and the Conservation Area, or otherwise, and other obligations set forth herein.

(j) "Conservation Area" or "Conservation Easement Area" shall mean and refer to any such Property so designated upon any the Plat or Plats of the Property.

(k) "Declarant" shall mean EVERBANK, a federal savings bank. Wherever the term Declarant is used in this Declaration, the Articles or By-Laws, it shall be deemed to include the successors and assigns of the Declarant, but only to the extent specifically so identified by an instrument in writing executed and recorded by the Declarant and shall not include an Owner who has purchased a Lot from the Declarant.

(l) "Declaration" shall mean this AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVERWALK OF MELBOURNE.

(m) "Excluded Property" shall mean that property excluded from and depicted on the Plat as Parcel A and Parcel B.

(n) "Fire Protection System" means and refers to potable water mains, together with all appurtenant structures, pipes, lines, tees, bends, meters, gauges, mechanical equipment, valves, and fire hydrants. Fire Sprinkler Systems are excluded from this agreement.

(o) "Improvements" shall mean and refer to all structures of any kind including, without limitation, any building or buildings, fences and Privacy Walls, and shall mean and refer to all landscaping, exterior lighting or landscape device or object.

(p) "Initial Assessment" shall mean the one time assessment collected from an initial purchaser of a Lot upon which Lot a single-family Residence has been constructed from a Builder as provided for in Section 5.9 hereafter.

(q) **"Institutional Lender"** shall mean the owner and holder of a mortgage encumbering a Lot when such owner and holder shall be a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, an agency of the United States government, public or private pension fund, the Veteran's Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, a credit union, real estate or mortgage investment trust, or other lender generally recognized in the community as an institutional lender.

(r) **"Lot"** shall mean any parcel of land shown on the Plat of the Property upon which shall be located a residential dwelling unit.

(s) **"Maintenance"** shall mean, but not be limited to, cleanup, landscaping and grounds care, and upkeep of recreational amenities, the Surface Water Management System, the Conservation Area, the Fire Protection System, Water Distribution System, Sewer System and other facilities within the Common Area, and the repair, maintenance and upkeep of the entry features and Privacy Walls, as defined below. The term "maintenance", as applied to the Surface Water Management System, shall include those maintenance responsibilities set forth in that certain Stormwater Maintenance Agreement dated December 12, 2012, by and between the Association and the City and recorded in Official Records Book 6761, Page 2809, Public Records of Brevard County, Florida, as and shall also include the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District, including (i) checking the inlets for accumulation of debris and sedimentation; (ii) checking for pond side slope stability by replacing dead sod and, after mowing operations, checking for disturbed side banks; and (iii) cleaning sediment out of mitered end sections (inflow to ponds). Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified, as approved, by the St. Johns River Water Management District. The term "maintenance", as applied to the Fire Protection System shall include those maintenance responsibilities set forth in that certain Fire Protection System Agreement entered into between the Tompkins Group, Inc. and the City on July 2, 2004 and recorded in Official Records Book 5334, Page 3292, Public Records of Brevard County, Florida, as modified and amended by that certain Amended and Restated Fire Protection System Agreement dated December 12, 2012 by and between Declarant and the City and recorded in Official Records Book 6761, Page 2804, Public Records of Brevard County, Florida, but shall not include the responsibility to maintain any portion of the Fire Protection System that is located within or under any residential dwelling unit. The term "maintenance", as applied to the Water Distribution System shall include those maintenance responsibilities set forth in that certain Private Utility Systems Agreement dated _____, 2012 by and between the Association and the City and recorded in Official Records Book _____, Page _____, Public Records of Brevard County, Florida (the "PUSA"), but shall not include the responsibility to maintain any portion of the Water Distribution System that is located within or under any residential dwelling unit. The term "maintenance", as applied to the Sewer Collection System shall include those maintenance responsibilities set forth in the PUSA but shall not include the responsibility to maintain any portion of the Sewer Collection System that is located within or under any residential dwelling unit.

(t) **"Member"** shall mean all Owners who are Members of the Association as provided in this Declaration.

(u) **"Notice"** shall mean delivery to the person or entity who appears as Owner in the records of the Association of any document by mail with postage prepaid to the last known address reflected in the records of the Association. Notice to one of two or more co-owners of a Lot shall constitute notice to all Owners of such Lot.

(v) "Original Declaration" shall mean that certain Declaration of Covenants, Conditions and Restrictions for the Riverwalk Club Townhomes dated July 19, 2005 and recorded in Official Records Book 5506, Page 6893, together with that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for the Riverwalk Club Townhomes dated effective July 11, 2009 and recorded in Official Records Book 6021, Page 2135, all of the Public Records of Brevard County, Florida.

(w) "Owner" shall mean the owner (whether it be the Declarant, one or more persons, firms or legal entities) of fee simple title to any Lot located within the Property or any Additional Property. For purposes of giving notices hereunder, any such Owner shall be responsible for providing a copy of such Owner's deed or other evidence of title. Owner shall not mean the holder of any mortgage or lien unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure nor shall the term include any lessee or tenant of any Owner.

(x) "Plat" shall mean and refers to the subdivision plat of Riverwalk of Melbourne, as recorded in Plat Book ~~59~~, Page ~~50-51~~ Public Records of Brevard County, Florida, as replatted from time to time in whole or in part, made subject to this Declaration.

(y) "Privacy Wall" or "Privacy Walls" are defined in Article IX below.

(z) "Party Wall" or "Party Walls" are defined in Article VIII below.

(aa) "Property" shall mean the real property described in Exhibit "A" attached hereto and, when added in accordance with the terms and conditions hereof, any Additional Property which may be made subject to this Declaration in the manner provided herein.

(bb) "Riverwalk of Melbourne" shall mean the property described in the schedule attached hereto as Exhibit "A" which is to be platted as Riverwalk of Melbourne according to the plat thereof which is to be recorded in the Public Records of Brevard County, Florida, together with any Additional Property which may be made subject to the terms of this Declaration in the future pursuant to the terms hereof. The reference to Riverwalk of Melbourne as used in this Declaration shall refer to the entire Plat, including areas specifically designated for ownership and/or maintenance by the Association either herein or on the Plat.

(cc) "Sewer Collection System" means and refers to sanitary sewer mains, lines and services, together with all appurtenant structures, pipes, lines, tees, bends, meters, gauges, mechanical equipment, clean-outs and valves.

(dd) "Streets" shall mean the areas designated for vehicular traffic and more particularly known as Tract A on the Plat, which area is not included in a Lot, and such additional Tracts as Declarant may designate for such purpose in the future on subsequent plats.

(ee) "Surface Water Management System" shall mean that portion of the Property constituting a system 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*, the maintenance of which shall be the responsibility of the Association in accordance with the Storm Waters Management Permit No. 40009-88488-1, previously issued by St. Johns River Water Management District, as amended from time to time.

(ff) **"Water Distribution System"** means and refers to potable water mains, lines and services, together with all appurtenant structures, pipes, lines, tees, bends, meters, gauges, mechanical equipment, valves, and fire hydrants.

Section 1.2. Interpretation. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation". This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Properties by providing a common plan for the development and preservation thereof. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

ARTICLE II

EASEMENTS AND PROPERTY RIGHTS IN THE COMMON AREA

Section 2.1. Utility Easements. The Declarant reserves the right to grant easements to any public or private utility or governmental authority providing utility and other services within the Property over, under, upon and through the Property. Any such easement granted by the Declarant pursuant hereto shall be given for the purpose of maintaining, installing, repairing, altering and operating sewer lines, irrigation lines, water lines, lift stations, effluent disposal lines, pipes, wires, power lines, telephone service, gas lines, cable television service, alarm systems, and like machinery, equipment and apparatus appurtenant to all of the forgoing as may be necessary or desirable for the installation and maintenance of utilities and providing services to Owners, the Property and the Common Area. All such easements shall be of such size, width and location as the Declarant, in its discretion, deems appropriate; provided, however, such discretion will be exercised in such a manner so as to not unreasonably interfere with the use of any improvements which are now, or may hereafter be, located upon the Property. The Association shall have a perpetual and non-exclusive easement over all Lots for access to operate, maintain and repair the Water Distribution System and Sewer Collection System, provided always that said easement shall be limited to twenty-four inches (24") on either side of any Water Distribution System or Sewer Collection System facility located on a Lot which are otherwise outside any utility easement otherwise designated and shown on the Plat for the purpose of maintaining, repairing or replacing such facilities, it being the purpose of such limitation to limit digging or construction activities related to the maintenance of such facilities rather than general access associated with such activities, and provided always that such easements shall not extend into the interior portions of any Owner's residential dwelling unit.

Section 2.2. Owners' Easement of Enjoyment. Except as to (i) the Surface Water Management System which shall be operated and maintained by the Association as required by the St. Johns River Water Management District, (ii) Drainage and Utility Easements dedicated in the Plat to the Public and the City, and (iii) any Conservation Area, every Owner shall have a right and easement of enjoyment in and to the Common Areas, if any, which shall be appurtenant to and shall pass with the title to every Lot.

Section 2.3. Conveyance of Common Area. If not previously conveyed at the time of the recording of the Plat and this Declaration, then on or before such time as ninety percent (90%) of the Lots have been sold and conveyed from the Declarant to the individual Owners, Declarant shall convey by quit claim deed its fee simple right, title and interest in and to those areas designated as Common Area on the Plat to the Association, such deed to be recorded among the public records of Brevard County, Florida; and whereupon the Association shall assume the responsibility for the maintenance and repair of such Common Area in accordance with the terms and provisions of this Declaration.

Section 2.4. Streets. Easements and Property Rights in the Streets within the Property shall be governed by the provisions of Article VI herein.

Section 2.5. Surface Water Management System. The Association shall have a perpetual and non-exclusive easement over all areas of the Surface Water Management System for access to operate, maintain, or repair the same. 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 Management System, at a reasonable time and in a reasonable manner, to operate, maintain, or repair the Surface Water Management System as required by the St. Johns River Water Management District Permit described above in Section 1.1(dd). Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water Management System. No person shall alter the drainage flow of the Surface Water Management System, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

Surface Water Management System shall include those portions of the Property designated on the Plat as Retention Areas or Drainage Easements (collectively "Drainage Areas") by Declarant for irrigation, drainage or beautification purposes in a manner consistent with the original design thereof by the Declarant and in accordance with the requirements of applicable governmental authorities. The Drainage Areas shown on the Plat, any plat or conveyance shall be used for the construction, repair and maintenance of drainage facilities including, but not limited to, canals, pumps, pipes, inlets and outfall structures and all necessary appurtenances thereto. In addition to the consent required above from the St. Johns River Water Management District, the location of the drainage pattern may not be modified or relocated without the prior written consent of the Declarant and any other applicable governmental authority. 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 Section 40C-42.027, F.A.C., and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

Section 2.6. Maintenance of Common Areas. The Association shall perform all maintenance as described in Subsection 1.1(r). Until such time as the Class B Membership is converted to Class A as provided for hereinafter, and any provisions herein to the contrary notwithstanding, in the event the assessments collected by the Association are insufficient to pay the cost of Maintenance of the Common Areas, the Declarant shall be obligated to fund the cost of the same.

Section 2.7. Encroachment. If any portion of an Improvement encroaches upon any Lot or any Improvement or other improvement upon any Lot encroaches upon any other Lot as a result of (i) the original construction of such Improvement by the Developer; (ii) the settling or shifting of any Improvement; or (iii) any non-purposeful or non-negligent act of an Owner or the Association in repairing, replacing or maintaining any Improvement (including any wall along the boundary line of a Lot), then in any such event an easement shall exist for such encroachment and for the maintenance of same as long as the encroachment shall exist.

Section 2.8. Additional Easements. The Declarant (so long as the Declarant is a Class B Member) and the Association (after the Declarant ceases to be a Class B Member), on their behalf and on behalf of all Owners, each shall have the right to (i) grant and declare additional easements over, on, under, and/or across the Common Area in favor of the Owners and their guests and invitees, or in favor of any other person, entity, public or quasi public authority, or utility company, or (ii) modify, relocate, abandon or terminate existing easements within or outside the Property in favor of the Association and/or the Owners of the Property and their guests and invitees, or in favor of any person, entity, public or quasi

public authority, or utility company, as the Declarant or the Association may deem desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the health, safety or welfare of the Owners, or for any other reason or purpose. So long as such additional easements, or the modification, relocation or abandonment of existing easements will not unreasonably and adversely interfere with the construction of Improvements on a Lot, or the use of any Lot and Improvement constructed thereon for dwelling purposes, no joinder of any Owner or any mortgagee of any Lot shall be required; or, if same would unreasonably and adversely interfere with the use of any Lot for dwelling purposes, only the joinder of the Owners and the mortgagees of Lots so effected shall be required.

ARTICLE III **RULES AND REGULATIONS**

Section 3.1. Residential Use. Each Lot shall be used for single-family residential purposes only, and no trade or business of any kind may be carried on therein or thereon; provided, however, the lease or rental of a residence shall not constitute a violation of this covenant.

Section 3.2. Antennas. No television antennas may be erected and maintained on a Lot if cable television is available to serve the Properties. If cable television is not available, a single television antenna may be erected and maintained solely within the attic area and not otherwise visible from the exterior, which antenna shall be removed within three (3) months from the date of availability of cable television. A satellite dish which is less than one meter in diameter is permitted and shall be installed so that the same is not visible from the street, provided, however, that this restriction shall not apply if installation in a location visible from the street is necessary in order for reception to be received by such satellite dish.

Section 3.3. Clothes Drying Area. No portion of any Lot (outside of the fully enclosed Improvements thereon) shall be used as a drying or hanging area for laundry of any kind.

Section 3.4. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in the Common Area which would be in violation of this Declaration or any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area shall be committed by any Owner or any Tenant or invitee of any Owner; and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from any such damage or waste caused by him or his Tenants or invitees, to the Association or other Owners. No noxious, destructive or offensive activity shall be permitted on any Lot or in the Common Area, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any other person at any time lawfully residing on the Property.

Section 3.5. Signs Prohibited. No sign on any kind shall be displayed to the public view on any Lot or the Common Area. This prohibition shall not apply to Street signage, signage required by law to be publicly posted, or other signage approved by the Association in writing. The Association may promulgate rules and regulations governing signage and the approval of same.

Section 3.6. Parking. In addition to the provisions contained in Section 6.2 below, no truck or van with more than 3/4 ton capacity, boat, trailer, recreational vehicle or commercial vehicle shall be parked, stored or otherwise kept on any portion of the Property for more than twenty-four (24) hours, except that any of the foregoing vehicles may be stored in the garage on a Lot so long as the garage door is fully closed while such vehicle is located therein. The term "commercial vehicle" shall include, without limitation, all autos, trucks, vans and other vehicular equipment, which bear signs or shall have printed thereon any reference to a commercial undertaking or enterprise. Commercial vehicles in the

process of loading or unloading shall not be considered to "parked" so long as such vehicles shall not be kept on the Property overnight. Further, the Association may promulgate further rules and regulations affecting the parking of any vehicles on the Lot which appear in the best interests of all Owners.

Section 3.7. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or the Common Area, except that dogs, cats and other customary household pets (but not to exceed a total of two (2) pets weighing no more than thirty-five (35) pounds each) may be kept on Lots subject to limitations, which may be imposed from time to time by applicable governmental authority and further subject to rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purpose. Each Owner shall be responsible at all times for the prompt collection and proper removal and disposal of all excrement from their pets. The Association may prohibit the keeping of any pet anywhere upon the Property which the Association reasonably determines may constitute a threat to the safety or health of persons lawfully upon the Property. All Owners at all times shall comply with all rules, regulations, ordinances, statutes, and laws adopted, promulgated, or enforced by any public agency having jurisdiction of the Property and relating to animals, and shall at no time allow such animals to constitute a nuisance within any portion of the Property.

Section 3.8. Trash and Garbage. No trash, garbage, or other waste material shall be kept or permitted upon any Lot or the Common Area except inside the improvements on each Lot or in sanitary containers concealed from view and otherwise in conformity with rules and regulations adopted by the Association. There shall be no burning of trash or any other waste material.

Section 3.9. Provisions Are Inoperative As to Initial Construction. Nothing contained in this Declaration shall be interpreted or construed to prevent the Declarant, its transferees, or its or their contractors, or sub-contractors, from doing or performing on all or any part of the Property owned or controlled by the Declarant, or its transferees, whatever they determine to be reasonably necessary or advisable in connection with the completion of the construction, marketing and sale of improvements on the Lots and the Common Area, including, without limitation:

(a) erecting, constructing, and maintaining thereon such temporary structures or uses otherwise conforming with applicable zoning regulations of the County as may be reasonably necessary for the conduct of Declarant's business of completing such construction and establishing the Property as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or

(b) maintaining such sign or signs thereon conforming with applicable zoning regulations of the County as may be reasonably necessary in connection with the sale, lease, or other transfer of the Property in parcels.

As used in this Section and its sub-paragraphs, the term "its transferees" specifically does not include purchasers of Lots improved as completed residences.

Section 3.10. Recreational Equipment. There shall be no basketball backboards and any other fixed game and play structures located on any Lot. Tree houses or platforms of the like kind or nature shall not be constructed on any part of the Lot. Skateboard ramps or equivalent structures shall not be permitted on any Lot.

Section 3.11. Fences. Subject to the prior approval of the ARC, an Owner may install a privacy fence only between such Owner's residential dwelling unit and an adjacent residential dwelling unit along the line dividing the respective Lots. On any side where no other residential dwelling unit abuts the Owner's unit, the Owner is hereby prohibited from erecting any fence. Any such fence so installed shall be six feet (6') in height, as measured from the ground, and extend no more than eight feet (8') from the

rear of the Owner's residential dwelling unit. All such fences shall be manufactured from solid vinyl or pvc material and shall be tan in color. From time to time, the ARC may adopt rules governing the landscaping of such fences which may be required, provided always that any such landscaping which may be permitted by the ARC shall be aesthetically compatible with the existing landscaping of the residential dwelling unit. The foregoing to the contrary notwithstanding, all fencing must comply with the City code, as amended from time to time.

Section 3.12. Intentionally Omitted.

Section 3.13. Swimming Pools. No swimming pool, whether above or below ground, shall be constructed on any Lot.

Section 3.14. Air Conditioning Equipment. Heating and cooling of residences with systems of active or passive solar, wind and other forms of energy other than gas or electric shall be subject to prior approval of the ARC. Components of such systems that are affixed to the exterior of a residence shall not be permitted unless the design thereof shall have first been approved by the ARC. Exterior components of any cooling or heating system (or a combination thereof) shall be substantially screened from view from the street fronting the residence.

Section 3.15. Transmission Facilities. No radio or television signals, nor any other form of electromagnetic radiation, shall be permitted to originate from any Lot which interferes with the reception of television or radio received upon any other Lot.

Section 3.16. Maintenance of Lots. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or other waste. All setback areas, yards, walkways, driveways and parking areas shall be maintained and kept in a neat and clean condition, free of refuse and debris. All landscaped areas (up to the edge of pavement on the public right-of-way adjacent to each Lot) shall be maintained in live, healthy and growing condition, properly watered and trimmed. Any planting of grass, shrubs or trees which become dead or badly damaged, shall be replaced with similar sound and healthy plant materials.

Section 3.17. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view from front or side streets or adjacent properties, but may be installed within the main dwelling house, within a walled in or screened area, or buried underground, and shall be approved by the ARC prior to construction.

Section 3.18. Mailboxes. All mailboxes shall be centrally located in one or more clusters within the Common Area and shall meet the requirements of the United States Postal Service for multiple mailboxes and shall otherwise conform with the criteria of the applicable governmental authority as to the type of mailboxes allowed and the specific distance needed in the recovery area of the street system. There shall be no individual mailboxes at a residence.

Section 3.19. Inoperative Vehicles and Repair. No inoperative cars, trucks, trailers or other types of vehicles shall be allowed to remain on the Property for a period in excess of two (2) days. There shall be no major maintenance, repair or restoration performed on any motor vehicle on or adjacent to any Lot in the Property; provided, however, such maintenance, repair or restoration may be done if solely within an enclosed garage. All vehicles shall have current license plates. Moreover, no stripped, unsightly, offensive, wrecked, junked, or dismantled vehicles or portions thereof, shall be parked, stored or located upon any Lot at any time.

Section 3.20. Garage Doors. All single family residences shall be constructed so as to include operational garage doors. All garage doors shall remain closed at all time when not in use for entry or exit to or from the garage.

Section 3.21. Window and Sliding Glass Door Treatments. All operable windows shall have two inch (2") white blinds; all sliding glass doors shall have white vertical blinds. All non-operable windows shall have a white backing.

Section 3.22. Porches. Owners may install screen enclosures on existing patios or porches in the rear of a residential dwelling unit subject to the prior review and approval by the ARC of the plans for same. Any such enclosure approved by the ARC shall be constructed of screen material with white or bronze aluminum framing. No portion of the enclosure may be constructed of vinyl, including the roof or covering portion of such enclosure. No Owner shall be permitted to enlarge the size of the existing concrete patio or porch at the rear of such Owner's residential dwelling unit for any purpose. This provision shall not act to prohibit the construction of a patio or porch at the time of initial construction of a residential dwelling unit.

Section 3.23. Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Lots and the Common Area, as the same are from time to time adopted by the Association. The prohibitions and restrictions contained in this Article shall be self-executing without implementation by further rules and regulations; provided, however, the foregoing shall not be construed as an implied prohibition preventing the Association from extending the scope of such prohibitions and restrictions from time to time by adopting further rules and regulations consistent with this Declaration.

Section 3.24. Short Term Rentals. Rentals of any Residence for a period less than seven (7) months shall be prohibited. All leases shall be filed with the Association in accordance with the requirements promulgated from time to time by the Board of Directors; such filing shall be complied with seven (7) days after the effective date of the lease. All leases and occupancy of leased premises shall comply with the zoning laws and regulations of the County.

Section 3.25. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors or the Association, a fine or fines may be imposed upon an Owner for failure of any Owner, his family, guests, invitees, tenants, or employees to comply with any covenant, restriction, rule or regulation, contained herein and rules or regulations promulgated under the Articles of Incorporation or Bylaws of the Association, provided the following procedures are adhered to:

a. **Notice.** The Association shall notify the Owner of the infraction or infractions. The Included in the notice shall be the date and time of the next Board of Directors meeting, which shall not be less than fourteen (14) days from the date of said notice. At the meeting, Owner shall present reasons why penalties should not be imposed.

b. **Hearing.** The non-compliance shall be presented to the Board of Directors, at a meeting which shall not be held less than fourteen (14) days after the date notice of non-compliance is sent to Owner. The Board of Directors shall hear reasons why the penalties should not be imposed at said hearing. A written decision of the Board of Directors shall be submitted to the Owner no later than twenty-one (21) days after the Board of Director's meeting.

c. **Appeal.** Any person aggrieved by the decision of the Board of Directors as to a non-compliance may, upon written request to the Board filed within seven (7) days of the request and shall consist of three (3) non-interested members of the Association. The appeals committee shall meet and file a written determination of the matter and serve copies on both the Board and the aggrieved

person. In no case shall the appeals committee's findings be binding on either party; however, the Board of Directors may elect to review its decision in light of the findings of the appeals committee. A failure of an Owner to file an appeal shall be deemed to be a waiver of any further legal remedies relating to the infraction.

d. Penalties. The Board of Directors may impose special assessments as follows:

(i) First non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).

(ii) Second non-compliance or violation: a fine not in excess of Five Hundred Dollars (\$500.00).

(iii) Third and subsequent non-compliance or violations that are of a continuing nature: a fine not in excess of One Thousand Dollars (\$1,000.00).

e. Payment of Penalties. Fines shall be paid no later than thirty (30) days after notice of the imposition or assessment.

f. Application. All monies received from fines shall be allocated for the benefit of the Association as directed by the Board of Directors.

g. Nonexclusive Remedy. These fines shall not be construed to be exclusive, and shall exist in addition to other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

ARTICLE IV **MEMBERSHIP AND VOTING RIGHTS**

Section 4.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 4.2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, each of whom shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant who shall be entitled to three (3) votes for each Lot owned. For purposes of this Declaration, the calculation of Lots owned by the Declarant shall include those Lots expressly designated on the Plat at the time of recording this Declaration. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) three (3) months after ninety percent (90%) of the maximum number of residential Lots allowed for the Property have been conveyed to Class A Members;

- and
- (b) on the date which is ten (10) years after the recording of this Declaration;
 - (c) upon voluntary conversion to Class A Membership by the Declarant.

Section 4.3. Declarant's Right to Elect at Least One Member of the Board of Directors. Notwithstanding the above, the Declarant is entitled to elect or appoint at least one (1) member of the Board of Directors of the Association as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual, special and other assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs, and reasonable attorneys' fees, 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 interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot on the date when the assessment became due. The personal obligation for delinquent assessments shall not pass to a successor in title unless expressly assumed by such successor; provided, however, in no event shall assumption by a successor relieve the former Owner of any personal liability arising hereunder. In the case of co-ownership of a Lot, all such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 5.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively (i) to promote the recreation, health, safety, and welfare of the Owners of the Lots, their guests, lessees and business invitees; (ii) for the improvement, repair, replacement and Maintenance of the Common Area (including resurfacing of the Streets) and the improvements located thereon; (iii) for maintenance of the Conservation Area; (iv) for maintenance of any stormwater/retention areas, if any, and the Surface Water Management System as set forth in Section 2.5 above; (v) for payment of all taxes assessed to the Association, if any, in respect to the Common Area, or the improvements or personal property thereon, or both; (vi) maintenance of the Improvements as provided for in this Declaration; (vii) to pay for the cost of providing potable water to the subdivision and Owners pursuant to a bulk meter with the City, to pay for the cost of providing solid waste removal pursuant such arrangement with a vendor for same that the Association may enter into from time to time, and to pay for such other bulk utilities or services which the Association may contract to provide for the benefit and welfare of the Owners; and (viii) for the general purpose of enabling the Association to perform and fulfill its authorized or required rights, powers, duties and obligations.

Section 5.3. Annual Assessments. The Association shall have the power to levy annual assessments against the Lots and the Owners thereof in the manner and for the purposes provided herein. The Association shall have the further right to require the payment of annual assessments in monthly, quarterly or semi-annual installments as the Association may deem necessary and appropriate. The annual assessment may incorporate an estimate of the annual amount to be collected to enable the Association to perform its maintenance obligation of the Improvements, which are to be conducted on a periodic basis, which would be in addition to the annual amount to be collected for resurfacing of the Streets as provided for in Section 6.1.

Section 5.4. Maximum Annual Assessment. Until December 31, 2012, the maximum annual assessment shall be TWO THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$2,100.00) per Lot, plus any amounts that may be assessed under Sections 5.5 or 5.6 of this Article V. The actual amount of the annual assessment shall be determined by the Board on an annual basis subject to the following:

(a) From and after January 1 of the year immediately following the conveyance of the first Lot by the Declarant to an Owner, the maximum annual assessment may be increased each year without a vote of the Members by an amount not more than fifteen percent (15%) over the maximum assessment for the preceding year.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot by the Declarant to an Owner, the maximum annual assessment may be increased by more than the amount permitted pursuant to Subparagraph (a), above, by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

(c) The Board or Directors may fix the annual assessment at an amount not in excess of the amount set forth herein.

(d) The Board may elect to allow Owners to pay the annual assessment on a monthly, quarterly or annual basis utilizing such billing procedures as may be reasonably.

Section 5.5. Individual Assessments. The Association may impose an individual assessment upon any Owner whose use or treatment of the Common Area, any Lot or the improvements on any Lot is not in conformity with the standards adopted by the Association or which increases the maintenance cost to the Association above that which would result from compliance by the Owner with such use restrictions imposed by this Declaration. The maximum amount of such assessment shall be equal to such cost incurred plus ten percent (10%) to cover the cost of administration and may be enforced in the manner provided for other assessments.

Section 5.6. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5.7. Notice and Quorum for Any Action Authorized Under Sections 5.4 and 5.6. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.4 or 5.6 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast majority of all the votes of each class of Membership shall constitute a quorum.

Section 5.8. Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots; provided, however, that prior to the time that a Lot is improved with a residential dwelling unit, which has received a certificate of occupancy, the Owner of such Lot shall only be required to pay the annual assessment at a rate equal twenty-five percent (25%) of the normal annual assessment. Notwithstanding the foregoing, the Declarant shall be excused from the payment of any

assessments on any Lots owned by the Declarant so long as Declarant obligates itself to pay any operating deficit incurred by the Association during the period it elects to pay the operating deficit.

Section 5.9. Initial Assessment. In addition to the annual, special and individual assessments provided for hereunder, the Association shall have the right to collect from each party purchasing a Lot a one-time Initial Assessment in the greater of either (i) the amount of THREE HUNDRED FIFTY AND NO/100 DOLLARS (\$350.00) or (ii) two times (2x) the monthly amount of the then current annual assessment. The Initial Assessment shall be due and payable only at the time of the conveyance of the Lot to the initial purchaser of the Lot from a Builder and shall not apply to subsequent conveyances of said Lot to subsequent Owners. As used herein, the term "Builder" shall mean a party who has contracted to purchase three or more Lots in RIVERWALK OF MELBOURNE for the purpose of constructing homes for third-party purchasers. The Initial Assessment may be utilized in the discretion of the Declarant to offset any obligation of the Declarant to deficit fund the operation of the Association or for any other lawful purpose as set forth herein for the use of Annual Assessments. At the time of payment of the Initial Assessment provided herein, the Owner shall likewise pay to the Association that portion of the Annual Assessment provided in Section 5.3 prorated from the date of purchase through the end of the then current calendar year.

Section 5.10. Date of Commencement of Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on such date as shall be determined by the Board in conformity with the provisions of this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates of periodic installments shall be established by the Board. The Association shall, upon request, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.11. Determination of Allocation of Assessments. The number of Lots used for the calculation of the annual assessments shall be determined as of the ownership of record thirty (30) days prior to the commencement of the fiscal year of the Association and when so determined shall be controlling for the entire fiscal year.

Section 5.12. Effect on Nonpayment of Assessments; Remedies of the Association. If any assessment is not paid on the date due as determined in the manner provided in this Article V then such assessment shall become delinquent and shall, together with accrued and accruing interest and costs of collection as herein provided, become due and payable and be a continuing lien on such Lot which shall bind such Lot and the then Owner. The Association may record a notice of lien for delinquent assessments in the Public Records of Brevard County, Florida, and foreclose the lien in the same manner as a mortgage. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments, interest and costs of collection accruing thereafter until satisfied of record. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, there being added to the amount of such assessment interest at the aforesaid rate and all costs of collection, including reasonable attorneys' fees incurred in connection therewith at trial and all appellate levels.

Section 5.13. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an Institutional Lender

encumbering a Lot; provided, however, such subordination shall apply only to the assessments with respect to such Lot to the extent they have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure judgment or in any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from the liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. An Institutional Lender shall, upon request, be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. Furthermore, the Association may provide such notice without receiving a request from an Institutional Lender.

Section 5.14. Reserves. The Association shall include within the annual assessment amount (but not be limited by the matters for which reserves may be collected as hereafter stated), sums to be collected as reserves for replacement, repair and/or maintenance of the Surface Water Management System, Water Distribution System, Sewer Collection System, Streets, roofing and other improvements situate upon or within the Common Area and re-roofing of the residential dwelling units constructed on the Lots. Such reserve amounts will be based on a schedule approved and prepared by the Board on an annual basis and shall be based on the cost of the improvements and their estimated life.

Section 5.15. Exceptions to Liability for Assessments.

(a) **The Association.** Should the Association become the Owner of any Lot(s), the Assessment which would otherwise be due and payable to the Association by the Owner(s) of such Lot(s), reduced by an amount of income which may be derived from the leasing of such Lot(s) by the Association, shall be apportioned and the assessment therefor levied ratably among the Owners of all Lots, which are not owned by the Association, exclusive of the interests therein appurtenant to any Lot or Lots owned by the Association.

(b) **The Declarant.** Declarant shall not be obligated to pay the share of Common Expenses and Assessments attributable to Lots it owns until the date control of the Association is turned over to the Owners other than Declarant. The Declarant shall be obligated to pay any amount of Common Expenses incurred during such period and not produced by the Assessments, at the guaranteed level receivable from other Lot Owners.

Section 5.16. Property Exempt from Assessments. Notwithstanding anything herein to the contrary, the following property shall be exempt from the payment of Assessments:

- (a) All Common Area under this Declaration; and
- (b) All property dedicated to and accepted by any governmental authority or public utility; and
- (c) All real property not within a Lot which is part of the Surface Water Management System; and
- (d) All parcels identified on the Plat as a "Tract"; and
- (e) Those parcels identified on the Plat as "Parcel 6, Block 9" and "Parcel 6, Block 13" for any period of time they are owned by the Association.

ARTICLE VI
SUBDIVISION STREETS

Section 6.1. Maintenance: Assessments. The Association shall maintain the Streets within the Common Areas and assess the cost of maintenance to the Members. The estimated maintenance cost shall be included in each annual budget and assessed to each Lot. The Association shall have the right to propose a special assessment, if necessary, to defray the cost of any extraordinary repairs of the Streets. The procedure for the adoption and collection of regular and special assessments or maintenance of the Streets shall be as set forth in this Article VI. Notwithstanding the foregoing sentence, the Board of Directors of the Association, if it finds that an emergency road repair is needed to promote or insure the health, safety or welfare of the community, may take such curative action as may be necessary and assess the cost thereof as a special assessment without the necessity of a prior meeting of Members.

Section 6.2. Street Parking. No vehicle shall parked on a Street area.. The Association shall have the right to tow repeat offenders' vehicles after placing a warning notice on the offending car one time. "No Parking" signs shall be installed as needed or as directed by the City.

Section 6.3. Prohibited Vehicles. Each of the following vehicles is prohibited from using the Streets: all-terrain vehicles, dune buggies, or similar vehicles.

Section 6.4. Security. The Association shall have right to provide for security in order to keep unauthorized persons or vehicles off the Streets and the Property. The security provisions may include a restricted access point at the subdivision entrance.

Section 6.5. Access. Unless otherwise stated herein, all of the Streets are not required for public use and such Streets and easements are not and will not be a part of the City system of public roads. Said Streets and easements shall remain private and the sole exclusive property of the Declarant, its successors and assigns, and shall be conveyed to the Association by fee simple quit claim deed as provided for elsewhere herein. The Declarant does hereby grant to the present and future owners of adjacent lands within the boundaries of the Plat and their guests, invitees and domestic help, and to delivery, pick up and emergency protection services, police, fire and other authorities of the law, United States Postal Service mail carriers, gas, power, telephone, cable television, street lighting and solid waste service providers, representatives of utilities authorized by the Declarant to serve the land shown on the Plat, holders of mortgage liens on such lands and such other persons as the Declarant, from time to time, may designate, the non-exclusive and perpetual right of ingress and egress over and across said Streets and easements. The City is also granted the right, in perpetuity, to enter, operate, construct, reconstruct, repair, maintain and inspection all facilities which have been or will in the future be constructed or installed for the public good and welfare.

Section 6.6. Rights of Declarant. There is hereby granted a perpetual easement to Declarant, its successors and assigns, across the Streets for the purpose of providing access to prospective purchasers of Lots or of constructed homes. No plan of restricted access through the use of a guard gate or check point may be commenced without the Declarant's consent.

Section 6.7. Construction Vehicles. Access for construction vehicles shall be permitted only during daylight hours for the purpose of constructing improvements which have received prior approval of the ARB.

Section 6.8. Speed Limits. The Association may establish speed limits or other traffic regulations as it deems necessary.

Section 6.9. Periodic Resurfacing. The Association shall require that the Streets be resurfaced every twelve (12) years unless a longer period of time is approved by the Board of Directors

Section 6.10. Intentionally Omitted

Section 6.11. Intentionally Omitted.

Section 6.12. Intentionally Omitted

Section 6.13. Intentionally Omitted

Section 6.14. Conveyance of Streets. If not previously conveyed to the Association at the time the Plat and this Declaration are recorded, then on or before such time as ninety percent (90%) of the Lots have been sold and conveyed from the Declarant to owners, Declarant shall convey by quit claim deed its fee simple right, title and interest in and to the Streets as shown on the Plat to the Association, which deed shall be recorded among the public records of Brevard County, Florida and whereupon the Association shall assume the responsibility for the maintenance and repair of such Streets in accordance with the terms and provisions of this Declaration.

Section 6.15. Traffic Enforcement by City of Melbourne. The Association may enter in to a traffic enforcement agreement with the City of Melbourne to provide for the enforcement of traffic safety laws within Riverwalk by the City of Melbourne police department and in accordance with Chapter 316, Florida Statutes. The cost of any such agreement shall be included in the annual assessments.

ARTICLE VII ARCHITECTURAL CONTROL

Section 7.1. Establishment of Architectural Review Committee. There is hereby established an Architectural Review Committee (the "ARC") which shall consist of three (3) or more persons designated and appointed by the Declarant. At such time as the Declarant no longer owns any Lot within the Property (or earlier at the option of the Declarant), the Declarant shall assign to the Association all rights, powers duties and obligations of the ARC, whereupon the Board shall appoint the members of the ARC and shall provide for the terms of the members of the ARC. Members of the ARC need not be officers, directors or Members of the Association.

Section 7.2. ARC Authority. The ARC shall have full authority to regulate the use and appearance the Property and all improvements constructed thereon to assure harmony of external design and location in relation to surrounding improvements and topography and to protect and preserve the value and desirability of the Property as a residential community. The power to regulate shall include the power to prohibit those exterior uses or activities deemed inconsistent with the provisions of this Declaration, or contrary to the best interests or the Association in maintaining the value and desirability of the Property as a residential community, or both. The ARC shall have authority to adopt, promulgate, rescind, amend and revise rules and regulations in connection with the foregoing; provided, however, such rules and regulations shall be consistent with the provisions of this Declaration and, in the event the Board has not constituted itself as the ARC, such rules and regulations shall be approved by the Board prior to the same taking effect. Violations of the rules and regulations of the ARC shall be enforced by the Board, unless such enforcement authority is delegated to the ARC by resolution of the Board.

Section 7.3. ARC Approval. No building, fence, hedge, wall, walk, dock, pool, planting, sign, or enclosure or addition to any improvement located upon a Lot shall be constructed, erected, removed, planted or maintained nor shall any addition to, or any change or alteration thereof, be made until the plans and specifications showing the nature, kind, shape, height, materials, color scheme and location of

same shall have been submitted to, and approved in writing by, the ARC. Any change in the exterior appearance of any improvement, including, without limitation, repainting in the same or different color, exterior refinishing, re-roofing, or the addition of architectural details, decorative sculptures or wrought iron grills, construction of fences or other enclosures, shall likewise require written approval of the ARC before any such work is commenced. The ARC shall have the right to refuse approval of plans, specifications or locations upon any grounds, including purely aesthetical considerations, which the ARC, in its sole and absolute discretion, deems appropriate. In the event the ARC fails to approve or disapprove such change requested by Owner within thirty (30) days after said request has been submitted to the ARC, said project shall be deemed disapproved by the ARC. Nothing contained herein shall relieve the Owner from the responsibility of obtaining proper governmental approvals and permits.

Section 7.4. Submissions of Plans and Specifications. As part of the application process to the ARC, two (2) complete sets of plans and specifications (including the landscape plan) prepared by an architect or other person found to be qualified by the ARC and two (2) site plans shall be submitted for approval by written application on such form as may be provided, required or approved by the ARC. In addition, the anticipated commencement date and estimated time for completion shall be included in the application to the ARC. In the event the information submitted to the ARC is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information.

Section 7.5. Standards. No approval shall be given by the ARC pursuant to the provisions of this Article unless the ARC determines that such approval shall (i) assure harmony of external design, materials, and location in relation to surrounding improvements and topography within the Property; (ii) shall protect and conserve the value and desirability of the Property as a residential community; (iii) shall be consistent with the provisions of this Declaration; and, (iv) shall be in the best interests of the Association in maintaining the value and desirability of the Property as a residential community. The ARC may deny any application upon the ground that the proposed alteration will create an undue burden of maintenance upon the Association. In the event additional maintenance may be required, then the ARC shall require an agreed method of payment for such maintenance cost and require security for the payment of same. The ARC may condition the approval of any application upon the Owner providing reasonable security that the contemplated work will be completed substantially in accordance with the plans and specifications therefor submitted to the ARC.

Section 7.6. Drainage. All plans submitted to the ARC shall contain a drainage plan which shall be consistent with the master drainage plan for the Property or, in the alternative, contain an affirmative statement that none of the work contemplated by the plans will have any effect on the drainage of the Lot. In all events, each Owner shall be and remain fully liable for any and all damage caused directly or indirectly by any change in the design of function of drainage on or from any Lot, or the grade of any Lot, in connection with the construction, installation or maintenance of any approved changes by the Owner. In the event of any change to the drainage design, function or grade, the Association may, but shall not be required to, restore the drainage design, function or grade and may charge the Owner for all reasonable costs incurred in connection therewith plus ten percent (10%), said charge to constitute a lien on the Property of such Owner. In connection with any such restoration, the Association may exercise powers granted to it under Section 5.5 of Article V.

Section 7.7. Completion. All improvements for which approval of the ARC is required and has been obtained pursuant to the terms and provisions of this Declaration shall be completed within the time period specified in such approval. In the event the improvements are not completed within the required time, the Association may, thirty (30) days following written notice from the ARC to the Owner, complete such improvements at the sole expense of the Owner in accordance with the plans and specifications previously approved by the ARC and may charge the Owner for the expenses incurred in

connection therewith plus ten percent (10%), said charge to constitute a lien on the Property of the Owner. In connection with any such restoration, the Association may exercise powers granted to it pursuant to Section 5.5 of Article V.

Section 7.8. Right of Entry. There is specifically reserved to the Association and the ARC, the right of entry and inspection upon any Lot (but not within the Improvements located thereon) for the purpose of determining and/or correcting the existence of any activity or condition which violates the terms of any approval given by the ARC or the terms of this Declaration. The ARC is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to enforce the terms of this Declaration, or to remove any improvements which have not been approved by the ARC or have not been constructed in conformity with approval granted by the ARC, the prevailing party shall be entitled to recover all costs, expenses and reasonable attorneys' fees in connection therewith. The Association shall indemnify and hold the ARC and its members harmless from any and all costs, expenses and liabilities, including reasonable attorneys' fees, incurred by virtue of service as a member of the ARC.

Section 7.9. Violations. In each instance where improvements have been constructed, or the construction thereof is substantially advanced, in such manner that the same violates the restrictions contained in this Declaration, including, activities carried out which are not consistent with plans and specifications approved by the ARC, the ARC (if it has knowledge of such violation) shall notify the Board in writing and the Board may thereafter direct the violating Owner to immediately remove any/or cure such violation. For purposes hereof, all Owners specifically consent and agree to comply with the provisions of this Section as of the time such Owner shall become vested with title to any portion of the Property.

Section 7.10. Waivers. The ARC shall have the right, but not the obligation, to grant waivers for minor deviations and infractions of the covenants, conditions and restrictions contained herein. The granting of any waiver may be given or withheld in the sole discretion of the ARC and any prior grant of a similar waiver shall not impose upon the ARC the duty to grant new or additional waivers for like or similar conditions.

Section 7.11. Disclaimer of Liability. The Association, the Declarant, the ARC and all officers, employees, directors or members thereof shall in no way be liable to any person or persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or non-feasance arising out of, or in connection with, the approval, disapproval or failure to approve any such plans and specifications. Each person who submits plans and specifications for approval agrees, by submission thereof, that it will not bring any action or suit whatsoever against the Association, the Declarant, the ARC, or any officer, employee, director or member thereof.

ARTICLE VIII

PARTY WALLS AND OTHER SHARED STRUCTURES

Section 8.1. Definition of Party Wall. Each wall, including patio walls, fence, driveway or similar structure which is built as part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. For purposes of this Article VIII, the definition of Party Wall shall expressly include the entry between two interior residential dwelling units located within a single building including, without limitation, all concrete walkways, archways, and other architectural features including all supporting walls and structures,

landscaping and irrigation systems serving same (the "Entryway"). The Entryway shall be included in the definition of the Party Wall even though same may not lie equally along the dividing line between interior Lots, and, despite being located on one Lot more than on another, the costs of maintenance and repair shall be shared equally between the two Lots which utilize the Entryway, the provisions of Section 8.2 notwithstanding.

Section 8.2. Sharing of Costs of Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the adjoining Owners of such wall in proportion to the use thereof, without prejudice, however, to the right of any Owner to call for a larger contribution from the adjoining Owner under any rule of law regarding liability for negligent or willful acts or omissions.

Section 8.3. Destruction of a Party Wall. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 8.4. Liability for Negligent or Willful Acts. Notwithstanding any other provision of this Article, an Owner, who, by his negligent or willful act, causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 8.5. Right of Contribution Runs With the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner=s successors in title.

Section 8.6. Restriction on Improvements to Party Wall. In addition to meeting the Owner requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild in any manner which requires the extension or other alteration of any party wall, shall first obtain the written consent of the adjoining Owner.

Section 8.7. Resolution of Disputes Between Owners as to Party Walls. In the event of a dispute between the Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then, upon written request of one such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third by the two so chosen, or, if the arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then by any Judge of the Circuit Court of Brevard County, Florida. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then the other party shall have the right and power to choose both arbitrators.

Section 8.8. Binding Effect. These covenants contained in this Article VIII shall be binding upon the heirs and assigns of any Owners but no person shall be liable for any act or omission respecting any party wall except such as took place while an Owner.

Section 8.9. Rules and Regulations. The Association may by its By-Laws, rules or regulations, govern the use of party walls by Owners, if necessary, to prevent the imposition of annoyances between Owners.

ARTICLE IX PRIVACY WALLS

Section 9.1. Privacy Wall. The Declarant may construct walls, entry monuments, signage or fences within the Property ("Privacy Wall" or "Privacy Walls"). A Privacy Wall shall hereinafter be defined as any wall or fence built by the Declarant, or later built by the Association, in any Common Area or easement as a visual barrier, decorative or architectural feature, safety feature, or for any other reason at the sole discretion of the Declarant, or as a requirement of any municipality or governing authority.

Section 9.2. Ownership and Maintenance of Privacy Walls. The Association shall own and shall be responsible for maintenance of the Privacy Walls.

Section 9.3. Easement of Privacy Wall. An easement is hereby created in favor of the Declarant and the Association for the construction, management, inspection, painting, maintenance and repair of the Privacy Walls located within the Property. The easement shall extend five (5) feet into each affected Lot from the boundary of the Lot for each Lot having a Privacy Wall. Entry upon a Lot by the Declarant or the Association, or its agents, as provided herein, may occur without notice and shall not be deemed a trespass.

ARTICLE X ANNEXATION AND WITHDRAWAL

Section 10.1. Annexation without Association Approval. At any time prior to ten (10) years from the date hereof, Additional Property may be annexed, in whole or in part, by the Declarant and made subject to the governing provisions of this Declaration without the consent of Class A Members of the Association. The Lots and the improvements thereon, together with the rights and obligations of the Declarant and other Owners thereof, upon all or any portion of such Additional Property shall become subject to the provisions of this Declaration upon recording of an appropriate supplement or amendment hereto executed by the Declarant without the consent of the Class A Members.

Section 10.2. Withdrawal. Until such time as Declarant owns fewer than one Lot, Declarant shall be entitled to withdraw any portion of the Property that is described in Exhibit "A" herein (or any additions thereto that may be annexed in accordance with the provisions of Section 10.1 above) from the provisions and applicability of this Declaration and the Articles and Bylaws by recording notice thereof in the public records; provided, however, that this right of Declarant to withdraw shall not apply to any portions of the Property that have been conveyed to a purchaser thereof unless said right is specifically reserved in such conveyance. The withdrawal of any portion of the Property as hereinabove stated shall not require the consent or joinder of any other party, including any Owner, the Association, or any mortgagee of the Property, provided applicable governmental approvals are obtained, if required.

ARTICLE XI RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 11.1.0 Common Area Maintenance The Association shall be responsible for the exclusive management, control and Maintenance of the Surface Water Management System, any Conservation Area, and the Common Area, together with all Improvements thereon, including specifically, but not by way of limitation, all furnishings and equipment related thereto, paving, drainage structures, walls, lighting fixtures and appurtenances, landscaping, sprinkler system, entry features and markers, and signs, and shall keep the same in good, clean, substantial, attractive and sanitary condition,

order, and repair. In furtherance of the forgoing, the Association shall have the right to enter into such contracts or agreements as the Board shall deem appropriate.

Section 11.1.1 Maintenance of Improvements. The Association shall paint and maintain the exterior walls of all buildings which are Improvements, including any townhomes built on the Lots. The cost of such painting and any incidental repairs in connection therewith shall be a Common Expense of the Association unless an Owner has caused or allowed damage or deterioration of his Improvement resulting in more than incidental repairs. The cost of such painting and/or repair which the Board, in its discretion, believes exceeds what is typically required of other Improvements shall be assessed to the Owner of that Improvement at the time painting and/or repair is required. In the event the Association paints any fence, wall, or other Improvement along the common boundary of two (2) Lots (other than exterior walls of any townhomes), the cost of same shall be borne equally between the adjacent Owners.

Section 11.1.2 Roof Repair. At the discretion of the Board, the annual assessment may include an annual amount to be collected for roof repairs, including re roofing to the Improvements and any townhomes built on the Lots. The Association shall have no obligation to cause roof repairs to be performed mandatorally unless first approved by an affirmative vote of sixty-six and two-thirds (66 2/3) of the Members present or represented by proxy and entitled to vote at any meeting at which a quorum is present as provided in the By-Laws when written notice of such meeting specifies that a vote on mandatory roof repairs and/or replacement will be taken at such meeting. Absent such affirmative vote, roof repairs and/or replacement shall be performed at the discretion of the Board.

Section 11.1.3 Lawn Maintenance by Association. The Association shall perform the following maintenance to each Lot: cutting grass, trimming hedges, edging, fertilizing, mulching and irrigation system maintenance.

Section 11.1.4 Maintenance by Owners. Notwithstanding the maintenance obligations of the Association, whether mandatory or voluntarily, each Owner shall maintain the Improvements located on his Lot, together with the portion of the Water Distribution System, Fire Protection System, and Sewer Collection System located under or within the residential dwelling unit located on their Lot. The wall or fence located on a Lot shall be maintained by the Owner of the Lot. If not undertaken by the Association, the Owner of each Lot shall maintain the exterior portion of the building located on such Lot including repainting as may be necessary in order to maintain the building at all times in a first class condition, provided, however, that such Owner shall not be required to paint that portion of the building which the Association is obligated to paint. If the Board determines that an Owner is failing to maintain his Lot and/or Improvement, the Board shall have the right to go on such Lot to provide exterior maintenance on any Improvement, subject, however, to the following provisions: Prior to performing any maintenance on an Improvement, the Board shall determine that said Property is in need of repair or maintenance and is detracting from the overall appearance of the Property. Prior to commencement of any maintenance work on a Lot, the Association must furnish thirty (30) days prior written notice if the maintenance involves structural work or exterior work on the building. Notice must be given to the Owner at the last address listed in the Association's record for such Owner, notifying the Owner that unless certain specified repairs or maintenance are made within the 30 day period, the Association shall make said necessary maintenance or repairs and charge the same to the Owner. Upon failure of the Owner to act within the required period of time, the Association shall have the right to enter in or on any such Lot or to hire personnel to do so to make such necessary repairs or maintenance as are specified in the above-written notice. In this connection, the Association shall have the right to paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior Improvements.

Section 11.1.5 Assessment of Cost. The cost of such exterior maintenance as described in Section 10.1.4 above shall be assessed against the Lot upon which such maintenance is performed as a special assessment and shall be due and payable immediately, and shall be a lien or obligation of the Owner. The Association shall have the right to bring legal action against the Owner to collect for the cost of the maintenance or repairs along with any attorneys' fees and costs and administrative fees and costs. The Association shall also have the right to record a lien against the Lot for such costs and expenses and bring legal action against the Owner to foreclose the lien. The Board, when establishing the annual assessment for Common Expenses against each Lot for any assessment year as required under Article V hereof may add thereto the estimated cost of the exterior maintenance of a Lot for that year; but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

Section 11.1.6 Maintenance of Streets. The maintenance of the Streets shall be as provided for in Article VI above.

Section 11.1.7 Maintenance of Street Lights. The Association shall be responsible of the cost of street lighting.

Section 11.1.8 Termite Bond. The Association shall carry a termite bond for all townhomes constructed on the Lots. Said bond shall provide for the repair of improvements in the event of termite infestation, and in the sole discretion of the Board, said bond may be for the replacement of improvements in the event of termite infestation.

Section 11.2. Right of Entry. The Association, through its employees, contractors and agents, is hereby granted a right of entry into and upon each Lot to the extent reasonably necessary to discharge the Association's performance of any duty imposed, or exercise of any right granted, by this Declaration, including, the discharge of any duty of maintenance or replacement, or both, imposed upon any Owner. Such right to entry shall be exercised in a peaceful and reasonable manner at reasonable times and upon reasonable notice whenever the circumstances permit. Entry into any improvement upon any Lot shall not be made without the consent of the Owner or occupant thereof except when such entry is reasonably necessary for the immediate preservation or protection of the health or safety of any person lawfully upon the Property or of any such person's property. An Owner shall not arbitrarily withhold consent to such entry for the purpose of discharging any duty or exercising any right granted by the foregoing Sections of this Article, provided such entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner.

Section 11.3. Services of Association. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems appropriate and advisable, together with such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it may contract. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration.

Section 11.4. Services for Owners. The Association may contract, or otherwise arrange, with any person or entity to furnish potable water, irrigation water, trash collection, sewer services, maintenance, replacement, and other common services to all Lots. Any Owner additionally may voluntarily contract with the Association for the Association to perform, or cause performance of, any services benefiting such Owner's Lot at the cost and expense of such Owner. All sums due the Association pursuant to such contract shall be added to and become a part of the assessment against such Owner's Lot. Notwithstanding the foregoing, the Association may not contract with any Owner to

provide any service at such Owner's expense which it is the duty of the Association to provide at its own expense under any provision of this Declaration.

Section 11.5. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

Section 11.6. Rules and Regulations. The Association may from time to time adopt, alter, amend, and rescind rules and regulations further governing the use of the Lots and of the Common Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

Section 11.7. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles, or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege granted herein or reasonably necessary to effectuate the exercise of any right or privilege granted herein.

Section 11.8. Restriction on Capital Improvements. Except for replacement or repair of those items installed by the Declarant, and except for personal property related to the maintenance of the Common Area, the Association may not authorize capital improvements to the Common Area without consent of the Declarant during a period of five (5) years from the date of this Declaration. At all times hereafter, all capital improvements to the Common Area, except for replacement or repair of those items installed by the Declarant and except for personal property related to the maintenance of the Common Area, shall require approval of the Board.

Section 11.9. Hazard and Casualty Insurance on Residential Dwelling Units Any provision herein to the contrary notwithstanding, hazard and casualty insurance and the provision thereof on residential dwelling units (the "Units") located on the Lots shall be governed by the following provisions:

(a) **Purchase, Custody and Payment of Policies.** Upon Board resolution and at least sixty (60) days prior written notice to each effected Owner, the Association may elect to obtain a blanket insurance policy providing property insurance for all structures on all Lots. Inclusion of such notice in the Association Budget provided to each Owner shall be adequate notice. In such event, the Owner shall be relieved of their insurance responsibility to the extent such responsibility is assumed by the Association.

(i) **Purchase.** Except as hereafter set forth, all insurance policies covering the Lots shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida which has an office or agent located in the vicinity of the Property.

(ii) **Approval by Institutional Lenders.** Each Institutional Lender will have the right upon reasonable notice to the Association to review and approve, which approval shall not be unreasonably withheld, the form, content, insurer, limits and coverage of all insurance purchased by the Association, and to require the Association to purchase any insurance complying with the reasonable and customary requirements of the Institutional Lender. In the event of a conflict between Institutional Lenders, the decision of the Institutional Lender holding mortgages encumbering Lots which secure the largest aggregate indebtedness shall control.

(iii) **Named Insured.** The named insured on all policies purchased by the Association shall be the Association, individually and as agent for all Owners covered by the policy, without naming them, and as agent for their mortgagees, without naming them.

(iv) Copies to Owners or Institutional Lenders. One (1) copy of each insurance policy or a certificate evidencing same, and all endorsements thereon, shall be furnished by the Association to each Owner or Institutional Lender who holds a mortgage upon a Lot covered by the policy, and, in writing, requests the Association to provide it with such policies.

(v) Personal Property and Liability. The Owners may obtain insurance at their own expense and at their own discretion for their personal property, personal liability, living expenses, flood damage, and for improvements made to their Lot or Unit which are not covered by any insurance purchased by the Association.

(vi) Deductibles. Except for casualty insurance purchased by the Association on the Units, any deductible of exclusion under an insurance policy purchased by the Association shall be a Common Expense.

(b) Discontinuance of Blanket Insurance. Following such an assumption of insurance responsibility as provided for above, the Association may, at any time, but not less than thirty (30) days written notice to each Owner, discontinue such blanket insurance coverage and in such event each Owner shall immediately obtain in his or her own name and at his or her own expense the insurance coverage for such Owner's Lot and structures thereon as required elsewhere in this Declaration.

(c) Coverage.

(i) Casualty. All Units and all improvements upon the Property and all personal property of the Association are to be insured in an amount equal to one hundred percent (100%) of the then current replacement cost, excluding foundation and excavating costs and other items normally excluded from coverage, as determined annually by the Association. Prior to obtaining any casualty insurance or renewal thereof, the Association shall obtain an appraisal from a fire insurance company or otherwise of the full replacement cost of the Units and improvements upon the Property and all personal property of the Association, without deduction for depreciation, for the purposes of determining the amount of casualty insurance to be obtained pursuant to this Paragraph. Such coverage shall afford protection against:

a. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;

b. Such other risks as from time to time shall be customarily insured against with respect to buildings and improvements similar in construction, location and use, including, but not limited to, vandalism and malicious mischief, and all other risks normally covered by a standard "All Risk" endorsement, where available.

c. The casualty insurance policy shall cover, at a minimum, the "Principal Components" of the Buildings and Units which includes all exterior and structural components, the roof, including tiles, exterior and interior walls, doors, windows and stairways, drywall, exterior stucco and paint (but not interior paint), and the mechanical, plumbing and electrical systems extending under and up to the drywall of the Unit. The "Principal Components" do not include any interior improvements other than as set forth above, and specifically shall not include the following: (i) any extras, upgrades, or improvements ordered or made in any Unit by an Owner which would be more expensive to install, repair or replace than the equivalent of what was originally supplied as standard by Declarant, (ii) sinks, toilets, bathtubs, showers, cabinets, appliances, fixtures, floor coverings, or wall and ceiling texture finishes or coverings, (iii) any furniture, furnishings or other personal property installed or brought into a Unit, from time to time, by the Owner or residents of a Unit, or their guests or invitees, or

(iv) any exterior fencing, pool, patio or other exterior improvement in excess of any improvement which was originally offered as a standard for all of the Units by Declarant.

ARTICLE XII

RECONSTRUCTION OR REPAIR AFTER CASUALTY INSURANCE REQUIREMENTS

Section 12.1. Damage to Common Area. In the event that any portion of the Common Area is damaged or destroyed by casualty, it shall be repaired or restored by the Association to substantially its condition prior to the damage or destruction. Repair or reconstruction of the Common Area shall be substantially in accordance with the plans and specifications pursuant to which the same was originally constructed. All insurance proceeds shall be applied to the restoration and repair. If the insurance proceeds are insufficient, the deficit shall be assessed against all Owners as a special assessment. If there is a surplus of insurance proceeds, it shall become the property of the Association. Each Owner shall be responsible to the Association for damage to the Common Area caused by such Owner or the tenants, guests or business invitees of such Owner and the Association shall have the right to recover its expenses, including reasonable attorneys fees, in the event it should become necessary for the Association to initiate an action to recover damages from an Owner.

Section 12.2. Insurance Requirements. Each Owner is required to obtain casualty insurance in an amount equal to one hundred percent (100%) of the then current replacement costs of improvements on the Lot. The provision of the foregoing sentence to the contrary notwithstanding, each such Owner shall be relieved of the obligations imposed hereby to obtain casualty insurance in the event and only for so long as the Association has elected to provide blanket coverage as provided for above.

Section 12.3. Damage to the Lots. In the event of damage or destruction to any portion of the improvements on a Lot, the improvements shall be repaired or restored in accordance with the provisions of the applicable insurance requirements. All such repairs or restorations shall be completed within twelve (12) months after destruction. In the event the Owner is unable to rebuild the improvements on the Lot, such Owner shall clear the debris and have the Lot leveled and restored within sixty (60) days from the date of destruction or damage. In the event an Owner fails to clear debris on his Lot within the time period prescribed herein, the Association may, but shall not be obligated, to go on such Lot and remove the debris, subject, however, to the following provisions: Prior to removing any debris from the Lot, the Board shall determine that said debris must be removed and that Owner has failed to do so within the time period prescribed herein. Prior to commencement of any debris removal, the Association shall furnish thirty (30) days prior written notice to the Owner of the Lot. Notice must be given to the Owner at the last address listed in the Association's record for such Owner, notifying the Owner that unless the debris is removed within the thirty (30) day period, the Association shall remove the debris and charge the same to the Owner. Upon failure of the Owner to act within the required period of time, the Association shall have the right to enter in or on any such Lot or to hire personnel to do so to make such necessary repairs or maintenance as are specified in the above-written notice.

Section 12.4. Right of Association to File Insurance Claim. Regardless of whether the insurance required hereunder is obtained by the Association or the Owners, in the event of a casualty loss to the Lots, the Association shall be entitled to file a claim against such insurance for the cost of any repair or construction to the Lot and improvements thereon which is the Association's responsibility, and the Owner shall pay the amount of any deductible and shall be responsible for any deficiency in the Association proceeds. The Association shall be entitled to adjust with the insurance provider the amount of any proceeds payable to the Association and the Owner thereunder, based upon the amount necessary to enable the Owner and Association each to repair or replace those portions of the Lot and improvements thereon which are their respective responsibilities. If the Owner is required to obtain insurance hereunder

and such insurance is insufficient, the Association shall be relieved of any obligation to maintain, repair and replace damage or destroyed portions of the Owner's Lot, to the extent of such insufficiency. Alternatively, the Association may perform such required repairs, whether the responsibility of the Association or the Owner, and assess all costs to the Owner and the Owner's Lot as a Special Assessment. In the event of damage to or destruction of a structure on a Lot, and provided that the Association has assumed responsibility for insurance coverage as provided for above, the Association shall be responsible for repair or reconstruction of those portions of the structure on the Lot for which the Association has assumed insurance responsibility.

ARTICLE XIII GENERAL PROVISIONS

Section 13.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by, or pursuant to, the provisions of this Declaration; and the party enforcing the same shall have the right to recover all costs and expenses incurred, including reasonable attorneys' fees. In the event the Association enforces the provisions hereof against any Owner, the costs and expenses of such enforcement, including reasonable attorneys' fees, may be assessed against such Owner's Lot as a special assessment pursuant to the provisions hereof. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so at any time. If these restrictions are enforced by appropriate proceedings by any such Owner or Owners, such Owner or Owners may be reimbursed by the Association for all or any part of the costs and expenses incurred, including reasonable attorneys' fees, in the discretion of the Board. In addition to the foregoing, the St. Johns River Water Management District and/or the County shall have the right to enforce, by proceedings at law or in equity, the provisions contained in the Declaration as they may relate to the maintenance, operation and repair of the Surface Water Management System. Additionally, the County shall have the right, but not the obligation, to enforce, by proceedings at law or in equity, the provisions contained in the Declaration as they may relate to the construction, reconstruction, maintenance, operation and repair of the Streets. Venue for any action to enforce the provisions of this Declaration or the County Code, as same relates hereto, shall lie in Brevard County, Florida.

If any dispute arises between an Owner and the Declarant, or between the Association and the Declarant, with respect to the repair and Maintenance of the Common Areas, Streets, sidewalks, any Conservation Area, Surface Water Management System, Water Distribution System, Fire Protection System, Sewer Collection System and/or funding for same, such Owner and the Declarant or the Association and the Declarant, respectively, agree in good faith to attempt to settle such disputes by non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association. Such non-binding mediation shall be a condition precedent to the filing of any action at law or in equity to enforce the provisions of this Declaration pertaining to the repair and Maintenance of the Streets, sidewalks, Conservation Area, and Surface Water Management System and/or funding of same. Notwithstanding the foregoing, non-binding mediation shall not be required in any case where immediate relief, such as injunction relief, is sought.

Section 13.2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 13.3. Duration and Term. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the

Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended and renewed for successive ten (10) year periods, and in any event for so long as the subdivision shall exist.

Section 13.4. Amendment. Unless provided otherwise herein, this Declaration may be amended by the affirmative vote of seventy-five percent (75%) of the Members present at any meeting at which a quorum is present as provided in the By-Laws when written notice of such meeting specifies the proposed amendment and amendments to be considered at such meeting. If an amendment is approved by the Members in the foregoing manner, the President and Secretary of the Association shall execute an Amendment to this Declaration which shall set forth the amendment, the effective date thereof, the date of the meeting of the Association at which such amendment was adopted, the date upon which notice of such meeting was given, the number of votes required to constitute a quorum at such meeting, the number of votes necessary to adopt the amendment, the total number of votes cast in favor of the amendment, and the total numbers of votes cast against the amendment. Anything contained herein to the contrary notwithstanding, there shall be no amendments to the Declaration that materially or adversely affect rights granted or reserved herein to the Declarant without its written consent. In addition, the Declarant expressly reserves the right, so long as it is a Class B Member, to amend this Declaration without the necessity of concurrent action or approval of the owners. Furthermore, any amendment to this Declaration which would tend to alter or affect the Surface Water Management System shall require prior written approval of the St. Johns River Water Management District. All amendments to this Declaration shall be recorded in the Public Records of Brevard County, Florida.

Section 13.5. Effect of Recording. Any Lot situated within the Property shall be deemed to be "subject to assessment", as such term is used in this Declaration, the Articles or the By-Laws, upon recording of this Declaration; and, any Additional Property annexed pursuant to the provisions hereof shall be deemed "subject to assessment" upon recording of the appropriate supplement or amendment to this Declaration annexing the same.

Section 13.6. Effect on Excluded Property. The Excluded Property (as defined in Section 1.1(m)) is not subject to or governed by this Declaration as the owners of the Excluded Property failed or refused to consent to this Declaration or the Plat. The Excluded Property, and the owners thereof, remain subject to and governed by the covenants, easements, restrictions and all of the provisions of the Original Declaration, granting such owners certain rights and obligations thereunder, and for purposes of the Excluded Property and the owners thereof, this Declaration does not and is not intended to merge with the Original Declaration and shall not effect in any way the effect or applicability of the Original Declaration upon the Excluded Property and the owners thereof. The owners of the Excluded Property are and remain members in the Association pursuant to the Original Declaration and have all of the rights, responsibilities and obligations thereunder. Parcel 6, Block 9 and Parcel 6, Block 13, as depicted on the Plat, represent certain real property adjacent to the Excluded Property, which will be held, owned and operated by the Association as provided for on the Plat until such time as the Excluded Property is annexed into the Declaration as Additional Property, which annexation requires the consent of the respective owners of the Excluded Property.

{Signatures appear on following pages.}

IN WITNESS WHEREOF, the Declarant has caused this instrument to be duly executed the day and year first above written.

Signed, sealed and delivered in the presence of the following persons as witnesses:

DECLARANT:

EVERBANK, a federal savings bank

Joyce M. Durden
Print Name: Joyce M. Durden

By:

Chase Pattillo
Chase Pattillo, Vice-President

Roxanne A. Evans
Print Name: ROXANNE A. EVANS

STATE OF FLORIDA

COUNTY OF Doral

The foregoing instrument was acknowledged before me this 5th day of November, 2012, by Chase Pattillo, as Vice-President of Everbank, a federal savings bank, on behalf of the bank. He/she is personally known to me or has produced — as identification and did not take an —.

(SEAL)

Roxanne A. Evans
Notary Public
Print name: ROXANNE A. EVANS
My Commission Expires: July 12, 2016



Signed, sealed and delivered in the presence of the following persons as witnesses:

Joyce M. Durdan
Print Name: Joyce M. Durdan

Roxanne A. Evans
Print Name: Roxanne A. Evans

ASSOCIATION:

RIVERWALK OF MELBOURNE HOME OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation

By: Chase Pattillo
Chase Pattillo, President

STATE OF FLORIDA

COUNTY OF Duval

The foregoing instrument was acknowledged before me this 5th day of November, 2012, by Chase Pattillo, as President of RIVERWALK OF MELBOURNE HOME OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. He/she is personally known to me or has produced as identification and did not take an.

(SEAL)

Roxanne A. Evans
Notary Public
Print name: Roxanne A. Evans
My Commission Expires: July 12, 2016



EXHIBIT "A"

LEGAL DESCRIPTION

LEGAL DESCRIPTION FOR SD-2010-01 (rev. 10/17/12)

PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, RUN S0°14'59"W ALONG THE EAST LINE OF SAID SOUTHWEST 1/4 A DISTANCE OF 1491.00 FEET; THENCE S89°57'00"W A DISTANCE OF 632.11 FEET TO THE NORTHWEST CORNER OF PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 479, PAGE 280, SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE S89°57'00"W A DISTANCE OF 605.34 FEET TO THE EAST LINE OF MAP OF BLAKE PLAT NO. 5, AS RECORDED IN PLAT BOOK 9, PAGE 28; THENCE S1°02'21"W ALONG SAID EAST LINE A DISTANCE OF 760 FEET, MORE OR LESS, TO THE ORDINARY HIGH WATER LINE OF EAU GALLIE RIVER; THENCE SOUTHEASTERLY, MEANDERING SAID ORDINARY HIGH WATER LINE OF EAU GALLIE RIVER A DISTANCE OF 380 FEET, MORE OR LESS TO THE NORTH RIGHT-OF-WAY LINE OF EAU GALLIE BOULEVARD; THENCE S89°07'49"E ALONG SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 465 FEET, MORE OR LESS TO THE WEST LINE OF PROPERTY DESCRIBED IN OFFICIAL RECORDS BOOK 479, PAGE 280; THENCE N0°14'59"E 1063.07 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ANY RIGHT, TITLE AND INTEREST, INCLUDING RIPARIAN OR LITTORAL RIGHTS, IN EAU GALLIE RIVER AS MAY APPERTAIN TO SAID PROPERTY.

LESS AND EXCEPT: PARCEL A

A PARCEL OF LAND, BEING A PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, RUN S0°14'59"W ALONG THE EAST LINE OF SAID SOUTHWEST 1/4 A DISTANCE OF 1491.00 FEET; THENCE S89°57'00"W A DISTANCE OF 632.11 FEET TO THE NORTHWEST CORNER OF PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 479, PAGE 280 OF BREVARD COUNTY, FLORIDA; THENCE CONTINUE S89°57'00"W A DISTANCE OF 605.34 FEET TO THE EAST LINE OF MAP OF BLAKE PLAT NO. 5, AS RECORDED IN PLAT BOOK 9, PAGE 28 OF THE PUBLIC RECORDS OF BREVARD COUNTY,

FLORIDA; THENCE S01°02'21"W, ALONG SAID EAST LINE A DISTANCE OF 486.88 FEET; THENCE RUN S88°57'39"E, A DISTANCE OF 23.49 FEET TO THE POINT OF BEGINNING; THENCE RUN N89°50'55"E, A DISTANCE OF 59.05 FEET; THENCE RUN S00°09'05" E, A DISTANCE OF 29.33 FEET; THENCE RUN S89°50'55"W, A DISTANCE OF 59.05 FEET; THENCE RUN N00°09'05"W A DISTANCE OF 29.33 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT: PARCEL B

A PARCEL OF LAND, BEING A PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, RUN S0°14'59"W ALONG THE EAST LINE OF SAID SOUTHWEST 1/4 A DISTANCE OF 1491.00 FEET; THENCE S89°57'00"W A DISTANCE OF 632.11 FEET TO THE NORTHWEST CORNER OF PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 479, PAGE 280 OF BREVARD COUNTY, FLORIDA; THENCE CONTINUE S89°57'00"W A DISTANCE OF 605.34 FEET TO THE EAST LINE OF MAP OF BLAKE PLAT NO. 5, AS RECORDED IN PLAT BOOK 9, PAGE 28 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S01°02'21"W, ALONG SAID EAST LINE A DISTANCE OF 778.54 FEET; THENCE LEAVING SAID EAST LINE RUN S88°57'39"E, A DISTANCE OF 258.93 FEET TO THE POINT OF BEGINNING OF SAID PARCEL; THENCE RUN N89°59'48"E, A DISTANCE OF 24.47 FEET; THENCE RUN S00°00'12" E, A DISTANCE OF 59.54 FEET; THENCE RUN S89°59'48"W, A DISTANCE OF 24.47 FEET; THENCE RUN N00°00'12"W A DISTANCE OF 59.54 FEET TO THE POINT OF BEGINNING.