

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
SUNSET COVE**

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and after recording return to:

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AND RESTRICTIONS FOR SUNSET COVE**

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR SUNSET COVE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNSET COVE is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by SUNSET COVE, LLC., a Florida Limited Liability Company ("Declarant"), whose address is 3280 S. Atlantic Ave., Suite A, Daytona Beach Shores, Florida 32118.

**RECITALS:**

A. Declarant owns the real property described in the Master Development Agreement for Sunset Cove, as recorded in Official Records Book 5191, Page 4242, of the Public Records of Volusia County, Florida and which is also more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. The Property is a proposed residential community known as "Sunset Cove".

C. Declarant desires to preserve and enhance the values and quality of life in the Property and the health, safety and welfare of the residents thereof, and to provide for the maintenance of certain areas and improvements for the benefit of the Property, as further defined herein.

D. Declarant incorporated a non-profit corporation to which will be conveyed title to certain property, and to which will be delegated the powers of and responsibility for maintaining and administering certain property and improvements, administering and enforcing this Declaration, and collecting and disbursing the monies derived from the assessments hereafter levied.

**DECLARATIONS:**

NOW, THEREFORE, Declarant declares that the Property is and shall be owned, improved, transferred and occupied subject to this Declaration.

**ARTICLE I**  
**DEFINITIONS**

1. **Definitions.** When used in this Declaration, the following words shall have the following meanings:

a. "Area(s)" of Common Responsibility" shall mean and refer to any land or improvement located in or near the Property, as later defined herein, which is intended to be improved, maintained or operated by the Association in the manner and to the extent determined from time to time by the Board. Areas of Common Responsibility may be designated by this Declaration, any Supplemental Declaration, a contract entered into by the

Association, or by a decision of the Board. The following are hereby designated as Areas of Common Responsibility:

1. **Rights of Way and Entrance Area.** Subject to limitations imposed by governmental authority, the Association shall maintain, repair and replace to the extent determined by the Board the signs, lighting fixtures, electrical equipment, drainage improvements (in accordance with the Master Surface Water Management System permit issued by the District), irrigation lines and equipment, landscape materials and features, and other improvements from time to time located within the unpaved rights-of-way of Madeline Avenue adjacent to the Property, within the entry area at the intersection of Madeline Avenue and Sunset Cove, and within any medians in the rights-of-way of, and streets as shown on any plat of the Property. Such maintenance and improvements may be made even though the Association does not own such properties;
2. **Drainage Improvements within Easements.** Except as is otherwise the responsibility of the City or other governmental agency, the Association shall maintain, repair and replace all drainage improvements within the Property, including without limitation within all platted drainage easements, all in accordance with the Master Surface Water Management System permit issued by the District. The foregoing to the contrary notwithstanding, each Owner shall provide routine landscape maintenance, mowing and removal of trash and debris within the portions of the Master Surface Water Management System lying within that Owner's Lot, failing which the Association shall perform the required maintenance and levy an individual assessment to cover the costs thereof;
3. **Common Property.** The Association shall maintain and repair the areas designated as Common Property or Common Area, as further defined herein.

b. "Articles" shall mean and refer to the Articles of Incorporation of the Association. A copy of the initial Articles are attached as Exhibit "B" to this Declaration. The Articles may be amended as provided therein and it shall not be necessary to amend this Declaration in order to amend the Articles.

c. "Association" shall mean and refer to the Sunset Cove Homeowners Association at Port Orange, Inc., a Florida corporation not for profit, and its successors and assigns.

d. "Board" or "Board of Directors" shall mean and refer to the Board of

Directors of the Association.

e. "Bylaws" shall mean and refer to the Bylaws of the Association. A copy of the initial Bylaws are attached as Exhibit "C" to this Declaration. The Bylaws may be amended as provided therein and it shall not be necessary to amend this Declaration in order to amend the Bylaws.

f. "City" shall refer to the City of Port Orange, a Florida Municipality.

g. "Common Expense" shall mean and refer to the actual and estimated expense of operating the Association and meeting the costs to be incurred by the Association in performing its duties and in exercising its prerogatives, including without limitation costs incurred for operation, maintenance, insurance and improvement of the Common Property and Areas of Common Responsibility, and for any reserves from time to time established by the Board.

h. "Common Property" shall mean and refer to the real and personal property from time to time owned or intended to be owned by the Association and devoted to the use and enjoyment of all Members of the Association, all at Common Expense. Without limiting the generality of the foregoing, the areas marked "Common Area" depicted on the plat of Sunset Cove, Unit I shall be Common Property. Common Property shall include, but not be limited to, easement areas which are held by the Association as grantee, if any. No commitment is made that any Additional Property will contain Common Property.

i. "County" shall refer to the County of Volusia.

j. "Declarant" shall mean and refer to Sunset Cove, LLC, a Florida limited liability company, its successors and assigns. No successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment, or unless such rights pass by operation of law.

k. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Sunset Cove, as amended or supplemented.

l. "District" shall mean and refer to the St. Johns River Water Management District, an agency created pursuant to Chapter 373, Florida Statutes.

m. "Dwelling" shall mean and refer to a single family residence located on a Lot.

n. "Lot" shall mean and refer to each residential building site created by any recorded plat of the Property, including any Dwelling located thereon once constructed.

o. "Master Surface Water Management System" means the overall system designed, constructed and implemented upon the Property to control discharges caused by rainfall events, which system is intended to collect, convey, store, absorb, inhibit, treat, use or reuse surface water in order to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution, and to control the quality and quantity of discharges from the system, all as permitted by the District pursuant to Chapter 40C-4, 40C-40, 40C-42, Florida Administrative Code.

p. "Member" shall mean and refer to each Member of the Association as provided in Article III, Section 2.

q. "Owner" shall mean and refer to the record holder, whether one or more persons or entities, of fee simple title to each Lot in the Property, but, notwithstanding any applicable theory of the law of mortgages, Owner shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title to a Lot pursuant to foreclosure proceeding or a conveyance in lieu of foreclosure. All owners of a single Lot shall be treated for all purposes as a single Owner, irrespective of whether such ownership is joint, in common, or tenancy by the entirety.

r. "Permit" shall mean ERP No.4-127-89285N-ERP issued by the District.

s. "Property" shall mean and refer to the real property described in the Master Development Agreement for Sunset Cove, as recorded in the Public Records of Volusia County, Florida, which is also more particularly described on Exhibit "A" to this Declaration.

2. **Interpretation.** The provisions of this Declaration and the Articles, Bylaws and any rules and regulations of the Association shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Association and the Property, the preservation of the value of the Lots and the protection of Declarant's rights, benefits and privileges herein contemplated. Notwithstanding that this Declaration was prepared, initially, at the direction of the Declarant, and notwithstanding any rule of construction to the contrary, this Declaration shall not be more strictly construed against the Declarant and/or any of its affiliates than against any other person or entity.

## **ARTICLE II** **PROPERTY SUBJECT TO THIS DECLARATION**

1. **The Property.** The Property is and shall be improved, held, transferred and occupied subject to this Declaration.

2. **Method of Annexation.** Additions authorized under Article II shall be made, if at all, by recording a Supplemental Declaration extending this Declaration to Additional Property. The Supplemental Declaration shall describe the real property to be annexed and shall state that it



is being made pursuant to the terms of this Declaration for the purpose of annexing property to this Declaration and extending the jurisdiction of the Association to the Additional Property. The Supplemental Declaration may contain additional terms not inconsistent with this Declaration to reflect the different character, if any, of the real property being annexed or of the housing or development approaches being implemented. Upon the recordation of any Supplemental Declaration, the Owners shall also have a right and non-exclusive easement of use and enjoyment in and to the Common Property, if any, within the Additional Property and an obligation to contribute to the cost of operating, maintaining and insuring the additional Common Property and any additional Areas of Common Responsibility. Any Supplemental Declaration recorded in accordance with the terms hereof shall be conclusive in favor of all persons who rely thereon in good faith. From and after recordation of any Supplemental Declaration, the Additional Property described therein shall be subject to the provisions of this Declaration and to the jurisdiction of the Association.

3. **Withdrawal.** Declarant reserves the right to amend this Declaration unilaterally at any time for the purpose of removing any portion of the Property (including, without limitation Lots and Common Property) without notice and without the consent of any person or entity other than the owner of the portion of the Property to be withdrawn; provided, however, no such withdrawal may impair access to any Lot.

### **ARTICLE III THE ASSOCIATION**

1. **The Association.** The Association is a nonprofit corporation. The Association shall have the power to do all lawful things which may be authorized, assigned, required or permitted to be done by this Declaration, the Articles, or the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration and improvement of the Property and Areas of Common Responsibility. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be either (1) a Member of the Association, or (2) an agent of Declarant. The Board, and such officers as the Board may appoint, shall conduct the affairs of the Association.

2. **Membership.** Each Owner (including Declarant) shall be a Member of the Association. The Association membership of each Owner shall be appurtenant to and inseparable from the Lot giving rise to such membership, and any transfer of title to a Lot shall operate automatically to transfer to the new Owner the membership in the Association appurtenant to that Lot.

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

- A. Class "A". Class "A" Members shall be all Owners, with the exception of Declarant for so long as Declarant retains Class "B" voting rights. Each Class "A" Member shall have one (1) vote for each Lot owned by that Member.
- B. Class "B". The sole Class "B" Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Lot in the Property owned by Declarant, plus three (3) votes for each potential subdivision lot that has not yet been annexed but which could be developed upon the lands eligible for annexation to the Property under the terms of the Declaration. Upon the execution of this Declaration, Declarant shall have 108 Class "B" votes representing three (3) votes for each of the 36 Lots in the Phase 1 Property plus three (3) votes for each of the 114 potential residential subdivision lots not yet included in the Property but which could be developed upon the lands described on Exhibit "D" and annexed to the Property. In all, Declarant expects but shall not be required to develop and submit a total of 150 residential lots to this Declaration and to the jurisdiction of the Association. In the event Declarant elects at any time or from time to time, for any reason whatsoever, not to develop and annex any one or more of the 150 potential subdivision lots not included in the Property, then Declarant will give written notice to the Association of that election and Declarant's Class "B" votes shall be reduced by three (3) votes for each one of the potential residential subdivision lots so excluded from eligibility for annexation by Declarant. The Class "B" Member shall be entitled to cast all of its votes in any vote or election held by the Association.
- C. Termination of Class "B" Membership. As each Lot in the Property is conveyed by Declarant to a Class "A" Member, Declarant's votes for that Lot shall lapse. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of the following:
1. When the total outstanding Class "A" votes in the Association equals or exceeds the total outstanding Class "B" votes; or
  2. Ten (10) years from the date of recording this Declaration; or
  3. At such earlier time as Declarant, in its sole discretion, may so elect.

Upon the happening of any one of these events, Declarant shall call a special meeting of the Members to advise of the termination of Class "B" membership.

- D. Transition of Control. Any other provision of this Article III to the contrary notwithstanding, Owners other than Declarant shall be entitled to elect at least a majority of the members of the Board of Directors not later than three (3) months after ninety percent (90%) of the Lots in all phases of Sunset

Cove that will or may ultimately be operated by the Association have been conveyed to Owners. Declarant shall be entitled to elect at least one member of the Board of Directors as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of Sunset Cove. After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant-owned voting interests in the same manner as any other Owner, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors.

- E. Multiple Owners. Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. If joint or multiple Owners are unable to agree among themselves as to how their vote is to be cast, or if more than one (1) Class "A" vote is cast for any Lot, none of the votes for that Lot shall be counted. If any Owner casts a vote on behalf of a Lot, it shall be conclusively presumed that Owner was acting with the authority and consent of all other Owners of that Lot.

#### ARTICLE IV

#### PROPERTY RIGHTS IN THE COMMON PROPERTIES

1. Easements. The Association and each Owner (including Declarant) shall have a non-exclusive right and easement of use and enjoyment in and to the Common Property. Said right and easement shall be appurtenant to and pass with the title to each Lot, and shall include, without limitation, the following:

- (a) Right-of-way for ingress and egress by vehicles and on foot through and across any streets, roads or walks in the Common Property for all lawful purposes; and
- (b) Rights and easements to drain across the Master Surface Water Management System in accordance with the Permit and District rules; and
- (c) Rights to connect to, maintain and make use of utility lines, wires, pipes, conduits, cable television lines, telephone lines and equipment, sewers and drainage lines which may from time to time be in or along areas of the Common Property, but only in accordance with applicable laws and regulations and the requirements of the applicable entities which regulate said utilities; and
- (d) Rights and easement to use and enjoy the Common Property for any purpose not inconsistent with this Declaration, the Articles, the Bylaws, the rules and regulations of the Association, or law.

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

3. **Maintenance of Stormwater Drainage System.** The Sunset Cove Homeowners Association at Port Orange, Inc. shall be responsible for the operation and maintenance of the drainage system serving the area within the boundaries of the Sunset Cove subdivision, as depicted on the Stormwater Management Plan approved for this development by the City of Port Orange, Florida. Should the Association fail to perform the maintenance of the drainage and stormwater management systems, The City of Port Orange shall be entitled to enter upon the common areas and designated easement areas to perform maintenance, repair or replace the facilities; and, shall have the right to lien all owners of record in property for the cost of such maintenance, repair and replacement, as deemed by the City to be necessary.

4. **Title to Common Property.** Declarant shall convey to the Association, by dedication or deed, for the uses and purposes set forth in this Declaration or in any subdivision plat of the Property fee simple title in and to the Common Property free and clear of all encumbrances except taxes, applicable subdivision plats, this Declaration and any easements recorded in the public records prior to the conveyance to the Association. Once conveyed to the Association, the Common Property may not be mortgaged or further conveyed without the consent of at least two-thirds (2/3) of the Owners (excluding Declarant).

5. **Extent of Easements.** The rights and easements created in this Article IV shall be governed by the following:

- A. Subject to any rights of Declarant and the Owners set forth in this Declaration, the Association shall be responsible for the exclusive management, control and maintenance of the Common Property.
- B. Declarant, until conveyance of title to the Association, and the Association thereafter, may reserve to itself or to grant or dedicate (subject to the terms of Article XII) to Declarant, any Owner, any governmental agencies and/or to any utility companies, easements and rights-of-way, over, under or through the Common Property for installation, use, maintenance and inspection of lines and appurtenances for public or private utilities, surface water drainage improvements and areas, or completion of the development. No improvement or material may be placed upon any such easement which may

damage or interfere with the installation or maintenance of utilities or the easement area or that may alter or impede the direction or flow of drainage.

- C. Declarant's rights reserved in this Declaration.
- D. Matters shown on any plat(s) of the Property.

6. **Additional Easements over Common Property.** Declarant hereby creates, reserves and declares to exist the following licenses, rights, privileges and easements over, under and through the Common Property subject at all times to the terms and conditions of the Permit and subject to receiving prior written approval of the District as to any activities that may affect or may occur on or within the Master Surface Water Management System, including any upland buffers : (i) rights-of-way and easements to install, maintain and use electric, lighting, telecommunications, cable television, telephone, gas, water, sewer, drainage and utility poles, wires, cables, conduits, fixtures, pipes, meters, equipment, facilities, ponds, swales, berms or ditches, and other equipment and improvements necessary or convenient for the completion, marketing, use and enjoyment of the Property, (ii) the right to cut trees, bushes or shrubbery, make any gradings of the soil, and take any similar action reasonably necessary to provide economical and safe utility and drainage installation or to maintain reasonable standards of health, convenience, safety and appearance, (iii) the right to locate thereon wells, pumping stations and irrigation systems and lines, (iv) easement of ingress and egress for purposes of development, construction and marketing, and (v) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development and sale of the Property including, without limitation, the maintenance of temporary signage and trailers used in such development and sales efforts; provided, however, that said reservation and right shall not be considered an obligation of Declarant to provide or maintain any such easement, utility, equipment or service. Declarant also reserves the right to connect with and make use of the utility lines and drainage improvements which may from time to time be in or along the streets and roads, or within the Common Property or platted easements. The easements and rights-of-way herein reserved shall continue in existence in favor of Declarant after conveyance of the Common Property to the Association or dedication to the City until such time as Declarant has sold all Lots in the Property and in any lands separately developed by Declarant and located adjacent to the Property.

Declarant also reserves a perpetual right and easement to irrigate the Common Property with treated effluent from a wastewater treatment facility, if any. The benefit of this reservation shall inure to Declarant and its specifically designated successors and assigns, but not in favor of any other Owner and shall remain in effect whether or not Declarant owns any Lots in or lands adjacent to the Property.

7. **Delegation.** Any Owner (including Declarant) may grant the benefit of any easement, right or privilege to tenants and guests for the duration of their tenancies or visits, but same shall not be construed to create any rights in the general public.

## ARTICLE V

### INSURANCE

The Board may obtain fidelity bond coverage in its discretion for the coverage of each Board Member, management company representing the Board, and any and all other employees of the Association. In addition, the Board may obtain insurance for insurable improvements on the Common Property, any Area of Common Responsibility, or on any easement benefiting the Owners or the Association, public liability policies covering the Association and Members for damage or injury caused by the negligence of the Association or any of its Members, guests or agents, directors' and officers' liability insurance, and any other types of insurance coverage as the Board may deem appropriate, with such insureds, deductibles provisions and coverage types and amounts as shall be determined by the Board. Premiums for insurance so obtained shall be a Common Expense. The Association may self-insure against any risk.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

1. **Lien and Personal Obligation Nonpayment.** Declarant, for each Lot owned by it in the Property, and each Owner other than Declarant by acceptance of title to any Lot, whether or not it shall be so expressed in any deed or other conveyance, covenants and agrees to pay to the Association: (1) annual assessments or charges, (2) special assessments, (3) individual assessments, and (4) a one-time only start-up assessment. Said assessments shall be fixed, established and assessed as herein provided. Assessments, together with such interest and late charges as shall be imposed by the Board at its discretion, and the cost of collection thereof, including without limitation court costs and reasonable attorneys' and paralegals' fees before trial, at trial and on appeal, shall be a charge and a continuing lien upon the Lot against which such assessment is made, and upon any Dwelling located on said Lot, from and after the date on which such assessment is due. Each assessment, together with said interest, late charges, costs and fees, shall also be the personal obligation of each person who was an Owner of the Lot at the time the assessment fell due.

If any assessment or installment thereon is not paid when due, then such assessment shall be delinquent and the delinquent assessment, together with interest, late charges, and collection costs, shall be secured by a continuing lien on the Lot as to which the assessment accrued, and upon any Dwelling located thereon. Such lien shall be prior to all other liens hereinafter created except taxes or assessments levied by governmental authority, and except as to the lien of any mortgage. The lien shall be prior to and superior in dignity to homestead status. The lien shall bind the Lot and any Dwelling located thereon in the hands of the then Owner and of each subsequent Owner. The personal obligation of the Owner to pay such delinquent assessment shall remain that Owner's personal obligation for the statutory limitations period and personal liability shall not pass to successors in title unless expressly assumed by them.

If the delinquent assessment or installment thereon is not paid within thirty (30) days after the due date, late charges may be assessed in an amount to be determined by the Board and the delinquent assessment shall further bear interest from the date due at the highest lawful rate in Florida, or at such lesser rate as may be determined by the Board and uniformly applied, and the Association may bring an action for collection against the Owner personally obligated to pay the same and to foreclose the lien against the Lot and any Dwelling located thereon by judicial foreclosure in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment the aforesaid interest, late charges, collection costs and attorneys' and paralegals' fees, and fees and collection costs shall be recoverable whether or not suit be brought. The Owner shall also be required to pay the Association any assessments against the Lot which become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale and to own, sell, lease, encumber, use and otherwise deal with the Lot and any Dwelling thereon as owner thereof.

2. **Exempt Property.** The following property shall be exempt from the assessments, charges and liens created herein: (1) Common Property; (2) lands owned by Declarant which have not been annexed to the Property by this Declaration or any Supplemental Declaration; (3) lands dedicated to the City] or other governmental authority, any utility company or the public; and (4) Lots owned by Declarant during the period of time that Declarant subsidizes the Common Expenses of the Association pursuant to Section 8 of this Article. No other land or improvements in the Property shall be exempt from these assessments, charges or liens. No Owner may avoid assessment obligations by virtue of non-use or abandonment of the Common Property, or any disagreement with the operation or policies of the Association, or with management of such Association.

3. **Purpose.** The assessments levied by the Association may be, but are not required to be, used to promote the recreation, health, safety and welfare of the Owners, to perform the Association's duties and to exercise the powers conferred on it, to improve, operate, insure and maintain the Common Property and the Areas of Common Responsibility, and to pursue any other purpose deemed desirable or appropriate by the Board, including without limitation any one or more of the following: (a) payment of Association operating expenses; (b) lighting, irrigation, maintenance, improvement and beautification of streets and easement areas, and acquisition, maintenance, repair and replacement of community identification signs and traffic control devices, and control and regulation of traffic in the Property; (c) payment, contest or compromise of real and personal property taxes and assessments separately levied upon or assessed against the Association or the Common Property; (d) operation, management, insurance, replacement, maintenance, repair, beautification and improvement of the Common Property, Areas of Common Responsibility, and easement areas benefiting the Association; (e) repayment of any deficits previously incurred by the Association; (f) funding of reserves for future Common Expenses, (g) procurement and maintenance of insurance, (h) employment of accountant attorneys and other professionals to represent or advise the Association; (i) operation, maintenance and repair of the Master Surface Water Management System for the Property in accordance with the terms of this Declaration and the requirements of the District; (j) doing anything necessary or desirable in the judgment of the Board to keep the Property

neat and attractive, to preserve or enhance the value thereof, to eliminate fire, health or safety hazards, or otherwise to benefit the Owners.

**4. Determination of Annual Assessments.**

- A. Operating Budget. At least thirty (30) days prior to the end of the Association's fiscal year, the Board shall prepare a budget of the estimated costs of operating the Association during the coming year, including but not limited to operational items such as overhead and indirect costs, insurance, utilities, taxes, professional fees, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years, and capital improvement budget items approved by the Board under Subsection (b), below.
- B. Capital Budget. Each year, the Board shall approve a capital budget taking into account the number, type, useful life and expected replacement cost of replaceable assets. The Board shall then set the required annual capital contribution in an amount sufficient to meet the projected capital needs of the Association on a timely basis. The annual capital contribution fixed by the Board shall then be included in the annual operating budget and annual assessments described in Subsection (a), above.
- C. Adoption of Operating Budget. The Association shall mail to each Member a copy of the capital budget, operating budget and projected annual assessments approved by the Board to be levied for the next fiscal year at least thirty (30) days prior to the end of the Association's current fiscal year. The operating budget and annual assessments shall become effective unless disapproved at a special meeting of the Members held not later than sixty (60) days after the proposed budget and assessments are mailed to the Members. To be effective, the disapproval must be by a vote of two-thirds (2/3) of the membership of the Association, without regard to class. If the membership so disapproves the operating budget for the succeeding year, or if the Board fails to propose a budget, then the budget and annual assessments for the preceding year shall continue in effect until a new budget is determined.
- D. Allocation of Annual Assessments Among Lots. The operating budget of the Association shall be assessed against all Owners and Lots in the Property in an equal amount per Lot, except as otherwise provided herein.

**5. Special Assessments.**

- A. Special Assessments. In addition to annual assessments, the Board may levy at any time a special assessment for the purpose of defraying the cost of any



construction, repair or replacement of any improvement on the Common Property or Areas of Common Responsibility, or on any easement benefiting the Association, for the purpose of covering any budget deficits of the Association, or for any other purpose deemed desirable or appropriate by the Board; provided, however, that any such special assessment shall have the approval of a majority of the votes of the Members of each class who are in attendance and voting in person or by proxy at a meeting duly called for said purpose.

- B. Individual Assessment. The Board may levy an individual assessment against any Owner and that Owner's Lot and any Dwelling located thereon in order to cover costs incurred by the Association due to that Owner's failure to maintain its Lot or Dwelling pursuant to the standards set forth in this Declaration, or to reimburse the Association for loss or damage to the Association or to any Common Property, Area of Common Responsibility or easement area caused by that Owner or his lessee, agent, contractor or guest, and not covered by insurance, or for any other purpose expressly permitted by this Declaration.
- C. Commencement Dates; Start-Up Assessment; Initial Annual Assessment; Due Dates. Annual assessments on the Lots in the Property shall commence upon the closing of the first Lot in the Property to a bona fide third party purchaser. The annual assessment for the Property for the calendar year 2005 shall be Four Hundred Eighty (\$480.00) Dollars per Lot. At the closing of the sale of each Lot in the Property by Declarant to the first purchaser from Declarant, the purchaser shall pay to the Association (i) a one time Start-Up Assessment in the amount of Four Hundred (\$400.00) Dollars, and (ii) the entire annual assessment for the calendar year of closing, prorated on a per diem basis from the date of closing through the end of that calendar year. Thereafter, annual assessments shall be due, in advance, on or before the commencement of the Association fiscal year for which imposed; but the Board may elect to collect annual assessments in monthly, quarterly or semi-annual installments. In the event of such deferred payments, the Board may but shall not be required to charge a uniform, lawful rate of interest on the unpaid balance. The Board may accelerate the balance of any annual assessment upon default in the payment of any installment thereon. Annual assessments which commence to accrue as to any Lot other than on the first day of the year shall be prorated for the balance of that year. After the one time Start-Up Assessment has been paid as to a Lot in the Property, subsequent purchasers of said Lot shall not be required to pay said Start-Up Assessment. This provision shall not prevent the first purchaser of any lot from being reimbursed for such Start-Up Assessment from a subsequent purchaser.

6. **Certificate.** Upon request, the Association shall furnish to any Owner a certificate setting forth whether required assessments have been paid. Such certificate shall be conclusive evidence in favor of third parties relying thereon of the payment of any assessment therein stated to have been paid.

7. **Subordination.** The assessment lien shall be subordinate to the lien of any mortgage. Any mortgagee which obtains title to a Lot by foreclosure of a mortgage, or by voluntary conveyance in lieu of such foreclosure, shall not be liable for the uncollected assessments or interest, late charges or collection costs pertaining to such Lot or chargeable to the former Owner thereof which became due prior to the acquisition of title by said mortgagee. Such unpaid amounts shall be deemed a Common Expense collectible from all Owners, including the acquiring mortgagee, on a pro-rata basis. Any such transfer to or by a mortgagee shall not relieve the transferee of responsibility nor the Lot from the lien for assessments thereafter falling due.

8. **Funding by Declarant.** Notwithstanding anything contained in this Declaration to the contrary, Declarant shall not be obligated to pay any annual or special assessment as to any Lot owned by it during any period of time that Declarant pays the Common Expense actually incurred over and above the income derived from annual, special and individual assessments collectible from the Class "A" Members. For purposes of this subsidy arrangement, Declarant need not subsidize or pay replacement reserves or capital expenditures. Declarant, at its option, may elect by written notice delivered to the Association at any time to abandon the subsidy approach and commence payment of the assessments thereafter falling due for the Lots then owned by Declarant, prorated as of the date of such notice. Declarant shall never be obligated to pay any individual assessment.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL**

1. **Architectural Control; ARB.** All Lots and Dwellings in the Property are subject to architectural review in accordance with this Article and the Planning, Construction and Development Criteria ("the Planning Criteria") adopted and revised from time to time by the Architectural Review Board (the "ARB"). The Planning Criteria shall be written and made available to all builders in the Property and to all Owners or prospective Owners. The Planning Criteria may include any matters considered appropriate by the ARB not inconsistent with this Declaration.

No site work, landscaping, utility extension, drainage improvement, paving, driveway, swimming pool, pool enclosure, building, fence, wall, sidewalk, or any other physical or structural improvement, or change or alteration to the exterior of any existing structure or improvement, or to any existing landscaping, shall be commenced, erected or maintained until the plans showing such details as the size, design, shape, finished grade elevation, height, materials and color of the same, together with a landscape plan and a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes, have been approved in writing

by the ARB. All such improvements must further conform to the Planning Criteria and no plans shall be approved by the ARB if they are not in conformity with same. All improvements, changes and alterations shall also comply with all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees. Until such time as any improvements, changes and/or alterations have been submitted to and approved by the ARB, no Owner (and/or designee thereof) shall make application for a building permit from the applicable governmental agency. Nothing herein shall limit the right of an Owner to finish or alter the interior of that Owner's Dwelling as that Owner desires.

It shall be the responsibility of each Owner at the time of construction of the Dwelling on that Owner's Lot to comply with the approved construction plans for the Master Surface Water Management System on file with the District pursuant to Chapter 40C-4, F.A.C.

**2. Membership of ARB.** So long as Declarant owns any Lots subject to this Declaration, Declarant shall be entitled to appoint all members of the ARB. Thereafter, the membership of the ARB shall be determined by the Board. The ARB shall consist of no less than three (3) members, none of whom shall be required to be Owners or occupants of the Property. No member of the ARB shall be entitled to compensation for services performed, but the ARB may employ professional advisors and pay reasonable compensation to such advisors at Common Expense. Members of the ARB (other than those appointed or designated by the Declarant) may be removed by the Board of Directors at any time without cause. Members of the ARB appointed or designated by the Declarant may only be removed by the Declarant.

**3. Approvals.** Decisions of the ARB shall be by majority action. Unless waived by the ARB, all plans shall be prepared by an architect or engineer, said person to be employed by and at the expense of the Owner. If for any reason, including purely aesthetic reasons, the ARB should determine that a proposed improvement or alteration is not consistent with the Planning Criteria or Declarant's development plan, or in the best interest of the Association and its Members, such improvement or alteration shall not be made. Approval of plans may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by virtue of the dissatisfaction of the ARB with the location of the structure on the Lot, the elevation, color scheme, finish, design, proportions, architecture, drainage plan, shape, height, style and appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the Lot, or because of its reasonable dissatisfaction with any other matter or thing which, in the judgment of the ARB, will render the proposed improvement or alteration inharmonious with the general development plan or the Planning Criteria. Two (2) sets of plans, specifications and plot plans shall be submitted to the ARB by the Owner prior to applying for a building permit. Submittals and re-submittals of plans shall be approved or disapproved within thirty (30) days after receipt by the ARB. The ARB approval or disapproval shall be written and shall be accompanied by one (1) copy of the plans, etc., to be returned to the Owner. Whenever the ARB disapproves plans, the ARB shall specify the reason or reasons for such disapproval.

4. **Violations.** The work must be performed strictly in accordance with the plans as approved. If after plans have been approved, the improvements are altered, erected, or maintained upon the Lot other than as approved, same shall be deemed to have been undertaken without ARB approval. After one (1) year from completion of any improvement, addition or alteration, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to comply with the provisions hereof unless a notice of such noncompliance executed by any member of the ARB shall appear in the public records of the County, or legal proceedings shall have been instituted to enjoin the noncompliance or to enforce compliance with these provisions.

5. **Variances.** The ARB may grant variances from compliance with the architectural provisions of this Declaration or the Planning Criteria, including without limitation restrictions upon height, size or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may reasonably require. The granting of any variance shall not operate to waive any of the terms and provisions of this Declaration or the Planning Criteria for any purpose except as to the particular Lot and the particular provision covered by the variance, nor shall it affect the Owner's obligation to comply with governmental requirements. Such variances may only be granted when unique circumstances dictate and no variance shall (i) be effective unless in writing, (ii) be contrary to the restrictions set forth in this Declaration, or (iii) estop the ARB from denying a variance in other circumstances.

6. **Waiver of Liability.** None of Declarant, the ARB, the Directors or the Association, or any agent or employee thereof, shall be liable to anyone submitting plans for approval or to any Owner, occupant or guest of the Property by reason of or in connection with approval or disapproval of any plans, or for any defect in any plans submitted, revised or approved in accordance with the requirements of the ARB, or for any structural or other defect in any work done according to such plans. Approval of plans, or any other approvals, variances or consents, are given solely to protect the aesthetics of the Property in the judgment of the ARB and shall not be deemed a warranty, representation or covenant that any action taken in reliance thereon complies with applicable laws, codes, rules or regulations, nor shall ARB approval be deemed approval of any plan or design from the standpoint of structural safety or conformity with building or other codes. Every person who submits plans for approval agrees, by submission of such plans, and every Owner or occupant of any Lot agrees, by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit to recover any such damages and shall be deemed to have automatically agreed to hold harmless and indemnify the aforesaid parties from and for any loss, claim or damages connected with the aforesaid aspects of the improvements or alterations.

7. **Enforcement.** Declarant and the Association shall have standing and authority on behalf of the Association to enforce in courts of competent jurisdiction the Planning Criteria and the decisions of the ARB. Should Declarant or the Association be required to enforce the provisions hereof by legal action, the reasonable attorneys' fees and costs incurred, whether or not judicial proceedings are involved, including the attorneys' fees and costs incurred on appeal from judicial proceedings, shall be collectible from the violating Owner. Should any Owner fail to comply with the requirements hereof after thirty (30) days' written notice, Declarant and the Association shall

have the right but not the obligation to enter upon the Owner's property, make such corrections or modifications as are necessary, or remove anything in violation of the provisions hereof or the Planning Criteria, and charge the cost thereof to the Owner as an individual assessment. Declarant and the Association, or their agents or employees, shall not be liable to the Owner or to any occupant or invitee of any Lot for any trespass or damages or injury to property or person for any action taken hereunder unless caused by gross negligence or intentional wrongdoing.

8. **Exemption.** Declarant shall be exempt from the architectural control provisions of this Article VII. Declarant shall be entitled to construct or install any new improvement, and to alter or change any existing improvement, without submitting plans to or obtaining the approval of the ARB.

9. **No Waiver of Future Approvals.** The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

10. **ARB Rules.** The ARB shall adopt reasonable rules of procedure and standards for the submission and review of any matter to be brought before it and the inspection and final approval of any completed work done pursuant to an approval of the ARB. Such rules shall be (i) subject to the prior approval of the Board of Directors, (ii) consistent with the covenants and restrictions set forth in this Declaration and (iii) published or otherwise made available to all Owners and their contractors, subcontractors and other appropriate designees. All rules of the ARB shall be adopted and/or amended by a majority vote thereof.

## **ARTICLE VIII**

### **EXTERIOR MAINTENANCE**

1. **Owner's Responsibility.** Each Owner shall keep and maintain that Owner's Lot and all building and other improvements and landscaping located on that Owner's Lot in good repair and in a neat and attractive condition. The minimum but not exclusive standard for maintenance of improvements shall be consistency with the approved plans thereof and with the general appearance of the other occupied improvements in the Property as a whole when initially constructed and improved (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness). The maintenance obligation of each Owner as to building improvements shall include, without limitation, maintenance of all exterior surfaces and roofs, fascias and soffits, awnings, trellises, decorative facades, screens, windows and doors. Owners shall clean, repaint or re-stain, as appropriate, the exterior portions of the building improvements (with the same colors as initially approved), including exterior surfaces of garage doors, as often as is necessary to comply with the foregoing standards. Each Owner shall also keep, maintain and irrigate

the trees, shrubbery, grass and other landscape material located on that Owner's Lot in good repair and in a neat and attractive condition. The minimum but not exclusive standard for maintenance of landscaping shall be consistency with the approved plans thereof and with the general appearance of the other occupied Lots in the Property as a whole when initially landscaped (taking into account, however, the natural and orderly growth and maturation of applicable landscaping, as properly trimmed and maintained). Landscape maintenance shall include, without limitation, irrigation, fertilization, weeding, mowing, trimming, spraying for insects and disease, and periodic replacement of dead, damaged or diseased plantings. To the extent not included in the areas required to be maintained by the Association pursuant to Section 4 of this Article, each Owner shall, at that Owner's expense, grass over, mow and keep free of trash and debris, on a routine basis, those portions of the Master Surface Water Management System located on that Owner's Lot (whether or not included in a platted drainage easement). When required, major repairs to, and major maintenance and reconstruction of, components of the Master Surface Water Management System will be performed by the Association, at Common Expense. Each Owner shall grass over, mow and keep free of trash and debris, on a routine basis, the unpaved portion of any platted street(s) abutting the Owner's Lot. Each Owner shall be responsible for the maintenance, operation and repair of the swales, if any, on the Owner's Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other storm water management capabilities as permitted by the District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the swale shall be authorized and any damage to any swale, whether caused by natural or human-induced phenomena, shall be repaired and the swale returned to its proper condition as soon as possible by the Owner(s) of the Lot(s) upon which the swale is located.

The Association shall have the right but not the obligation to provide exterior repair and maintenance on any Lot or any improvement thereon in the event of default by any Owner in the duties hereby imposed. Prior to performing repair or maintenance on any Lot, the Board shall determine that there is need of repair or maintenance and such need detracts from the overall appearance of the Property. Except in emergency situations, prior to commencement of any work, the Board must furnish written notice to the Owner to the effect that, unless specified repairs or maintenance are commenced within fifteen (15) days after the mailing of the notice, and thereafter diligently pursued to completion, the Association may procure said repairs. Upon the Owner's failure to commence timely and to diligently pursue the repairs or maintenance, the Association and its agents or employees shall have the right to enter in or upon the Lot and the exterior of any improvement thereon to perform the repairs or maintenance specified in the notice. In this regard, the Association shall have the right to do such things as, but limited to, paint, repair, replace and care for pools, pool enclosures, roofs, gutters, down spouts and exterior building surfaces, clean or resurface paved access ways and parking areas, trim and care for trees, shrubs, grass, walks, swales, berms and other landscaping and drainage improvements, as well as to provide general cleanup, shoreline maintenance, and removal of debris which in the opinion of the Board detracts from the overall beauty and setting of the Property. Declarant, the Association, and their respective agents and employees, shall have no liability to the Owner or any occupant or guest for trespass, or damage or

injury to property or person as the result of actions taken hereunder unless caused by gross negligence or intentional wrongdoing.

2. **Assessment of Cost.** The cost of any work performed by or at the request of the Association pursuant to Section 1 shall be assessed as an individual assessment against the Owner of the Lot upon which such work is done.

3. **Access.** In order to perform the repairs or maintenance authorized by this Article, the agents or employees of the Association may enter upon any Lot and the exterior of any improvement thereon during reasonable hours on any day except Sundays and holidays, except that in an emergency situation, as determined by the Board, entry may be made at any time.

4. **Association's Responsibility.** The Association shall maintain and keep in good repair the Common Property and the Areas of Common Responsibility and the wall, landscaping, lighting, irrigation, sign, drainage and other improvements from time to time located thereon. It is the responsibility of the Association, at Common Expense, to operate, maintain and repair the Master Surface Water Management System and to enforce, or to take such appropriate action as may be necessary to cure violations of, the routine maintenance and non-interference covenants of the Owners under this Declaration, and, when appropriate, to levy special assessments or individual assessments therefore. Maintenance of the Master Surface Water Management System shall include the exercise of practices which allow the system to provide drainage, water storage, conveyance and other surface water or storm water management capabilities as permitted by the District. Any repair or reconstruction of the Master Surface Water Management System shall be as originally permitted or, if modified, as approved by the District.

## **ARTICLE IX**

### **RESTRICTIVE COVENANTS**

The Property shall be subject to the following covenants and restrictions which shall bind each Owner and Lot:

A. **Wells.** Except for a water well for use only for air conditioning, heating or irrigation purposes, no individual water supply system shall be permitted on any Lot without the approval of the ARB.

B. **Obnoxious or Offensive Activity.** No activity or use shall be allowed upon the Property which is a source of annoyance, embarrassment or discomfort to Owners or their tenants or invitees, or which interferes with the peaceful possession and proper use and enjoyment of the Property, nor shall any improper, unsightly, offensive or unlawful use be made of any Lot, Dwelling or the Common Property, and all laws and regulations of applicable governmental bodies shall be observed. The Property shall be used, enjoyed and occupied in such manner as not to cause or produce any of the following effects discernible outside any Dwelling: noise or sound that is

objectionable because of its volume, duration, beat, frequency or shrillness; smoke; noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; vibration; or interference with normal television, radio or other telecommunication reception by other Owners.

C. Rules and Regulations. Reasonable rules and regulations may be promulgated by the Board, after notice and hearing, as to the use and enjoyment of the Property and shall be observed by the Owners and occupants thereof. Such rules and regulations may involve such matters as air conditioning units, signs, mailboxes, temporary structures, noisy mufflers or other nuisances, garbage and trash disposal, parking, traffic, state of repair of vehicles, tree removal, pets, game and play structures and devices, swimming pools, television and telecommunications devices and antennae, driveways, walkways, sight distances at intersections, garages, and fences. These matters are set out by way of illustration only and shall not be construed to limit the authority of the Board to promulgate and enforce reasonable rules and regulations. Such rules and regulations may augment or clarify the terms of this Declaration or any term, covenant or restriction herein contained.

D. Animals. Birds, fish, dogs, cats, reptiles, insects and all other non-human, non-plant living organisms (collectively, "Animals") may be kept as pets only, and shall not be held or offered for sale or maintained or bred for any commercial use. Animals shall be sheltered inside Dwellings. No separate or exterior shelter for Animals shall be permitted. All Animals must be kept in a fully fenced area or leashed when outside and shall not be permitted to run loose. Such Animals shall be attended by a responsible person. All Animal waste shall be removed from any Common Property and be properly disposed of. No Animals shall be permitted to remain on the Property if it or they disturb the tranquility of the Property or the Owners or tenants thereof, if it or they are unlawful, dangerous, annoying, or a nuisance to or destructive of wildlife, or if it or they are specifically excluded from the Property by the Board after notice and hearing. All owners must further comply with all local, state and federal regulations.

E. Garbage and Trash. No trash, garbage or other waste material or refuse shall be placed or stored on any part of the Property except in covered or sealed sanitary containers. All such sanitary containers must be stored within each Dwelling, buried underground, or placed within an enclosure or concealed by means of a screening wall approved by the ARB.

F. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and same may be installed only within an approved accessory structure, or buried underground, and shall otherwise comply with standards established from time to time by the ARB or applicable law.

G. Vehicles. No vehicle may be parked anywhere on the Property except on paved streets and paved driveways. No inoperative vehicles shall be allowed to remain on the Property in excess of forty-eight (48) hours unless kept in a garage and not visible from the street or any other Lot. No trailers, boats, campers, mobile homes, or motorized recreational vehicles may be parked in any part of the Property unless parked inside a garage. Trucks and vans, whether commercial or



non-commercial, will be permitted on the Property provided that they comply with the following:

1. They are temporarily on the Property for business purposes at the request of an Owner and do not remain on the Property for more than eight (8) continuous hours; or
2. They are continuously parked within a garage; or
3. They comply with each of the following restrictions:
4. Such vehicle(s) may not exceed one (1) ton carrying capacity;
5. Such vehicle(s) may not have camper shells extending more than twelve inches (12") over the cab roof;
6. Any signboard or lettering is professionally applied to fenders, doors, tailgates, and panels of such vehicle(s);
7. The frame to ground clearance may not exceed twenty four inches (24") on such vehicle(s); and
8. They may not have added frames, racks, wooden shells or boxes.

H. Visibility of Intersections. No obstruction to visibility at street intersections shall be permitted; provided that the Association shall not be liable in any manner to any person or entity, including Owners, their guests, tenants and invitees, for any damages, injuries or deaths arising from any violation of this Section.

I. Temporary Structures. No building or structure of a temporary or portable character such as trailers, tents or shacks shall be permitted in the Property, except as approved by the ARB, and except for temporary improvements used solely in connection with the construction of approved permanent improvements and removed immediately upon completion of such construction. Neither Declarant nor any residential builder doing business in the Property shall be prohibited from erecting or maintaining temporary dwellings, model homes and other structures for development and marketing purposes, provided such are in compliance with the appropriate governmental requirements, and further provided that any builder first obtains Declarant's written approval of such temporary dwelling, home or structure prior to installing or constructing same, such approval to be granted or denied by Declarant in Declarant's sole discretion.

J. Signs. No signs, advertisements, billboards, solicitation or advertising structures or materials of any kind shall be displayed or placed upon any Lot without the prior written approval of the ARB; provided, however, street numbers and name signs on Lots and one sign containing not more than eight (8) square feet of surface area per side (2 sides maximum) and used solely in connection with the marketing of the affected Lot for sale or lease shall be permitted without prior approval. Declarant or the Association may enter upon any Lot and remove and destroy any sign which violates this section. This section shall not apply to Declarant or to any residential builder doing business in the Property provided that any such builder first obtains Declarant's written approval of any such structures or materials prior to installing same, such approval to be granted or denied by Declarant in Declarant's sole discretion.

K. Air Conditioning Equipment. No air conditioning equipment other than compressor units may be visible on the exterior of any Dwelling unless previously approved by the ARB, which approval may be based on the adequacy of screening of such equipment. The ARB may prohibit window or wall air conditioning units altogether.

L. Drainage Structures. Unless first approved by the ARB and the District, no Owner including Declarant may obstruct, alter or in any way modify the method and/or structures of drainage utilized or installed by Declarant or the Association from, on or across any Lot, Common Property or easement area; nor shall any structure or material be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation. No elevation changes shall be permitted on any Lot which materially adversely affect the drainage of or to neighboring Lots or the Common Property.

M. Exterior Electronic or Electric Devices. Except to the extent required to be permitted under applicable law, no exterior telecommunications, radio, microwave or television mast, tower, pole, wire, aerial, satellite receiving stations or dish, antenna or appurtenances thereto, nor any other exterior electronic or electric equipment, structures or devices of any kind may be installed or maintained in the Property without the prior written approval of the ARB.

N. Subdivision. No part of the Property shall be further subdivided without the prior written consent of Declarant for so long as Declarant owns any Lot, and thereafter by the Board.

O. Completion. Upon commencement of construction of improvements on any Lot, the Owner shall diligently prosecute the work to the end that the improvements shall be completed as expeditiously as is reasonable. The Owner of the Lot on which improvements are being built shall keep the streets and areas adjacent to the Lot free from dirt, mud, garbage, trash or other debris occasioned by construction.

P. Excavation. No clearing or excavation shall be made except incident to construction, maintenance or repair of an improvement and must be in accordance with the Permit; and upon completion thereof exposed openings shall be back-filled, and disturbed ground shall be leveled, graded and covered with sod or seeded in accordance with the approved landscape plan.

Q. Sidewalks. If permitted by the City or other governmental authority, then the Owner of each Lot shall construct, prior to occupancy of the Dwelling on that Lot, a sidewalk along each boundary line of the Lot which abuts a platted street.

R. Fences and Walls. Except for walls constructed by Declarant, there shall be no fence or wall permitted on any Lot unless it meets the requirements below and has been approved by the ARB as to size, material, color, location, etc. Landscape buffers may be required by the ARB on the outside of any fences and walls. All fences must be made of a material approved by the Board and installed with the posts and supports on the inside. Additionally, fences may only be permitted within drainage easements so long as the fence does not block the flow of water through the drainage

easement. Notwithstanding anything herein to the contrary, so long as Declarant or builders designated by Declarant maintain any model homes within the Property, they shall have the right to fence all or any part of any Lots being used for parking for the term of such use.

S. Yard Accessories and Play Structures. All yard accessories and play structures, including basketball hoops or backboards and any other fixed games, shall be located at the side or rear of the Dwelling, except that, in the case of Dwelling(s) on corner Lots, such accessories and structures shall be restricted to the side yard furthest from the side street and to that portion of the rear yard which is no closer to the side street than a fence would be permitted to be located under Subsection 18(b), above. Basketball structures, either permanently mounted to Dwelling above the garage or mounted to a permanent pole, will be allowed only under the following conditions:

1. basketball hoops and structures must be well-maintained;
2. backboards must be transparent or white, NBA approved, with a limit of two colors of trim;
3. nets are limited to white nylon; and
4. the location of the basketball hoop and structure must first be approved by the ARB.
5. If pole-mounted, the pole must be metal, either black or galvanized and permanently mounted into the ground with a concrete base. No permanent basketball structures may be placed in any side yard.

T. Use: Rentals. Lots shall be used for single family residential purposes only; provided, however, Owners may rent or lease any Lot or Dwelling. Lots and Dwellings may be rented for any length of time exceeding twenty nine days in length of term.

U. Tools. Swimming pools may not be located in the front or side yard of any Lot, nor nearer than the Dwelling to any side street lot line.

V. Dwellings.

- (a) Each Dwelling shall contain more than the minimum square feet of air conditioned area under roof, exclusive of screened area, open porches, terraces, patios and garage set forth below:

Minimum Square Feet    1500 sq. ft.

- (b) Each Dwelling shall have an attached fully enclosed garage capable of housing not less than one (1) standard sized automobile. The garage shall not be enclosed for use as a living area.

- (c) Setbacks for Dwellings shall be as follows:

Front yard	25 feet
Rear yard	25 feet
Side yard	7.5 feet
Corner side yard	25 feet

Special Setbacks for Mechanical Equipment and Accessory Structures

	Side	Rear
Air Conditioning/Heating unit <sup>1</sup>	1.5'	16.5'
Patio Deck/Pool Deck including decks above grade <sup>1</sup>	5'	5'
Swimming Pool <sup>1</sup>	8'	8'
Screen Room/Covered Porch with Integral Roof <sup>1</sup>	5'	10'
Pool Enclosure <sup>1</sup>	5'	5'
Swimming Pool Pump <sup>1</sup>	1.5'	5'
Enclosed Storage Shed <sup>1</sup>	5'	15'

<sup>1</sup> These structures are prohibited within the required front yard of the principal structure.

- (d) No Dwelling shall exceed two (2) stories in height.
- (e) Except as permitted pursuant to Section 13 or by the ARB, no projections of any type other than chimneys, skylights and vent stacks shall be placed or permitted to remain above any roof of the Dwelling.
- (f) No Dwelling shall have exposed structural block on its front elevation.
- (g) All driveways shall be constructed of solid concrete, asphalt or decorative pavers approved by the ARB.
- (h) All oil tanks, soft water tanks, wood piles, water softeners, well pumps, sprinkler pumps, pool and spa equipment and heaters, and other or similar mechanical fixtures and equipment, shall be screened or located so as not to be visible from a street or other Lot. This provision shall not apply to central air conditioning compressor units (see Section 11).

W. Tree Removal and Landscaping. Except by Declarant, trees measuring six inches

(6") or more in diameter at three feet (3') or more above ground level shall not be cut or removed without the prior written consent of the ARB; provided, however, trees located within six feet (6') of the location of the Dwelling as approved by the ARB may be removed without prior approval. More restrictive arbor ordinances or environmental laws shall control in the event of conflict herewith. There shall be no removal of trees or Lot clearing, other than clearing of underbrush, until the ARB has approved in writing a general, conceptual landscape plan that designates those existing trees to be retained and preserved on the Lot. All Lots shall have fully sodded front and side lawns except in approved landscape or retained natural areas. All areas of each Lot not covered by building improvements or included within approved gardens and natural areas shall be sodded prior to occupancy of the Dwelling on that Lot. Unless prohibited by law, natural areas shall be finished by removal of underbrush and addition of mulch.

X. Collection. All garbage and refuse shall be placed for pickup not earlier than the evening preceding pickup, and all containers for garbage and refuse shall be returned no later than the evening of pickup to their normal, hidden location. Except for normal construction debris on any Lot during the course of construction of the Dwelling, no weeds, garbage, refuse or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property.

Y. Pumping or Draining. The Owner of any Lot which includes or is adjacent to any pond, creek, bay head, or other body of water shall not reduce the depth or size of said body of water by pumping or draining therefrom.

Z. Ramps. No skateboard or bicycle ramp or similar structure shall be permanently installed or maintained overnight on any portion of the Property.

AA. Declarant Reservation. Any provision of this Declaration to the contrary notwithstanding, until Declarant has completed all of the contemplated improvements and closed the sales of all of the Lots, neither the Owners nor the Association shall interfere with the completion of Declarant's planned improvements and the sale of the Lots. Declarant may make such lawful use of the unsold Lots and the Common Property, without charge, as may facilitate such completion and sale, including, but not limited to, maintenance of sales and construction trailers and offices, the showing of the Lots and the display of signs and the use of Lots for vehicular parking. Without limiting the generality of the foregoing, except only when the express provisions of this Declaration prohibit the Declarant from taking a particular action, nothing in this Declaration shall be understood or construed to prevent or prohibit Declarant from any of the following:

1. Doing on any property owned by it whatever it determines to be necessary or advisable in connection with the completion of the development of the Property, including without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development (all models or sketches showing plans for future development of the Property, as same may be expanded, may be modified by the Declarant at any time and from time to time, without notice); or

2. Erecting, constructing and maintaining on any property owned or controlled by Declarant such structures as may be reasonably necessary for the conduct of its business of completing said development and establishing the Property as a community and disposing of the same by sale, lease or otherwise; or
3. Conducting on any property owned or controlled by Declarant, its business of developing, subdividing, grading and constructing improvements in the Property and of disposing of Lots therein by sale, lease or otherwise; or
4. Determining in its sole discretion the nature of any type of improvements to be initially constructed as part of the Property; or
5. Maintaining such sign or signs on any property owned or controlled by Declarant as may be necessary or desired in connection with the operation of any Lots owned by Declarant or the sale, lease, marketing or operation of Lots; or
6. Filing Supplemental Declarations which modify or amend this Declaration, which add or withdraw Additional Property as provided in this Declaration, or otherwise limit or impair the Declarant from effecting any action which may be required of Declarant by the City, or any other federal, state or local governmental or quasi-governmental agency in connection with the development and continuing operation of the Property; or
7. Modifying, changing, re-configuring, removing or otherwise altering any improvements located on the Common Property or utilizing all or portions of the Common Property for construction access or staging (provided that same does not impair existing access or utility services to the Lots); or
8. Causing utilities to be available to all portions of the Property, including, but not limited, to the granting of easements and rights of way as may be necessary to locate, install and maintain facilities and connections.

BB. Mailboxes. Mailboxes may be located on common lot lines with dual mailbox stands or gang type neighborhood mail boxes used to the maximum extent possible in order to minimize the total amount of single mailboxes. Uniform mailbox placement and design will be governed by the ARB.

CC. Security Bars No security bar system may be installed on any window or door of any Dwelling in the Property.

DD. Variances. The Board of Directors of the Association shall have the right and power to grant variances from the provisions of this Article IX and from the Association's rules and regulations for good cause shown, as determined in the reasonable discretion of the Board. No

variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article IX in any instance in which such variance is not granted.

## **ARTICLE X**

### **ADDITIONAL COVENANTS AND RESTRICTIONS**

No Owner may impose any additional covenants or restrictions on any part of the Property without the prior written approval of Declarant, for so long as Declarant owns any Lots, and thereafter without the prior written approval of the Board.

## **ARTICLE XI**

### **AMENDMENT**

The holders of at least two-thirds (2/3) of the votes in the Association (without regard to class) may change or amend any provision hereof either (1) by executing a written instrument in recordable form setting forth such amendment, or (2) by causing a certified copy of a duly adopted resolution of the Owners to be prepared, and having the same recorded in the Public Records of Volusia County. Any proposed amendment may be initiated by Declarant, the Association, or petition signed by ten percent (10%) of the Owners. If a proposed amendment is to be adopted by vote, a written copy of the proposed amendment shall be furnished to each Owner at least thirty (30) days but not more than ninety (90) days prior to the meeting to discuss the proposed amendment. If adopted by vote, the affirmative vote required for adoption shall be two-thirds (2/3) of the votes of the Members (without regard to class) cast in person or by proxy at a meeting duly called, and the recorded certificate shall contain a recitation that notice was given as above set forth and said recitation shall be conclusive as to all parties, and all parties of any nature whatsoever shall have full right to rely upon said recitation in such recorded certificate. The amendment shall be effective upon recordation of the executed amendment, or the certified copy of the duly adopted resolution, among the Public Records of Volusia County.

## **ARTICLE XII**

### **HUD/FHA/VA AND DISTRICT APPROVAL RIGHTS**

Notwithstanding anything in this Declaration to the contrary, as long as there exists a Class "B" membership, if any one or more of HUD, FHA or VA requires approval or consent by it or them to annexation of Additional Property, any merger or consolidation involving the Association, the placing of any mortgage lien on the Common Property, dedication to the public of any Common Property, any amendment of this Declaration, or dissolution of the Association, by any one or more of said agencies as a condition of making, insuring or purchasing loans on Dwellings in the Property,

and any such loan has been approved, insured or purchased by the applicable agency at the time of the proposed annexation, merger, consolidation, mortgaging, dedication, amendment or dissolution, then the required consent or approval shall be obtained. In addition, any amendment to this Declaration of Covenants, Conditions and Restrictions which alters the Master Surface Water Management System beyond maintenance in its original condition, including the surface water management portions of the Common Property, must have the prior approval of the District. This Declaration may not be amended without the prior written consent of the District if such amendment would change any of the provisions of this Declaration governing or affecting the operation, maintenance or repair of the Master Surface Water Management System for the Property.

### **ARTICLE XIII**

#### **DURATION AND TERMINATION**

This Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Declarant, the Association and any Owner, and their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded in the public records, after which time this Declaration and each Supplemental Declaration shall be automatically extended for successive periods of ten (10) years unless prior to the commencement of any 10-year extension period an instrument signed by the Owners of eighty percent (80%) of the Lots and agreeing to terminate this Declaration is recorded in the Public Records of Volusia County.

### **ARTICLE XIV**

#### **ENFORCEMENT**

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

2. **Enforcement.** Failure of an Owner or that Owner's tenants, licensees, invitees and guests to comply with such restrictions, covenants or rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend the rights of use of the Common Property (except for legal access and utilities) of defaulting Owners. The offending Owner shall be responsible for all costs of enforcement including attorneys' fees actually incurred and court costs. If any person shall violate or attempt to violate this Declaration, it shall be lawful for Declarant, any Owner, or the Association: (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate this Declaration; (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate this Declaration, for the purpose of preventing or enjoining all or any such violations or attempted violations; or (c) to maintain a proceeding for any other equitable or legal recourse or



remedy available at law or in equity. In addition, whenever there shall have been built or there shall exist on any Lot any structure, thing or condition which violates this Declaration, Declarant or the Association (but not any Owner) shall have the right, but not the obligation, to enter upon the Lot where such violation exists and summarily to abate and remove the same, all at the expense of the Owner of such Lot, which expense shall constitute an individual assessment to be treated and collected as set forth in Article VI, and such entry and abatement or removal shall not be deemed a trespass or make Declarant or Association, or the agents or employees of either, liable for any damages on account thereof. The remedies contained in this provision shall be cumulative of all other remedies now or hereafter provided by law or this Declaration. The failure of Declarant, the Association, or an Owner to enforce any covenant, restriction, obligation, right, power, privilege or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior or subsequent thereto.

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

3. Fines. In addition to all other remedies, and to the maximum extent lawful, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner or that Owner's tenants, licensees, invitees and guests to comply with any covenant, restriction, rule or regulation, provided the following procedures are adhered to:

- (a) Notice. The Association shall notify the Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a special meeting of the Board of Directors at which time the Owner shall present reasons why a fine(s) should not be imposed. At least six (6) days' notice of such meeting shall be given.
- (b) Hearing. The alleged non-compliance shall be presented to the Board of Directors after which the Board of Directors shall hear reasons why a fine(s) should not be imposed. A written decision of the Board of Directors shall be submitted to the Owner by not later than twenty-one (21) days after the Board of Director's meeting. The Owner shall have a right to be represented by counsel and to cross examine witnesses.
- (c) Amounts. The Board of Directors (if its or such panel's findings are made against the Owner) may impose special assessments against the Lot owned by the Owner as follows:
  1. For each violation, a fine not exceeding One Hundred Dollars (\$100.00).

2. For a violation or violations which are of a continuing nature after notice thereof (even if in the first instance), a fine not exceeding One Thousand Dollars (\$1,000.00).
- (d) Payment and Collection of Fines. Fines shall be treated as an individual assessment subject to the provisions for the collection of individual assessments, and the lien securing same, as set forth elsewhere in this Declaration.
  - (e) Application of Proceeds. All moneys received from fines shall be allocated as directed by the Board of Directors.
  - (f) Non-exclusive Remedy. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any fines paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.
  - (e) CPI. Unless limited by law, specific dollar amounts stated in this Section shall increase from time to time by application of a nationally recognized consumer price index chosen by the Board of Directors, using the date this Declaration is recorded as the base year. In the event no such consumer price index is available, the Board shall choose a reasonable alternative to compute such increases.

#### ARTICLE XV

#### DAMAGE OR DESTRUCTION TO COMMON PROPERTY

Damage to or destruction of all or any portion of the Common Property shall be addressed in the following manner, notwithstanding any provision in this Declaration to the contrary:

1. Sufficient Insurance Proceeds. In the event of damage to or destruction of the Common Property, if the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such portions of the Common Property to be repaired and reconstructed substantially as it previously existed.

2. Insufficient Insurance Proceeds. If the insurance proceeds are not sufficient to effect total restoration of the Common Property, then the Association shall cause such portions for the Common Property to be repaired and reconstructed substantially as they previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a special assessment against each of the Owners in accordance with the provisions of Article VI of this Declaration.

3. Negligence or Willful Misconduct. Each Owner shall be liable to the Association for the cost to repair any damage to the Common Property not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of any Owner or that Owner's tenants, guests or invitees. In addition, the Association shall have the right to charge any Owner for the increase, if any, in the insurance premium attributable to damage caused by such Owner or that Owner's tenants, guests or invitees. The sums due from an Owner hereunder shall be an individual assessment against the Owner and that Owner's Lot and may be collected as provided elsewhere in this Declaration for the collection of individual assessments.

## ARTICLE XVI

### MORTGAGEE PROTECTION

1. Records and Notices. The Association shall make available to all Owners and to all holders of mortgages on Lots, and to insurers and guarantors of any first mortgage, for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of this Declaration (with all amendments) and the Articles, Bylaws, rules and regulations, and the books and records of the Association (including the budget). Such persons shall be entitled, upon prior written request, (i) to receive a copy of the Association's financial statement for the immediately preceding fiscal year, (ii) to receive notices of and attend Association meetings, (iii) to receive notice from the Association of an alleged default by any Owner in the performance of such Owner's obligations under this Declaration, the Articles or Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default and to the extent that the mortgagee, insurer and/or guarantor has an interest, by virtue of the mortgage, in the Lot owned by the defaulting Owner, and (iv) to receive notice of any substantial damage or loss to the Common Property.

2. Adverse Events. Any holder, insurer or guarantor of a mortgage on a Lot shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Common Property, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Lot, and (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

3. Taxes and Other Charges. After thirty (30) days written notice to the Association, any holder, insurer or guarantor of a mortgage on a Lot shall have the right to pay, singly or jointly, taxes or other charges that are delinquent and have resulted or may result in a lien against or loss of the Association's title to any portion of the Common Property, and to receive prompt reimbursement from the Association.

4. Insurance Premiums After thirty (30) days written notice to the Association, any holder, insurer or guarantor of a mortgage on a Lot shall have the right to pay, singly or jointly, any overdue premiums on any hazard insurance policy covering the Common Property or obtain, singly

or jointly, new hazard insurance coverage on the Common Property upon the lapse of a policy and, in either case, receive prompt reimbursement from the Association.

## ARTICLE XVII

### GENERAL PROVISIONS

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

2. Enforcement. Without limiting the generality of Article XIII, enforcement of these covenants and restrictions shall be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

3. Interpretation. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions and interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter genders shall each include the others.

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

5. Effective Date. This Declaration shall become effective upon its recordation in the Public Records of the County.

6. Conflict. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Association and said Articles shall take precedence over the By-Laws and any rules hereinafter promulgated.

7. Cooperation. Each Owner, by acceptance of a deed therefore or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to cooperate in, and support, any and all zoning, administrative, governmental and/or quasi-governmental filings, applications, requests, submissions and other actions necessary or desired for development and/or improvement of the Property, including, without limitation, signing any required applications, plats, etc. as the owner of any portion of the Property owned or controlled thereby when necessary or requested.

8. Easements. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners hereby designate the Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. All parties using easements granted in this Declaration shall use reasonable efforts to minimize interference with all other permitted uses of the easements and the property subject thereto and shall restore any damage to such property caused in the exercise of any rights granted in any such easement.

9. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Property to the public, or for any public use.

10. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot, shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition, lien and covenant contained herein, whether or not any reference hereto is contained in the instrument by which such person acquired an interest in such Lot.

11. Execution of Documents Required by the City The Declarant's plan for the development of Sunset Cove may require from time to time the execution of certain documents required by the City. To the extent that said documents require the joinder of any or all Owners in Sunset Cove, each of said Owners, by virtue of his acceptance of a deed to his Lot, does irrevocably give and grant to the Declarant, or any of its officers individually, full power of attorney to execute said documents as his agent and in his place and stead.

## ARTICLE XVIII

### DISCLAIMERS

1. Disclaimer of Representations or Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF. IF ANY SUCH WARRANTY

CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

2. General Notwithstanding anything contained herein or in the Articles, bylaws and rules and regulations of the Association or any other document governing or binding the Association, Declarant or the Property (collectively, the "constituent documents"), neither the Association nor the Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Property including, without limitation, residents and their families, agents, employees, contractors, guests or invitees, or for any property of any such persons. Without limiting the generality of the foregoing:

- (a) it is the express intent of the constituent documents that the various provisions thereof which are enforceable by the Association or Declarant or which govern the uses of the Property, have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof;
- (b) the Association is not empowered, nor has been created, to act as an entity which enforces or ensures compliance with the laws of the United States, State of Florida, the City or any other jurisdiction, or prevents tortuous activities; and
- (c) any provisions of the constituent documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for such reason.

Each Owner (by virtue of its, his or her acceptance of title to its, his or her Lot) and each other person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this Article XVIII and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association or Declarant and arising from or connected with any matter for which the liability of the Association or Declarant has been disclaimed in this Article or in this Declaration generally.

As used in this Article XVIII, the words "Association" and "Declarant" shall each include within their meanings all of the respective directors, officers, committees and board members, employees, agents, contractors (including without limitation management companies), and successors and assigns of each.

IN WITNESS WHEREOF Declarant has executed this Declaration on the day and year first above written.

**DECLARANT:**

Signed, sealed and delivered in the presence of:

**Sunset Cove, LLC  
A Florida Limited Liability Company**

**By: Volusia Realty Partners, LLC A Florida Limited Liability Company As Managing Member**

William B. Herring  
William B. Herring  
Witness 1 Printed Name

By: [Signature]  
Print Name: Allan Koch  
Title: Member and Manager

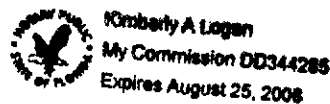
Lisa M. Cummins  
[Signature]  
Witness 2 Printed Name

STATE OF FLORIDA     )  
COUNTY OF VOLUSIA    )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of October, 2004 by Allan J. Koch as Member and Manager of Volusia Realty Partners, LLC, a Florida Limited Liability Company, as Managing Member of Sunset Cove, LLC, a Florida Limited Liability Company. He  is personally known to me or  has produced \_\_\_\_\_ as identification.

[Signature]  
Name: Kimberly A. Logan  
Title: Notary Public

NOTARY STAMP) My Commission Expires:



## EXHIBIT "A"

### LEGAL DESCRIPTION:

BEING A PORTION OF SECTIONS 1 AND 12, TOWNSHIP 16 SOUTH, RANGE 32 EAST AND A PORTION OF SECTION 7, TOWNSHIP 16 SOUTH, RANGE 33 EAST, PER PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 7, TOWNSHIP 16 SOUTH, RANGE 33 EAST, SAID POINT BEING A 4 INCH BY 4 INCH CONCRETE MONUMENT WITH IRON ROD AS DESCRIBED IN FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION DOCUMENT NUMBER 073039; RUN THENCE SOUTH 89 DEGREES 41 MINUTES 14 SECONDS EAST ALONG NORTH LINE OF SAID SECTION 7, FOR A DISTANCE OF 2627.21 FEET TO A 4 INCH BY 4 INCH CONCRETE MONUMENT WITH IRON ROD AS DESCRIBED IN FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION DOCUMENT NUMBER 0012236; THENCE DEPARTING SAID NORTH LINE SOUTH 00 DEGREES 42 MINUTES 08 SECONDS EAST FOR A DISTANCE OF 932.53 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 06 SECONDS WEST FOR A DISTANCE OF 400.04 FEET TO THE EASTERLY LINE OF A 80 FOOT DRAINAGE EASEMENT KNOWN AS THE EAST VOLUSIA COUNTY MOSQUITO CONTROL DISTRICT MAIN DRAINAGE CANAL EASEMENT AS RECORDED IN OFFICIAL RECORD BOOK 847, PAGES 438 THROUGH 444, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE NORTH 00 DEGREES 44 MINUTES 40 SECONDS WEST ALONG SAID EAST LINE, A DISTANCE OF 62.75 FEET TO A POINT OF CURVE, CONCAVE SOUTHWESTERLY AND TO THE LEFT, SAID CURVE HAVING A RADIUS OF 480.00 FEET, A CENTRAL ANGLE OF 88 DEGREES 56 MINUTES 40 SECONDS, A CHORD DISTANCE OF 672.54 FEET, A CHORD BEARING OF NORTH 45 DEGREES 13 MINUTES 00 SECONDS WEST; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 745.14 FEET; THENCE NORTH 89 DEGREES 41 MINUTES 20 SECONDS WEST FOR A DISTANCE OF 1755.96 FEET TO A POINT OF CURVE, CONCAVE NORTHEASTERLY AND TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 400.00 FEET, A CENTRAL ANGLE OF 90 DEGREES 04 MINUTES 42 SECONDS, A CHORD DISTANCE OF 566.07 FEET, A CHORD BEARING NORTH 45 DEGREES 35 MINUTES 56 SECONDS WEST; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 628.87 FEET; THENCE NORTH 00 DEGREES 33 MINUTES 44 SECONDS WEST FOR A DISTANCE OF 2015.96 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF MADELINE AVENUE (A 100 FOOT COUNTY RIGHT-OF-WAY); THENCE NORTH 89 DEGREES 24 MINUTES 18 SECONDS EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 400.00 FEET TO THE NORTHWEST CORNER OF THE GROVES, PHASE D, A SUBDIVISION, AS RECORDED IN MAP BOOK 44 PAGE 108, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, SAID POINT ALSO BEING THE EASTERLY LINE OF SECTION 1, TOWNSHIP 16 SOUTH, RANGE 32 EAST; THENCE SOUTH 00 DEGREES 33 MINUTES 40 SECONDS EAST ALONG THE EAST LINE OF SAID SECTION 1 FOR A DISTANCE OF 2016.11 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 51.514 ACRES MORE OR LESS.





FLORIDA DEPARTMENT OF STATE

Glenda E. Hood  
Secretary of State

June 29, 2004

SUNSET COVE HOMEOWNERS ASSOCIATION AT PORT ORANGE, INC.  
3280 S. ATLANTIC AVENUE  
SUITE A  
DAYTONA BEACH SHORES, FL 32118

The Articles of Incorporation for SUNSET COVE HOMEOWNERS ASSOCIATION AT PORT ORANGE, INC. were filed on June 28, 2004, and assigned document number [REDACTED]. Please refer to this number whenever corresponding with this office.

This document was electronically received and filed under FAX audit number [REDACTED].

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling [REDACTED] and requesting form SS-4.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have any questions regarding corporations, please contact this office at the address given below.

Sincerely,  
Loria Poole  
Document Specialist  
New Filings Section  
Division of Corporations

Letter Number: 904A00042354

Division of Corporations - P.O. BOX 6327 -Tallahassee, Florida 32314

H [REDACTED] 3

**ARTICLES OF INCORPORATION  
OF  
SUNSET COVE HOMEOWNERS ASSOCIATION  
AT PORT ORANGE, INC.**

In compliance with the requirements of Florida Statutes, Chapter 617, the undersigned incorporator has executed, adopted and caused to be delivered for filing these Articles of Incorporation for the purpose of forming a corporation not for profit and does hereby certify:

**ARTICLE I**

**NAME OF CORPORATION**

The name of the corporation is **SUNSET COVE HOMEOWNERS ASSOCIATION AT PORT ORANGE, INC.** (hereinafter called the "Association").

**ARTICLE II**

**PRINCIPAL OFFICE OF THE ASSOCIATION**

The principal place of business and the mailing address of the Association is located at 3280 S. Atlantic Avenue, Suite A, Daytona Beach Shores, FL 32118.

**ARTICLE III**

**REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the registered office of the Association is 3280 S. Atlantic Avenue, Suite A, Daytona Beach Shores, FL 32118, and the name of the initial registered agent to accept service of process within the State of Florida at that address is James R. Mack.

**ARTICLE IV**

**DEFINITIONS**

Unless otherwise provided herein to the contrary, all terms used in these Articles shall have the same definitions and meanings as those set forth in that certain Declaration of Covenants, Conditions and Restrictions for "Sunset Cove", a subdivision, to be recorded in the Public Records of Volusia County, Florida, as it may from time to time be amended (hereinafter called the "Declaration").

H [REDACTED] 3

## ARTICLE V

### PURPOSE AND POWERS OF THE ASSOCIATION

The Association does not contemplate pecuniary gain or profit to the Members thereof. The Association shall not pay dividends and no part of any income of the Association shall be distributed to its Members, directors or officers. The Association shall have all the powers of a non-profit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in these Articles, the Association's Bylaws ("Bylaws"), or the Declaration. The Association shall have the power and duty to do any and all lawful things which may be authorized, assigned, required or permitted to be done by the Declaration, these Articles or the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, operation and improvement of the Property and Areas of Common Responsibility, as defined herein. The Association shall operate, maintain and manage the Master Surface Water Management System (as prepared and required for the Sunset Cove subdivision) in a manner consistent with the permit therefore issued by the St. Johns River Water Management District ("District") and in accordance with applicable District rules. The Association shall levy and collect adequate assessments against Members of the Association for the costs of operation, maintenance and management of the Master Surface Water Management System.

## ARTICLE VI

### MEMBERSHIP

Section 1. Members. Every person or entity who is a record owner of a fee interest ("Owner") in any lot ("Lot") in "Sunset Cove", a subdivision being platted in the City of Port Orange, Volusia County, Florida ("Property") shall be a Member of the Association. Sunset Cove, LLC ("Declarant") shall also be a Member for so long as Declarant owns any portion of the Property. Notwithstanding anything else to the contrary set forth in this Article, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association. The Association membership of each Owner (other than Declarant) shall be appurtenant to and may not be separated from the Lot giving rise to such membership, and shall not be transferred *except upon the transfer of title to said Lot and then only to the transferee of title thereto.* Any prohibited separate transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

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Section 2. Classes. The Association shall have two (2) classes of voting membership:

(a) Class "A". Class "A" Members shall be all Owners, with the exception of Declarant for so long as Declarant retains Class "B" voting rights. Each Class "A" Member shall have one (1) vote for each Lot owned by that Member.

(b) Class "B". The sole Class "B" Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Lot in the Property owned by Declarant.

(c) Termination of Class "B" Membership. As each Lot in the Property is conveyed by Declarant to a Class "A" Member, Declarant's votes for that Lot shall lapse. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of the following:

- (i) When the total outstanding Class "A" votes in the Association equals or exceeds the total outstanding Class "B" votes; or
- (ii) Ten (10) years from the date of recording the Declaration; or
- (iii) At such earlier time as Declarant, in its discretion, may so elect.

Upon the happening of any one of these events, Declarant shall call a special meeting of the Members to advise of the termination of Class "B" membership.

Section 3. Multiple Owners. Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. If joint or multiple Owners are unable to agree among themselves as to how their vote is to be cast, or if more than one (1) Class "A" vote is cast for any Lot, none of the votes for that Lot shall be counted. If any Owner casts a vote on behalf of a Lot, it shall be conclusively presumed that Owner was acting with the authority and consent of all other Owners of that Lot. If more than one Class "A" vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

ARTICLE VII

BOARD OF DIRECTORS

The affairs of this Association shall be managed and administered by a Board of Directors consisting of three (3), five (5), or seven (7) members. Initially, the Board shall consist of three (3) members, with the number in subsequent years to be determined by the members of the Board; provided that there shall always be an odd number of directorships created. The number of directors may be changed by amendment to the Bylaws of the Association. The names and addresses of persons who are to act in the

capacity of director until appointment or election of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Allan Koch	3280 S. Atlantic Ave., Suite A Daytona Beach Shores, FL 32118
James Meck	3280 S. Atlantic Ave., Suite A Daytona Beach Shores, FL 32118
Kenneth D. Goodman	3838 Tamiami Trail N., Suite 300 Naples, FL 34103

Any other provision of this Article VII to the contrary notwithstanding, Owners other than Declarant shall be entitled to elect at least a majority of the members of the Board of Directors not later than three (3) months after ninety percent (90%) of the Lots for all phases of Sunset Cove that will ultimately be operated by the Association have been conveyed to Owners. Until then, Declarant shall be entitled to appoint all members of the Board of Directors. Thereafter, Declarant shall be entitled to elect at least one member of the Board of Directors as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of Sunset Cove. After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant-owned voting interests in the same manner as any other Owner, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors. Interim vacancies in the Board of Directors shall be filled by Declarant until Declarant has no authority to appoint Directors and thereafter by the majority of the remaining Directors, and any such appointed Director shall serve for the remaining term of his predecessor. After Declarant relinquishes its right to appoint the Board of Directors, the Members shall elect the directors by majority vote, for staggered terms of three (3) years each. To create the staggered terms, one post shall become vacant in one (1) year and a successor director shall be elected. The second post shall be deemed vacant at the end of the second year, and a successor director shall be elected. The third post shall be deemed vacant

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at the end of the third year, and a successor director shall be elected. All successor directors shall serve for terms of three (3) years each. In the event that the number of people comprising the Board of Directors is changed, such change in number shall be implemented in such a manner as to have as nearly equal in number as possible the number of directors whose terms expire in any given year.

**ARTICLE VIII**

**OFFICERS**

The day-to-day affairs of the Association shall be administered, subject to the direction and authority of the Board of Directors, by the officers of the Association, which may include a President, Vice President, Secretary and Treasurer and such other officers as permitted by the Bylaws. The officers shall be appointed by the Board of Directors and they shall serve at the pleasure of the Board of Directors. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>
President: Allan Koch	3280 S. Atlantic Ave., Suite A Daytona Beach Shores, FL 32118
Vice President: James Mack	3280 S. Atlantic Ave., Suite A Daytona Beach Shores, FL 32118
Secretary: James Mack	3280 S. Atlantic Ave., Suite A Daytona Beach Shores, FL 32118
Treasurer: Allan Koch	3280 S. Atlantic Ave., Suite A Daytona Beach Shores, FL 32118

**ARTICLE IX**

**DURATION**

The Association shall commence to exist upon the filing of these Articles with the Florida Department of State, and the Association shall thereafter exist in perpetuity.

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**ARTICLE X**  
**AMENDMENTS**

Amendments to these Articles shall be proposed and adopted in the following manner:

**Section 1. Notice.** Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.

**Section 2. Adoption.** Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes. Subject to the terms of Articles XIV, any amendment to these Articles of Incorporation shall require the assent of two thirds (2/3) of the votes of the entire membership without regard to class.

**Section 3. Recording.** A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Volusia County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded.

**Section 4. Limitations.** No amendment shall be made that is in conflict with the Declaration.

**ARTICLE XI**

**BYLAWS**

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided in the Bylaws.

**ARTICLE XII**

**INDEMNIFICATION OF OFFICERS AND DIRECTORS**

**Section 1.** The Association shall defend, indemnify and hold harmless any person of the Association who is made a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceedings, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, officer, committee member, employee or agent of the Association:

- (a) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with an action, suit, or proceeding (other than one by or in the right of the Association), if he acted in good faith, and, with

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- respect to any criminal action or proceedings, he had no reasonable cause to believe his conduct was unlawful; and
- (b) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings) actually and reasonably incurred by him in connection with the defense or settlement of an action or suit by or in the right of the Association, if he acted in good faith.

Section 2. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, or, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

Section 3. Notwithstanding any other provision hereof to the contrary, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association.

Section 4. Any indemnification under Section 1 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director or officer, committee member, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit, or proceeding, or (b) if such quorum is not obtainable, or even if obtainable and a quorum of disinterested Directors so directs, by a majority vote of Members of the Association.

Section 5. Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association from time to time as incurred rather than only after the final disposition of such action, suit, or proceeding. Payment of such expenses shall be authorized by the Board of Directors in each specific case only after receipt by the Association of an undertaking by or on behalf of the director or officer to repay such amounts if it shall later develop that he is not entitled to be indemnified by the Association.

Section 6. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which the Association's directors, officers, committee members, employees or agents may be entitled under the Association's bylaws, agreement, vote of Members or disinterested directors, or otherwise, both as to actions in their official capabilities and as to action in another capacity while holding such offices or positions, and shall continue as to a person who has ceased to be a director, officer, committee member, agent or employee and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Notwithstanding the foregoing provisions, indemnification provided under this Article shall not include indemnification for any action of a director, officer,



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committee member, agent or employee of the Association for which indemnification is deemed to be against public policy. In the event that indemnification provided under this Article is deemed to be against public policy, such an event shall not invalidate or affect any other right or indemnification herein provided.

Section 8. The Association shall have the power, but shall not be obligated, to purchase and maintain Indemnification insurance to provide coverage for any liability asserted against any director, officer, committee member, agent or employee of the Association in any of his capacities as described in Section 1, whether or not the Association would have the power to indemnify him or her under this Article.

Section 9. Any person requesting indemnification shall first look to any insurance maintained by the Association for indemnification against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement (as described above). The Association shall be obligated to indemnify such person (if entitled to indemnification by the Association) only to the extent such insurance does not indemnify such person. In the event that any expenses, judgments, fines, or amounts paid in settlement are paid pursuant to insurance maintained by such Association, the Association shall have no obligation to reimburse the insurance company.

#### ARTICLE XIII

##### INCONSISTENCY

In the event of any inconsistency between the terms and provisions contained in the Declaration and those contained in these Articles of Incorporation, the terms and provisions of the Declaration shall prevail.

#### ARTICLE XIV

##### REQUIRED APPROVALS

Notwithstanding anything in these Articles to the contrary, as long as there exists a Class "B" membership, if any one or more of HUD, FHA or VA requires approval or consent by it or them to annexation of additional property, any merger or consolidation involving the Association, the placing of any mortgage lien on the Common Property, dedication to the public of any Common Property, any amendment of the Declaration or these Articles, or dissolution of the Association, by any one or more of said agencies as a condition of making, insuring or purchasing loans on Dwellings in the Property, and any such loan has been approved, insured or purchased by the applicable agency at the time of the proposed annexation, merger, consolidation, mortgaging, dedication, amendment or dissolution, then the required consent or approval shall be obtained. In addition, in the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Master Surface Water Management System (as prepared and required for the Sunset Cove subdivision) 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 prior to such termination, dissolution or liquidation.


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**ARTICLE XV**  
**INCORPORATOR**

The name and street address of the sole incorporator to these Articles of Incorporation is as follows: James R. Mack, 3280 S. Atlantic Ave., Suite A, Daytona Beach Shores, FL 32118.

**IN WITNESS WHEREOF**, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, constituting the sole incorporator of this Association, has executed these Articles of Incorporation this 25<sup>th</sup> day of June, 2004.

  
[REDACTED]  
Name: JAMES R. MACK  
Incorporator and Registered Agent

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing Articles of Incorporation were acknowledged before me this 25<sup>th</sup> day of June, 2004, by JAMES R. MACK, who is personally known to me.

  
NOTARY PUBLIC  
Print Name: Deann Pike  
My Commission Expires:



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