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Exhibit "B"

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JEFFREY K. BARTON
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INDIAN RIVER CO., FLA

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DECLARATION AND GENERAL PROTECTIVE COVENANTS

FOR

BERMUDA BAY

September 16, 1991

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EXHIBITS

- EXHIBIT "A" - Legal Description of Bermuda Bay Community
- EXHIBIT "B" - Legal Description of Committed Property
- EXHIBIT "C" - Articles of Incorporation of Bermuda Bay
Foundation, Inc.
- EXHIBIT "D" - By-Laws of Bermuda Bay Foundation, Inc.
- EXHIBIT "E" - Foundation Common Area
- EXHIBIT "F" - Description of Sable Oaks Facilities
- EXHIBIT "G" - Legal Description of Lakes

DECLARATION AND GENERAL PROTECTIVE COVENANTS
FOR BERMUDA BAY

THIS DECLARATION is made this 20th day of September, 1991 by WESTINGHOUSE TREASURE COAST COMMUNITIES, INC., a Florida corporation, its successors and assigns ("Declarant").

W I T N E S S E T H:

WHEREAS, Declarant, Westinghouse Treasure Coast Communities, Inc., presently having its principal place of business in Broward County, Florida, is developing a residential community, to be known as the "Bermuda Bay Community"; and

WHEREAS, the real property which may ultimately be developed as part of the Bermuda Bay Community is located in the Town of Indian River Shores, Indian River County, Florida, and legally described on Exhibit "A" to this Declaration; and

WHEREAS, Declarant by this "Declaration" hereby imposes those certain protective covenants, conditions and restrictions set forth herein upon only a portion of the Bermuda Bay Community, which portion of the Bermuda Bay Community is legally described on Exhibit "B" to this Declaration and which shall be herein referred to as "Committed Property"; and

WHEREAS, Declarant may, in the future, elect to add or not to add additional portions of the Bermuda Bay Community to the Committed Property and thereby subject such additional portions of the Bermuda Bay Community to this Declaration and to amend this Declaration, and, as well, to impose additional protective covenants, conditions and restrictions not set forth in this Declaration on such additional portions of the Bermuda Bay Community; and

WHEREAS, there shall be certain "Foundation Common Area" (as that term is hereinafter defined) serving the Committed Property such as, without limitation, streets, entranceways, open areas, an irrigation system and the "Lakes", (as that term is hereinafter described in Article 5.1 hereof) all are more particularly described in this Declaration; and

WHEREAS, Declarant may include within the Committed Property of the Bermuda Bay Community as part of the Foundation Common Area certain recreational and beach facilities, which may be used by "Persons" (as that term is hereinafter defined) some of whom may not be residents of the Bermuda Bay Community; and

WHEREAS, Declarant has the right, as set forth in this Declaration, to divide the Committed Property into different "Neighborhoods" (as that term is hereinafter defined); and

WHEREAS, Declarant may impose, or cause to be imposed, additional protective covenants, conditions and restrictions, in conjunction with this Declaration, as may be necessary and appropriate on each Neighborhood; and

WHEREAS, Declarant desires to provide for the preservation of property values, amenities and opportunities in the Committed Property and to contribute to the personal and general health, and welfare of residents and for the maintenance of waterbodies and Lakes, Foundation Common Area and land and improvements thereon, and to this end desires to subject the Committed Property, to the protective covenants, conditions, restrictions, and other provisions hereinafter set forth, each and all of which is and are for the benefit of the Committed Property and each "Owner" (as that term is hereinafter defined) thereof; and

WHEREAS, Declarant has caused the Bermuda Bay Foundation, Inc., a Florida corporation not for profit (the "Foundation") to be formed, which Foundation has joined in this Declaration and to which there has been and will be delegated and assigned certain powers and duties of operation, administration, maintenance and repair of portions of the Committed Property; and the collection and disbursement of the "Operating Expenses" (as this term is hereinafter defined) all as more particularly set forth herein. The Foundation is NOT a condominium association under Chapter 718, Florida Statutes; and

WHEREAS, Declarant may, in its sole discretion, from time to time, convey, lease or grant a license or other use right to lands within or without the Bermuda Bay Community (or cause same to be so done by additional parties by deed, easement, or otherwise to the Foundation (which must accept the same), for the purpose of maintenance, landscaping, drainage, recreation or other purposes that will be for the use and benefit of some or all of its "Members" (as that term is hereinafter defined) and their families, tenants and guests.

NOW, THEREFORE, the Declarant, Westinghouse Treasure Coast Communities, Inc., declares that the Committed Property, together with such additional portions of the Bermuda Bay Community, if any, as may be hereafter added to the Committed Property in accordance with the Declaration, are and shall be owned, used, sold, conveyed, encumbered, demised and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, burdens, liens, and all other provisions of this Declaration, and the other "Governing Documents" (as that term is hereinafter defined), all of which shall run with the Committed Property and be binding on all parties having any right, title or interest in the Committed Property or any part thereof, their

heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1
DEFINITIONS

1.1 "Additional Lands" shall mean and refer to such real property, if any, which is not now part of the Bermuda Bay Community and which the Declarant shall have the right to add to the Bermuda Bay Community, as more fully described in Article 2.3 hereof.

1.2 "Articles" shall mean and refer to the Articles of Incorporation of Bermuda Bay Foundation, Inc., a copy of which is attached hereto as Exhibit "C" as may be amended from time to time.

1.3 "Assessments" shall mean and refer to any and all assessments made by the Foundation in accordance with the provisions of this Declaration, including, but not limited to, "General Assessments" (as that term is described in Article 8 hereof) to pay "Operating Expenses", and expenses for which a "Special Assessment" (as that term is described in Article 8 hereof) may be assessed, all as more particularly set forth in this Declaration.

1.4 "Beach Access Facility" shall mean and refer to that certain Beach Access Facility to be located on Tract "A" of the "Oceanside Plat" as more fully described in Article 2.5 hereof.

1.5 "Bermuda Bay Community" or "Bermuda Bay" shall mean and refer to that certain real property located in the Town of Indian River Shores, Indian River County, Florida, and legally described on Exhibit "A" to this Declaration. Only a portion of the Bermuda Bay Community is presently subject to this Declaration as Committed Property, but all or portions of the Bermuda Bay Community may become Committed Property as further set forth in Article 2.3 hereof. Notwithstanding the foregoing, Declarant may, in its sole and absolute discretion, add real property to the Bermuda Bay Community. Such additional real property shall be added to the Bermuda Bay Community by the Declarant's recordation of a "Supplement" (as that term is defined in Article 1.29 hereof and described in Article 2.3 hereof).

1.6 "Board of Governors" or "Board" shall mean and refer to the Board of Governors of the Foundation.

1.7 "By-Laws" shall mean and refer to the By-Laws of Bermuda Bay Foundation, Inc., a copy of which is attached hereto as Exhibit "D" as may be amended from time to time.

1.8 "Committed Property" shall mean and refer to (a) those portions of the Bermuda Bay Community legally described on Exhibit "B" to this Declaration; and (b) those portions of the Bermuda Bay

Community, if any, which may hereafter become Committed Property pursuant to the recordation of one or more Supplements.

1.9 "Declarant" shall mean and refer to Westinghouse Treasure Coast Communities, Inc., a Florida corporation, presently having its principal place of business in Broward County, Florida, its successors or assigns of any or all of its rights under the Governing Documents as specified by Declarant.

1.10 "Declaration" shall mean and refer to this document, entitled "Declaration and General Protective Covenants for Bermuda Bay" as the same may be amended from time to time.

1.11 "Dwelling Unit" shall mean and refer to any residential dwelling unit intended as an abode for one family constructed on a portion of the Committed Property including, without limitation, a detached single family home, an attached single family home, an attached townhouse, patio dwelling, duplex or multiplex dwelling, or any apartment-type building and whether any of the foregoing are subject to fee simple, cooperative, condominium, rental or other forms of ownership or possession.

1.12 "Foundation" shall mean and refer to Bermuda Bay Foundation, Inc., a Florida corporation not for profit, its successors or assigns.

1.13 "Foundation Common Area" shall mean and refer to all personal property and real property including any improvements and fixtures thereon, owned, leased or the use of which, exclusively or non-exclusively, has been granted to the Foundation as set forth in this Declaration or a Supplement, including, but not limited to, the real property described in Exhibit "E" attached hereto and made a part hereof, all as further described herein. The Foundation Common Area is NOT condominium property under Chapter 718, Florida Statutes.

1.14 "Governing Documents" shall mean and refer to this Declaration, Supplements, if any, Neighborhood Covenants and the Articles, By-Laws and "Rules and Regulations", if any, all as filed or recorded, if required, and all as may be amended from time to time. In the event of conflict or inconsistency among the documents, the governing provision shall be that first appearing in the following sequence: this Declaration, Neighborhood Covenants, the Articles, the By-Laws and the Rules and Regulations.

1.15 "Land Segment" shall mean and refer to real property which is a part of the Committed Property which is not a Lot, or a Dwelling Unit and which is designated by Declarant in writing as a Land Segment. Each Land Segment, if any, shall have that number of Property Units and Values which are attributed and assigned to it by Declarant in accordance with the provisions of Article 6.4 of this Declaration.

1.16 "Lot" shall mean and refer to a single family lot shown on a plat recorded in the Public Records of Indian River County, Florida which is part of the Committed Property. Notwithstanding anything contained herein, in the event there is a recorded Declaration of Unity of Title executed by Declarant stating that a Lot and a portion of a contiguous Lot or Plot shall "be held and treated as one single parcel of land", such Lot and portion of such contiguous Lot or Plot: (a) shall be considered as one (1) Lot for purposes of this Declaration; and (b) building setbacks and minimum building setback areas shall be measured from the new perimeter property lines of the Lot as combined by the Declaration of Unity of Title. No more than one (1) Dwelling Unit may be constructed on a Lot (as defined herein) in accordance with applicable zoning and use regulations.

1.17 "Members" shall mean and refer to those Persons who are entitled to membership in the Foundation, i.e., every Owner and Declarant.

1.18 "Neighborhood" shall mean and refer to each separately developed and denominated portion of the Committed Property designated by Declarant as a Neighborhood in an Amendment to this Declaration, a Supplement or Neighborhood Covenants.

1.19 "Neighborhood Covenants" shall mean and refer to any and all covenants, conditions, restrictions, and other provisions imposed by an instrument recorded in the Public Records of Indian River County, Florida and executed to or consented to by Declarant and which is applicable to one or more specific Neighborhoods.

1.20 "Operating Agreement" shall mean and refer to an Agreement which may be entered into by and among the Sable Oaks Condominium Association, Inc., the Foundation and Declarant pertaining to the operation of particular recreational amenities (the "Sable Oaks Facilities"). A copy of the Operating Agreement if executed, shall be attached to an Amendment or Supplement to this Declaration. A portion of the expenses under the Operating Agreement, if entered into, shall be Operating Expenses.

1.21 "Operating Expenses" shall mean and refer to the expenses for which Owners are liable to the Foundation as described in this Declaration or in any of the other Governing Documents, and include, but are not limited to, the costs and expenses incurred by the Foundation in fulfilling its obligations hereunder and in administering, operating, owning, constructing, reconstructing, financing, maintaining, repairing and replacing the Foundation Common Area, Lakes, waterbodies, other real property, or portions of any of these, a portion of the expenses under the Operating Agreement, if entered into, as well as Special Assessments.

1.22 "Owner" shall mean and refer to a record owner of any fee interest in any Plot located within the Committed Property, but

excluding those having an interest in a Plot merely as security for the performance of an obligation.

1.23 "Person" shall mean and include an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more Persons having a joint or common interest, or any other legal entity.

1.24 "Plot" shall mean and refer to any of the following property within that portion of the Bermuda Bay Community which is Committed Property: a Lot; a Dwelling Unit; a Land Segment; or any quantity of real property, platted or unplatted, including any fixtures, improvements and Structure thereon, capable of being described with such definiteness that its location and boundaries may be established, which is determined by the Declarant to be used, developed and conveyed as a unit and is so designated by Declarant and which is not Foundation Common Area.

1.25 "Property Units" shall mean and refer to the number of Dwelling Units which may be constructed on a particular Land Segment and which have been attributed to a particular Land Segment by Declarant, in writing, in accordance with the provisions of Article 6.4 of this Declaration.

1.26 "Rules and Regulations" shall mean and refer to the rules and regulations promulgated by the Board, if any, in accordance with the terms of the Governing Documents.

1.27 "Sable Oaks Facilities" shall mean and refer to real property and improvements thereon, owned by the Sable Oaks Condominium Association, Inc. and described on Exhibit "F" hereto, the non-exclusive use of which may be made available to the Owners pursuant to the Operating Agreement.

1.28 "Structure" shall mean that which is built or constructed, or any piece of work artificially built or composed of parts joined together in some definite manner, the use of which requires more or less permanent or temporary location on the ground, or which is attached to something having a permanent or temporary location on the ground or bottom of any body of water. The term shall be construed as if followed by the words "or part thereof."

1.29 "Supplement" shall mean and refer to an instrument executed by Declarant for the purpose of adding real property to the Bermuda Bay Community or for the purpose of subjecting portions of the Bermuda Bay Community to this Declaration as Committed Property, for designating a Neighborhood or for such other purposes as more fully described in this Declaration, including, without limitation, Article 2.3 hereof.

1.30 "Turnover Date" shall mean and refer to that date when Declarant shall no longer appoint a majority of the Board, as further described in Article 5 of the Articles, which shall be no

later than ninety (90) days after the Declarant no longer owns fee simple title to at least five (5) gross acres of the Bermuda Bay Community, which is either Committed Property or which may in the future become Committed Property, or at any earlier time upon a voluntary election of Declarant.

1.31 "Uncommitted Property" shall mean and refer to those portions of the Bermuda Bay Community which are not Committed Property.

1.32 "Value" shall mean and refer to a number, assigned to a Plot which is used in determining that Plot's applicable portion of Operating Expenses, all in accordance with the provisions of Articles 6.4 and 8.1 of this Declaration, and in regard to Land Segments, the Value shall also be used to determine the number of votes assigned to a Land Segment as set forth in Article 6.2 of this Declaration and the number of Dwelling Units which may be constructed on a Land Segment in accordance with Article 6.4 hereof.

ARTICLE 2
PLANS FOR DEVELOPMENT AND
DECLARANT'S RIGHTS AND POWERS

2.1 General Plan for Development.

(a) General. Declarant is the Owner of the Bermuda Bay Community and presently plans to develop all or a portion of same as a multiphased development, including, without limitation, residential and recreational property. A portion of the Bermuda Bay Community is Committed Property under this Declaration and all or a portion of the remainder of the Bermuda Bay Community may become Committed Property hereunder pursuant to a Supplement or Supplements.

(b) Neighborhood. It is currently anticipated that the Bermuda Bay Community will be divided into Neighborhoods, each of which shall be subject to Neighborhood Covenants in addition to this Declaration. The first Neighborhood shall be Bermuda Bay Oceanside ("Oceanside") platted by the plat thereof recorded in Plat Book 13, Page 52, of the Public Records of Indian River County, Florida (the "Oceanside Plat") and which is the first portion of the Bermuda Bay Community committed to this Declaration as Committed Property.

(c) Recreation Area. A Beach Access Facility shall be located on Tract "A" ("Tract A") of the Oceanside Plat and shall be Foundation Common Area. The Declarant shall have the absolute right, but not the obligation to establish additional recreational facilities for which Declarant may, in its sole and absolute discretion, establish user fees. There may also be conservation and open areas as well as other facilities. The mentioning of any

facilities or amenities including, without limitation, the Beach Access Facility in this Article is subject to the provisions of Article 2.4 and Article 2.5 of this Declaration. Declarant reserves the right to permit Persons who are not Members or Owners to use any facility prior to or after conveying such facility to the Foundation as Foundation Common Area.

(d) Transportation Service. Declarant reserves the right, in its sole and absolute discretion, to provide for a transportation system operated by the Foundation, or another entity, between the Beach Access Facility, other areas and parking area or areas. Declarant also reserves the right, in its sole and absolute discretion, to provide for a valet service at the Beach Access Facility and/or a shuttle service providing transportation from various locations in the Bermuda Bay Community to the Beach Access Facility or other areas. All or a portion of the costs of operating such transportation system, if established, or all or a portion of the cost of a valet system, if established, shall be an Operating Expense.

(e) Operating Agreement. In the event the Operating Agreement is entered into, a copy of same shall be recorded in the Public Records of Indian River County, Florida by Declarant. The Operating Agreement, if entered into, may provide for the non-exclusive use of the Sable Oaks Facilities by Owners. A portion of the expenses of operating, maintaining and administering the Sable Oaks Facilities may be Operating Expenses. Further, it shall, if entered into, provide for the use by Persons other than Owners of certain Foundation Common Area, including, but not limited to, the Beach Access Facility, utilities and ingress and egress. Under the Operating Agreement, the Foundation may be obligated to maintain certain areas, not Foundation Common Area and the cost of same shall be Operating Expenses.

2.2 Changes in Plan of Development; Committed Property.

(a) The foregoing plan of development is the plan currently anticipated by Declarant. Declarant shall not be obligated in any way to undertake the above plan of development. Many factors, including changes in market conditions and in consumer preferences, may cause Declarant to change such plans, and nothing in this Declaration shall in any way limit the right of Declarant, in its sole and absolute discretion, to change the foregoing plan of development. Any changes in the plan of development of the Bermuda Bay Community may be reflected in a Neighborhood Covenant or Supplement executed by Declarant and recorded in the Public Records of Indian River County, Florida.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED OR CONTAINED IN ANY OF THE GOVERNING DOCUMENTS, ONLY THAT PORTION OF THE BERMUDA BAY COMMUNITY WHICH IS COMMITTED PROPERTY SHALL BE SUBJECT TO THE PROVISIONS OF THIS DECLARATION AND THE OTHER GOVERNING DOCUMENTS.

2.3 Additional Lands and Property
Which May or May Not Be Committed.

(a) Declarant shall have the right, and the power, but neither the duty nor the obligation, in its sole and absolute discretion, and by its sole act, to add, at any time and from time-to-time, additional portions of the Bermuda Bay Community ("Uncommitted Property") to the Committed Property by recording in the Public Records of Indian River County, Florida, a Supplement subjecting the respective additional portion of the Uncommitted Property to this Declaration.

(b) Declarant may also, in its sole discretion, include in a Supplement certain provisions which (i) modify any of the provisions of this Declaration insofar as they may apply to such Uncommitted Property only, or (ii) create new provisions applicable to such Uncommitted Property being committed, or (iii) omit the applicability of any of the provisions of this Declaration to such Uncommitted Property, or (iv) do any, all, or none of the above.

(c) The execution and recordation of this Declaration shall not be construed to require Declarant to subject any portions of the Bermuda Bay Community, other than the Committed Property, to the covenants, conditions, restrictions or other provisions of this Declaration or any other recorded instrument.

(d) If Declarant determines not to add a particular portion of the Bermuda Bay Community to the Committed Property, and Declarant desires to make a statement to this effect of record, then Declarant may by its act alone, without the necessity of the joinder of the Foundation or any Person, place a statement to that effect in the Public Records of Indian River County, Florida, in which event such portion of the Bermuda Bay Community described therein shall not become Committed Property and shall not be affected by any of the provisions of this Declaration whatsoever.

(e) Declarant shall have the right and power, but neither the duty nor the obligation, in its sole discretion, and by its sole act, to add Additional Lands to the Bermuda Bay Community by recording a Supplement to that effect in the Public Records of Indian River County, Florida. Some of the effects of adding such Additional Lands to the Bermuda Bay Community may be to increase the size of the Bermuda Bay Community, the number of Dwelling Units, the size or amount of recreation amenities, the number of Members, the number of Neighborhoods, the size of the Foundation Common Area, the number of Persons using the Foundation Common Area, the size of the Foundation Budget and the total number of votes which may be cast by Members.

2.4 Foundation Common Area.

(a) Foundation Common Area are those portions of the Committed Property designated as such in this Declaration, a Supplement or other written instrument recorded in the Public Records of Indian River County, Florida. Declarant may, in its sole and absolute discretion, establish Foundation Common Area for recreational, maintenance, utilities, access, ingress, egress, irrigation, drainage, or other purposes. The Foundation Common Area shall be only that property designated as such by Declarant. The real property described on Exhibit "E" hereto is Foundation Common Area.

(b) Declarant shall have the right, and the power, but neither the duty nor the obligation, in its sole discretion, to, or to cause others to, convey, lease or grant a license or other use right to real property within or without the Bermuda Bay Community, whether it be Committed Property or not, to the Foundation for such purposes as may be expressed in the instrument of conveyance, lease or grant of license or use. No such real property shall be considered to be Foundation Common Area until actually so conveyed, leased or a grant of license or other use right is created by a written instrument.

(c) Any such conveyance, lease or grant of license or use right to the Foundation may be exclusive or non-exclusive so that Persons other than the Foundation or Members may or may not have a right, power, duty or privilege with respect to all or any part of any real property so conveyed, leased, licensed or the use of which has been granted. The Foundation shall accept from Declarant, or others approved by Declarant, any such conveyance, lease, grant of license or grant of use right. Except as provided above and in Article 2.4(d) below, the Foundation shall not accept, from any Person other than Declarant, a conveyance, lease, grant of license or grant of use right except upon the prior written consent of the Declarant, which consent may be withheld in Declarant's sole discretion.

(d) Prior to any conveyance, lease or grant of license or other use right by Declarant to the Foundation of any property, Declarant shall have the right to charge reasonable fees for the use of such property. Thereafter the right to use such property is subject to the payment of Operating Expenses, as the case may be, and may also be subject to reasonable rents, fees and other charges in favor of the Foundation, and any rents, fees and other charges required to be paid to Declarant under leases, grants, licenses or contracts creating use rights shall continue to be paid.

(e) The Foundation may enter into easement agreements or other use or possessory agreements whereby the Foundation may obtain the use or possession of certain real property not owned by Declarant, on an exclusive or non-exclusive basis, and included or

not included within Committed Property for certain specified purposes and whereby the Foundation agrees to maintain and pay for the taxes, insurance, administration, upkeep, repair, replacement and maintenance of such property. The aforestated expenses shall be an Operating Expense, as the case may be, whether or not such real property shall be Foundation Common Area. Prior to the Turnover Date, no such agreement shall be entered into without the prior written consent of Declarant, which consent may be withheld in Declarant's sole discretion.

(f) Declarant declares, subject to the provisions of this Declaration, including, but not limited to, the provisions of Articles 4.1 and 2.4(b) hereof, that the Foundation Common Area are subject to a perpetual non-exclusive easement in favor of Declarant, the Foundation, the Owners, their family members, guests, invitees, and lessees, to use the Foundation Common Area for all normal purposes which same is intended, including, but not limited to, ingress and egress and for the furnishing of services and facilities for which the same are reasonably intended in accordance with the terms of this Declaration. Declarant further declares that the Foundation Common Area are also subject to an easement for ingress and egress in favor of governmental and quasi governmental entities for the purposes of police, fire, mail, ambulance, garbage collection, municipal or other such governmental services.

(g) Declarant reserves the right for itself and its designees to grant additional easements for use, ingress and egress, governmental services and utilities over, across and under all portions of the Bermuda Bay Community, including, without limitation, the Foundation Common Area, for the use and benefit of Owner and Persons who are not Members of the Foundation or Owners and for portions of the Bermuda Bay Community which are not Committed Property hereunder.

(h) The Foundation may enter into agreements with other Persons to provide for the maintenance, upkeep and repair of any of the Foundation Common Area, or any other property which the Foundation has the obligation to maintain, upkeep and repair under this Declaration.

(i) Declarant, until the Turnover Date, and thereafter the Foundation, shall have the right, in its sole discretion, to suspend a Member's right to use the recreation portions of the Foundation Common Area, during any period when such Member fails to pay any Assessment when due.

2.5 Tract "A" of Oceanside.

(a) As set forth in Article 2.1(c) hereof, Declarant shall construct a Beach Access Facility on Tract "A" of the Oceanside Plat. The Beach Access Facility shall be part of the Foundation Common Area. The Beach Access Facility shall be constructed by

Declarant, at a location chosen by Declarant, in its sole discretion, on Tract "A". Once constructed Declarant reserves the sole and absolute discretion to relocate the Beach Access Facility. Declarant reserves the right, in its sole and absolute discretion, to complete the Beach Access Facility in such manner and to such extent as it may determine. To the extent reasonably required, there is hereby created on, across, above, under and through Tract "A" an easement for the installation, construction, maintenance and repair of the Beach Access Facility for the benefit of the Declarant, Foundation and their designees.

(b) Tract "A" and Tract "B" of the Oceanside Plat shall be subject to a non-exclusive easement to all Persons permitted to use the Beach Access Facility, including, without limitation, to those Persons permitted to use same under the Operating Agreement, if entered into and to all Owners, their guests, family members and lessees for normal beach recreational purposes and ingress and egress. Declarant reserves the right to grant the use of Tract "A" and Tract "B" of the Oceanside Plat to other Persons, as it determines, for normal beach recreational purposes and ingress and egress. The Foundation shall have the right to promulgate and enforce Rules and Regulations concerning the use of the Beach Access Facility.

(c) As aforesated, the Beach Access Facility shall be available for use by Persons other than Owners and Members, as determined by Declarant and under the Operating Agreement, if entered into. Some of these Persons may have the right to elect, in writing in advance, on an annual basis, to use such Beach Access Facility.

2.6 Enforcement.

(a) Declarant reserves unto itself and its designees the right, and the power, (i) to enforce the covenants, conditions, restrictions, and other provisions of this Declaration, and (ii) to delegate or assign, either exclusively or non-exclusively, any or all of its rights, powers, duties or privileges hereunder to a Person, the Foundation, an Owner or to any other designee. When Declarant determines to assign any of its rights, powers, privileges or duties hereunder, Declarant shall have no responsibility or liability in regard thereto, including, but not limited to, any responsibility or liability for the failure of any assignees to perform the rights, powers, privileges or duties so assigned.

(b) If Declarant does not enforce the covenants, conditions, restrictions or other provisions of this Declaration, then the following parties may in the following priority enforce same as hereinafter set forth; (i) the Foundation; (ii) the Owners of at least five (5) Plots. If a party with a lesser priority desires to enforce this Declaration then that party must first give thirty (30) days written notice to the parties with higher priority, starting first with Declarant, that the noticing party

intends to initiate enforcement upon the expiration of such thirty (30) day period, and if during such period the parties with the higher priority do not initiate enforcement procedures then the party of the lesser priority may so initiate such enforcement procedures. Any party, including Declarant, not initiating enforcement procedures shall incur no liability whatsoever for such non-enforcement.

(c) Declarant, its designees or other party having the right to enforce this Declaration, shall have the right and the power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any Person violating or attempting to violate any such provisions, to restrain the violation or attempted violation of such provisions, to require specific performance of such provisions, to recover damages for violations of such provisions, and to enforce any lien created by this Declaration. Failure by Declarant, or the Foundation, or any Owner, or any other Person, to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter.

(d) The costs and attorneys fees, including those resulting from any investigative, trial or appellate proceedings, incurred by Declarant or its designees or a party having the right to enforce this Declaration, if any, pursuant to Article 2.6(b) above, who prevails in any such enforcement action, in any action against a Person to enforce any provision of this Declaration shall be a personal obligation of such Person which shall be paid by such Person and any amount thereof which remains due and unpaid shall be a continuing lien upon such Owner's Plot, collectible in the manner provided in Article 7 hereof.

2.7 Declarant's Inaction.

Neither the execution and recordation of this Declaration nor the recordation of any other instrument subjecting any land in the Committed Property to protective covenants, conditions, restrictions or other provisions shall obligate or require (i) Declarant to grant any right, power, duty or privilege of any nature or kind to the Foundation or to any other entity, or (ii) Declarant to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to do.

2.8 Changes in Use or Boundaries.

Declarant shall have the right, by an amendment hereto or Supplement executed by Declarant alone, without the consent of the Foundation, any mortgagees or Owners or any other Person, to take such action as may be required to relocate, change the use or extent of use, or modify the boundaries of any of the Foundation Common Area, Plot, easement or use right provided for herein,

notwithstanding that such portions of the Foundation Common Area, Plot or easement or use right may be or may affect Committed Property.

ARTICLE 3
GENERAL PROTECTIVE COVENANTS

3.1 Use Restrictions.

Declarant reserves the absolute right, power and authority to assign and reassign various land uses to Bermuda Bay by instrument recorded in the Public Records of Indian River County, Florida, and to inaugurate and implement variations from, modifications to, or amendments of any governmental zoning, land use restrictions, plans, land development regulations, development order and development permits applicable to Bermuda Bay. Such modifications or amendments may increase or decrease the number of Plots permitted on all or portions of Bermuda Bay.

3.2 Plans, Specifications and Locations of Structure.

(a) Declarant may establish and from time to time modify, architectural standards for the control of the design of all Structure and other work within Committed Property.

(b) No Structure shall be commenced, erected, improved or altered, nor shall any grading, excavation, tree removal or change of exterior color or other work which in any way alters the exterior appearance of any Structure or Plot or of any Foundation Common Area be done without the prior approval of the Declarant.

(c) Each Owner shall, prior to the commencement of any construction, submit in sequence to Declarant the following materials: (i) a "preliminary/concept plan and design proposal" which shall include schematic site plans, floor plans, exterior elevations and materials, detailed building and site design plans and specifications sufficient and definite in detail so that there can be determined the character, exterior appearance, exterior materials and colors, and the quality and kind of building and landscape materials proposed; and (ii) "final plans and specifications" which shall be a true extension of the preliminary/concept plan and design proposal, including a sealed plot plan, in detail and to scale. Declarant shall, in writing, within ten (10) days after receipt of each required submittal which it deems complete, approve, reject or approve, subject to change, such plans, proposals and specifications as are submitted to it as required above. Declarant reserves the right to require any additional information which may assist it in reaching its decision. If no written notice is sent by Declarant within said ten (10) days the submittal shall be deemed rejected. After approval, any change in location, plot plan, exterior colors or exterior materials must be re-submitted for approval. Failure to

obtain approval of Declarant of all such plans, proposals, specifications and plot plans prior to the commencement of any construction shall be deemed a material breach hereof and Declarant shall then have the right, in addition to any other rights permitted by law or in equity or in the Governing Documents, to proceed in the courts to obtain a mandatory injunction requiring any construction done without said approval to be torn down or removed forthwith. Declarant reserves the right to modify this submission and approval process as it may relate to any particular Neighborhood.

(d) All plans, specifications, proposals, elevations and the like required to be submitted pursuant to this Article 3.2 shall be prepared, executed and sealed by an architect duly licensed by the State of Florida.

(e) The approval, rejection or withholding of any approval by Declarant of the plans, specifications, proposals, elevations and the like and the location of all Structure, and every alteration of any Structure, shall not be construed or interpreted as a representation or determination by Declarant that any building, plumbing, electrical code or other applicable governmental regulations, requirements or other standards have or have not been properly met by the Owner, it being understood that the approval of Declarant relates only to the aesthetics of the Structure shown on the plans, specifications, proposals, elevations and the like and not to their sufficiency or adequacy. Each Owner shall be responsible for obtaining all necessary technical data and to make application to and obtain the approval of the Town of Indian River Shores Building Department, and any other appropriate governmental agencies prior to commencement of any work or construction.

(f) Declarant shall have no duty, responsibility nor liability to any Owner or to any other Person whomsoever in respect to the exercise of its rights, or the failure to exercise its rights under the Declaration. Declarant may reject plans, specifications, proposals, elevations and the like based on any grounds or reason whatsoever, including purely aesthetic grounds, in its sole and absolute discretion. Declarant's decision to approve, reject or withhold its approval may, in the sole exercise of its discretion, be based upon: (i) the harmony of its exterior design, color and location in relation to, and its effect upon, surrounding Structures, vegetation, topography, and the overall community designs; (ii) the character of the exterior materials; (iii) the planned quality of the exterior workmanship; (iv) Declarant's design and construction standards; (v) Declarant's development plan; (vi) the Owner's failure to pay Assessments, or any installments thereof, when due; or (vii) any other factor deemed material or relevant by Declarant.

(g) No bay windows, chimneys, balconies or other similar extended Structure shall be permitted on, upon or over the building setbacks. Notwithstanding the preceding provision, the

following extended Structure shall be permitted on, upon or over the building setbacks:

- (i) Building appurtenances such as window sills, decorative banding and other similar appurtenances that do not protrude more than twelve (12") inches horizontally into a required building setback;
- (ii) Walls, fences, decks, and similar Structure not exceeding six (6) feet in height;
- (iii) The eaves of the roof of the Dwelling Unit;
- (iv) Air conditionings, pool pumps, sprinkler pumps or other similar mechanical equipment, provided there is adequate shielding of said mechanical equipment. The decision of what constitutes adequate shielding shall be made by Declarant, whose decision shall be final; and
- (v) as set forth in a Supplement or Neighborhood Covenant.

3.3 Lakes and Other Waterbodies.

The Foundation shall have the right to promulgate and enforce Rules and Regulations concerning the use of the Lakes (as hereinafter defined), and other waterbodies which are or may become part of the Committed Property, as further set forth in Article 5 herein.

3.4 Colors.

No exterior colors on any Structure shall be permitted that, in the sole judgment of Declarant, would be inharmonious or discordant or incongruous with Committed Property, or a particular Neighborhood. Any future exterior color changes desired by an Owner must first be approved by Declarant.

3.5 Factory Built Structure.

No Structure of any kind of what is commonly known as "factory built," "modular," or "mobile home" type construction shall be constructed, erected or placed on any Plot. Notwithstanding the preceding provision, Declarant, its successors and assigns, may use such Structure for a sales office for the length of time necessary to complete the sell out of all of the Bermuda Bay Community.

3.6 Landscaping.

All areas not covered by Structure, walkways or paved parking facilities shall be maintained as lawn or landscape areas, with underground sprinkler systems, to the pavement edge of any abutting streets and to the water line of any abutting canals, waterbodies or Lakes except as otherwise determined by Declarant. No stone, gravel, or paving of any type shall be used as a lawn unless approved as part of the final landscape plan. All landscaping shall be accomplished in accordance with a plan approved by Declarant. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of Declarant. All required lawns and landscaping shall be completed at the time of completion of the Structure as evidenced by the issuance of a Certificate of Occupancy, or its equivalent, by the appropriate governmental agency ("Certificate of Occupancy"), and shall be kept in good and living condition by Owner.

3.7 Driveways and Parking Areas.

Driveways and parking areas shall be constructed of decorative concrete, paver block, or brick material. Declarant may, in its sole and absolute discretion, approve the use of additional material. Plain concrete, asphalt, or loose stone shall not be permitted. Grass or other unpaved driveways or parking areas shall not be permitted.

3.8 Underground Utility Lines.

All electric, telephone, gas, cable television and other utility lines shall be installed underground.

3.9 Antennas and Flagpoles.

No outside antennas, antenna poles, antenna masts, electronic devices, satellite dishes or antenna towers shall be permitted. Placement of the aforesaid items within any screened enclosure on the Plot shall be permitted so long as there is appropriate landscaping and/or other screening. The decision of what constitutes adequate landscaping and/or screening shall be made by Declarant, whose decision shall be final. No more than one (1) flagpole per Plot for display of the American flag only will be permitted and the flagpole design and location must be first approved in writing by Declarant. An approved flagpole shall not be used as an antenna. No flagpole on a Plot shall exceed a height of fifteen (15') feet above ground level or the height of the Dwelling Unit whichever is less. Declarant, its successors or assigns, shall have the right for as long as Declarant maintains a sales office for the Bermuda Bay Community, to install a flagpole which will not exceed a height of thirty (30') feet above ground level.

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3.10 Accessory or Temporary Buildings.

No tents and no accessory or temporary Structures shall be permitted on any Plot. Declarant may, upon request of the Owner, permit a temporary construction facility during construction, and its size, appearance, color, materials and temporary location on a Plot must be first approved by Declarant. No approved construction facility shall be used as a domicile, either temporary or permanent.

3.11 Outdoor Equipment and Storage Area.

All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool equipment and housings and sprinkler pumps and other such outdoor equipment must be underground or placed in sight-screened, walled-in or fenced-in areas so that they shall not be readily visible from any adjacent street or Plot. In addition, Declarant may require that adequate landscaping be installed around these facilities and maintained by the Owner. No unenclosed storage area shall be permitted on any Plot. No enclosed storage area shall be constructed or erected which is separated from the principal Structure on the Plot.

3.12 Air Conditioners.

All air conditioning units shall be shielded and hidden so that they shall not be readily visible from any adjacent street or Plot. Wall and window air conditioning units shall not be permitted.

3.13 Solar Collectors.

Solar collectors shall be permitted only at locations and on Structure as are first approved by Declarant.

3.14 Signs.

No signs, freestanding or otherwise installed, shall be erected or displayed in or on any Plot or Structure. No sales price may be displayed on any sign, and no "for rent" or "for sale" signs shall be pasted, posted or displayed on any Plot or Structure, including, without limitation, in the window of any Dwelling Unit. No flashing signs shall be permitted. Declarant may summarily remove and destroy all unauthorized signs and same shall not be deemed a trespass, conversion or any other wrongful act. Notwithstanding anything contained herein, subdivision identification signs and required governmental signs (i.e., stop sign, yield sign, etc.) shall be permitted to be located on any Plot. Builder identification signs and lot identification signs approved by Declarant shall be permitted to be located on a Plot during construction of the Structure on such Plot.

3.15 Walls, Fences and Shutters.

No wall or fence shall be constructed with a height of more than six (6) feet above the ground level of an adjoining Plot, and no hedge or shrubbery abutting the Plot lines shall be permitted with a height of more than eight (8) feet without the prior approval of Declarant. No wall or fence shall be constructed on any Plot until its height, length, type, design, composition, material and location shall have first been approved by Declarant as set forth in Article 3.2 hereof. The height of any wall or fence shall be measured from the existing property elevations. Any dispute as to height, length, type, design, composition or material shall be resolved by Declarant, whose decision shall be final. Hurricane, storm or weather shutters or shades shall not be stored (as opposed to installed) on the exterior of any Structure without the approval of Declarant and all such shutters or shades on any one (1) Plot shall be uniform in character.

3.16 Clothes Drying Area.

No outdoor clothes drying area shall be allowed.

3.17 Trucks, Buses, Commercial Vehicles, Recreation Vehicles, Motor Homes, Mobile Homes, Boats, Campers and Trailers.

(a) No truck, van or other commercial vehicle of any kind shall be permitted to be parked on any Plot for a period of more than four (4) hours unless such vehicle is necessary in the actual construction or repair of a Structure or for ground/landscape maintenance.

(b) No truck, pick-up truck, "el camino"-type truck, recreation vehicle, van or vehicle other than a non-commercial four (4) wheel passenger automobile, shall be permitted to be parked overnight on any Plot unless same is fully enclosed inside a Structure.

(c) No bus, boat, boat trailer of any kind, camper, mobile home, motor home or disabled vehicle shall be permitted to be parked or stored on any Plot unless kept fully enclosed inside a Structure or parked in an area designated by Declarant for such purposes.

(d) None of the aforementioned vehicles shall be used under any circumstances as a domicile or residence, either permanent or temporary.

(e) Paragraphs (a) through (d) shall not be deemed to prohibit any temporary facility otherwise permitted pursuant to this Declaration.

3.18 Pets and Animals.

(a) Commonly accepted household pets such as dogs and cats may be kept in reasonable numbers all as determined by Declarant in its sole discretion. All animals shall be contained on the Owner's Plot and shall not be permitted to roam free, or to otherwise disturb the peace of other Owners.

(b) Obnoxious animals, fowl or reptiles shall not be kept or permitted to be kept on any Plot. The determination of what is or what may be an obnoxious animal, fowl or reptile shall be determined by Declarant in its sole discretion.

3.19 Maintenance of Premises.

No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Plot, and no refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Plot. All lawns, landscaping and sprinkler systems and any property, Structure, improvement and appurtenance shall be kept in good, safe, clean, neat and attractive condition. Upon the failure to maintain the premises as aforesaid to the satisfaction of Declarant and upon the Foundation or Owner's failure to make such correction within thirty (30) days of giving of written notice by Declarant (which written notice does not have to be given by Declarant in the case of emergency, in which event, Declarant may without any prior notice directly remedy the problem), Declarant may enter upon such premises and make such improvements or correction as may be necessary, the costs of which shall be paid by the Foundation or Owner, as the case may be, or Declarant may bring an action at law or in equity. Such entry by Declarant or its agents shall not be a trespass and by acceptance of a deed for a Plot or Dwelling Unit, such Person has expressly given the Declarant the continuing permission to do so, which permission may not be revoked. If any Owner or the Foundation fails to make payment within fifteen (15) days after request to do so by Declarant the payment requested shall be a lien in accordance with provisions of Article 7 hereof.

3.20 Waterbodies.

(a) No Structure of any kind shall be constructed or erected by or for an Owner, nor shall Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water, in any portion of any waterbodies reserved for, or intended by Declarant to be reserved for, drainage ways, sluiceways or for the accumulation of runoff waters, as reflected in any plat, this Declaration, Supplement or other instrument of record, without the specific written permission of Declarant.

(b) Owners shall in no way deny or prevent ingress and egress to such waterbodies for maintenance or landscape purposes by Declarant or the Foundation or any appropriate governmental

agency that may reasonably require any right of ingress and egress, and easements therefore are hereby specifically reserved and created.

(c) No Plot shall be increased in size by filling in any water or retention or drainage areas on which it abuts. Owner shall not fill, dike, rip-rap, block, divert or change the established water or retention or drainage areas that have been or may be created by easement or by plat without the prior written consent of Declarant, which consent may be withheld in Declarant's sole and absolute discretion.

3.21 Nuisances.

Nothing may or shall be done on Committed Property which may be or may become an annoyance or nuisance to any Person. No obnoxious, unpleasant, unsightly or offensive activity shall be carried on, nor may anything be done, which can be reasonably construed to constitute a nuisance, public or private in nature. Any question with regard to the interpretation of this Article 3.21 shall be decided by Declarant whose decision shall be final.

3.22 Wells; Mining or Drilling.

(a) There shall be no wells dug, except by the Declarant or the Foundation.

(b) There shall be no mining, quarrying or drilling for minerals, water, oil, gas or otherwise undertaken within any portion of the Committed Property. Excepted from the foregoing are activities of Declarant or the Foundation or their designees in dredging any waterbodies or lake; creating land areas from any waterbodies or lake; creating, excavating or maintaining drainage or other facilities or easements; and installing wells or pumps in compliance with applicable governmental requirements, or sprinkler systems for any portions of the Committed Property. Further excepted is excavation for swimming pools, hot tubs, or spas constructed in accordance with the provisions of this Declaration.

3.23 Time-Sharing.

No portion of the Committed Property shall be used for real estate time sharing, interval ownership or "time-share plan" of any type. For purposes of this section, a time-share plan shall be as defined in Section 721.05(28), Florida Statutes (1989).

3.24 Casualty Destruction to Improvements.

If a Structure is damaged or destroyed by casualty loss or other loss, then within a reasonable period of time after such incident, as determined by Declarant, the Owner thereof shall either commence to rebuild or repair the damaged Structure and diligently continue such rebuilding or repairing until completion

or properly clear the damaged Structure and restore or repair the Plot in a manner aesthetically satisfactory to Declarant. As to any such reconstruction of a destroyed Structure, the same shall only be replaced with Structures as are approved by Declarant as provided herein.

3.25 No Implied Waiver.

The failure of Declarant to object to an Owner or another Person's failure to comply with the covenants and restrictions contained herein shall in no event be deemed a waiver by Declarant, or any other Person having an interest herein, of its rights to object to the same and to seek compliance therewith in accordance with the provisions of this Declaration.

3.26 Rights Reserved by Declarant.

Notwithstanding anything contained in this Article 3 or elsewhere in this Declaration or the other Governing Documents, Declarant and its nominees, assignees, successors and designees shall have the right to construct, modernize, improve, landscape, demolish, maintain and repair any Plot or Structure including the carrying on of all activities appurtenant thereto or associated therewith as Declarant deems necessary or appropriate for the development of the Bermuda Bay Community all free from the restrictions of Article 3. Declarant reserves the right to lease or sell any Plot or Plots on terms determined in its sole and absolute discretion. Further, notwithstanding any other provision of the Declaration, Declarant reserves and Declarant, and its nominees, assignees, successors, and designees, shall have the right to enter into and transact on the Bermuda Bay Community or the Committed Property any business necessary to consummate the sale, lease, improvement, repair, maintenance or encumbrance, or the like, of Plots or other property in the Bermuda Bay Community including, but not limited to, the right to maintain models and sales and leasing offices, place signs, employ sales personnel, use the Foundation Common Area, and show Plots. Any such models, sales and leasing areas or construction, maintenance and repair areas shall not be considered a part of the Foundation Common Area, and shall remain the property of Declarant or its nominees or designees. Declarant reserves the right, at its discretion and for such period as it determines, to pay the costs of maintaining, operating, and staffing one or more gatehouses, if any, (whether or not Committed Property or Foundation Common Area) serving the Bermuda Bay Community. The cost so paid by Declarant, if any, may be part of or may be in excess of the cost therefore as provided in the Budget adopted by the Foundation. In the event Declarant elects to pay for all or a portion of the cost of staffing such gatehouse it may, in its sole and absolute discretion, and upon sixty (60) day notice to the Foundation, cease paying for same. In this event, such costs would be paid for by the Owners or such staffing may cease. This Article 3.26 may not be suspended, superseded or modified in any manner unless such amendment is

consented to by Declarant in writing. These rights of use and transaction of business as set forth in the Governing Documents, like Declarant's other rights herein, and other rights reserved by Declarant in the other Governing Documents may be assigned in writing by Declarant, in whole or in part when and to whom Declarant determines in its sole and absolute discretion.

3.27 Declarant's Exculpation and Approvals.

Declarant may grant, withhold or deny its consent, permission or approval in any instance when its consent, permission or approval is permitted or required at its sole and absolute discretion and without any liability of any nature or kind to Owner or any other Person for any reason whatsoever. Every consent, permission or approval by Declarant under this Declaration shall be in writing and binding upon all Persons.

3.28 Subdivision and Regulation of Land.

(a) No Plot shall be divided or subdivided without the prior consent of Declarant, who may impose certain requirements on an Owner as a condition of consent. No Lot shall be subdivided except by Declarant. Declarant shall have the right to assign the number of Property Units for each Plot, notwithstanding anything contained herein and the number of Property Units assigned to a Plot by Declarant shall not be increased and shall not be exceeded without the prior approval of Declarant.

(b) No covenant, condition, restriction or other provision of this Declaration shall be construed as in any manner limiting or preventing any Plot, and the improvements thereon, from being submitted to a plan of condominium ownership, and a condominium shall not be construed as constituting a subdivision of any Plot provided that the number of Property Units of the condominium is not greater than the number of Property Units assigned to the Plot.

(c) An Owner shall not inaugurate or implement any variation from, modification to, or amendment of Declarant's development plan, or governmental regulations, land use plans, land development regulations, zoning, development orders or development permits applicable to Committed Property, or to any Plot, without the prior written approval of Declarant.

3.29 Owner and Member Compliance.

(a) The protective covenants, conditions, restrictions and other provisions of this Declaration shall apply not only to Owners, Members and Persons to whom such Person has delegated his right of use to the Foundation Common Area, but also to any other Person occupying an Owner's Plot under lease from the Owner or by permission or invitation of the Owner or otherwise or his tenants, expressed or implied, licensees, invitees or guests.

(b) Failure of an Owner to notify any Person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration and the other Governing Documents shall not in any way act to limit or divest the right of Declarant of enforcement of such provisions against the Owner or such Person and, in addition, the Owner shall be responsible for any and all violations of such provisions by his tenants, delegates, licensees, invitees or guests or other such Person, and by guests, licensees and invitees of his tenants at any time.

(c) The costs to repair or replace any portion or portions of the Foundation Common Area due to damage caused by any Owner, any member of such Owner's family, or any tenant, delegatee, agent, licensee, guest or invitee of such Owner or Owner's family shall be assessed against such Owner and his Plot as a Special Assessment in accordance with the provisions of this Declaration.

ARTICLE 4
PROPERTY RIGHTS;
FOUNDATION COMMON AREA

4.1 Members Rights and Easements.

Every Member shall have a non-exclusive right and easement of enjoyment and use in and to the Foundation Common Area which shall be appurtenant to and shall pass with the title to the Plot, subject to:

(a) the right of the Foundation to charge reasonable admission and other fees for the use of any Foundation Common Area;

(b) the right of the Foundation to suspend a Member's right to vote, and a Member's right to the use of Foundation Common Area, for any period during which any assessment against the Member's Plot or any obligation of the Member to the Foundation remains unpaid, and for a reasonable period during or after any infraction of the Governing Documents; provided, however, that the Foundation shall not deny a Member access to his Plot;

(c) the right of the Foundation or Declarant to dedicate or transfer all or any part of the Foundation Common Area to any governmental agency, public authority, or utility (which right shall not be exercised by the Foundation without Declarant's prior written approval);

(d) the right of the Declarant or the Foundation to borrow money for the purpose of improving the Foundation Common Area and in aid thereof to mortgage the Foundation Common Area in accordance with the terms hereof;

(e) the right of Declarant or the Foundation to take such steps as are reasonably necessary to protect Foundation Common Area against foreclosure;

(f) the right of Declarant or the Foundation to limit the number of guests who may use the Foundation Common Area and the number of times a Member may delegate its rights under Article 4.2 hereof; and

(g) the provisions of the Governing Documents and any Rules and Regulations governing use and enjoyment of the Foundation Common Area.

4.2 Delegation of Right.

(a) A Member may delegate his right of use in and to the Foundation Common Area to the members of his family, to residential tenants who reside in or on the Member's Plot and to the Member's guests, but only to the extent and subject to conditions, limitations and restrictions as may be provided for in the Governing Documents. Any delegation of right hereunder also gives rise to an obligation on the part of the Person to whom the right is delegated to comply with and be governed by the Governing Documents.

(b) Each Member shall be responsible for the actions of any Person to whom the Member has delegated his right to use the Foundation Common Area or who is acting under the apparent authority of any member to use the Foundation Common Area. Any unpaid charge against such Person shall be charged against such Member personally and be assessed against such Member's Plot. Any infraction of the Rules and Regulations by such Person shall be deemed to be an infraction by such Member.

4.3 Conveyance and Use.

(a) Any real property conveyed, leased, or the use of which has been granted by Declarant or any third party, as provided in this Declaration, to the Foundation as Foundation Common Area is not and shall not by such conveyance, lease or grant be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the use and enjoyment of the Person or entities granted use or easement rights under the provisions of this Declaration or the other Governing Documents.

(b) Declarant may convey, or cause to be conveyed, property, including, but not limited to, all or a portion of the Foundation Common Area, to the Foundation in either an improved or an unimproved condition, with or without any specific restrictions on its use, and the Foundation must accept such property. Until the Turnover Date the Foundation shall not accept the conveyance of real property from any third party, in either an improved or

unimproved condition, without the prior written consent of Declarant, which consent may be withheld in Declarant's sole and absolute discretion.

(c) When the Foundation Common Area, or a portion or portions thereof, is conveyed to the Foundation by Declarant, all costs involved in such conveyance including documentary stamps, surtaxes, recording expenses, abstract, title insurance, surveys, etc. shall be borne by the Foundation. Except as herein provided, if the Foundation Common Area is conveyed to the Foundation, the Foundation Common Area and any improvements thereon shall not be abandoned, partitioned, subdivided, alienated or released, transferred, hypothecated, mortgaged or otherwise encumbered without first obtaining the written approval of Declarant. The preceding sentence shall not prohibit, the Declarant or the Foundation from encumbering the Foundation Common Area, provided that such encumbrances are subordinate to the provisions of this Declaration and the funds so loaned are used for improving the Foundation Common Area. Further, the provisions hereof shall not be applicable to, nor prohibit the Declarant or the Foundation from granting such easements as are reasonably necessary or appropriate for the development of the Foundation Common Area and the use thereof in a manner consistent with the provisions of this Declaration.

4.4 Foundation's Rights and Powers.

(a) Subject to the provisions of the Governing Documents, the Foundation shall have the right and the power to develop, promulgate and enforce reasonable Rules and Regulations for the use and enjoyment of Foundation Common Area.

(b) No Foundation Common Area shall be used in violation of any rule or regulation or other requirement of the Foundation established pursuant to the provisions of the Governing Documents.

(c) The Foundation shall have the right to enter into an agreement or agreement(s) with any entity, governmental or otherwise, to provide for the maintenance and landscaping of any abutting public road rights of way.

(d) Additionally, the Foundation shall have the right to enter into an agreement or agreement(s) with any governmental entity, including, without limitation, the Town of Indian River Shores, Florida, to provide for the enforcement of traffic regulations in the Bermuda Bay Community.

4.5 Declarant's Rights and Powers.

(a) Declarant shall have the right and the power to regulate and control the external design and appearance of Foundation Common Area in such a manner as (i) to promote a quality environment which will preserve the value of the Plots and (ii) to foster the attractiveness and functional utility of Committed Property as

a place to live and play, including a harmonious relationship among Structure, vegetation and topography.

(b) The Foundation Common Area shall be subject to the provisions of Article 3 hereof. The uses of the Foundation Common Area shall be in conformity with the uses permitted in Article 3; provided, however, that in Declarant's sole discretion, which discretion may not be waived, any of the provisions of Article 3 shall not be applicable to any property owned by Declarant, or Foundation Common Area.

(c) No nuisance or obnoxious or offensive activity shall be placed or conducted or permitted on any Foundation Common Area. Nothing shall be done within the Foundation Common Area which may be or become a nuisance to residents or Members. Declarant shall have the right and the power in the exercise of its discretion to determine what activities or uses constitute nuisances, unsightly objects, or obnoxious or offensive activity.

(d) Until the Turnover Date, any certain use of Foundation Common Area shall be subject to the prior written approval of Declarant and any dispute as to the permissibility of a use shall be determined by Declarant.

4.6 Maintenance of Foundation Common Area.

(a) The Foundation shall be responsible for the maintenance, repair and replacement of the Foundation Common Area, and shall keep the same in good, safe, clean, attractive and sanitary condition, order and repair at all times. Notwithstanding anything contained herein to the contrary, any Owner (or its family members, tenants, invitees, licensees and guests and the guests, invitees and licensees of its tenants) whom by its willful or negligent action, damages or destroys any portion of the Foundation Common Area shall be liable to the Foundation for the payment of repairs, maintenance, or replacement of said Foundation Common Area deemed necessary by the Foundation, within thirty (30) days of written notice from the Foundation. The notice shall set forth with reasonable particularity the repairs, maintenance, or replacement deemed necessary by the Foundation. Said payment shall be made to the Foundation as a Special Assessment.

(b) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of Foundation Common Area shall be an Operating Expense to be allocated among all Plots as part of the General Assessment.

4.7 Maintenance of Lakes, Waterbodies, Canals and Drainage Facilities.

The provisions of Article 5 herein shall govern the maintenance of any lakes, canals, drainage facilities or other

waterbodies which is Committed Property, whether or not same is a part of the Foundation Common Area.

ARTICLE 5
LAKES, WATERBODIES AND BEACH AREA

5.1 Lakes.

Exhibit "G" contains a legal description of one lake and a legal description of a portion of another lake (the "Lakes"). The Lakes are Uncommitted Property but the Lakes shall be Foundation Common Area maintained by the Foundation. The boundaries of the Lakes shall be subject to accretion, reliction and other natural changes.

5.2 Use.

(a) The Foundation shall have the right to promulgate and enforce Rules and Regulations concerning the use of the Lakes, and other waterbodies.

(b) No boat or craft shall be permitted on the Lakes, except for maintenance or emergency purposes.

(c) The Foundation may store Reuse Water (as that term is defined in Article 11.4 of this Declaration) in the Lakes. Such Reuse Water is not potable water.

(d) Swimming in the Lakes or any other waterbodies or otherwise going into the Lakes or any other waterbodies is prohibited. NEITHER THE BEACH ACCESS FACILITY, OCEAN, LAKES OR OTHER WATERBODIES WILL BE WATCHED BY LIFEGUARDS. IN ANY EVENT, ANY PERSON WHO SWIMS IN OR OTHERWISE USES THE LAKES, OCEAN OR ANY OTHER WATERBODIES SHALL DO SO AT THEIR OWN RISK AND SHALL HOLD DECLARANT AND THE FOUNDATION HARMLESS FROM ANY CLAIM OR LOSS ARISING THEREFROM.

(e) No docks, piers, or davits shall be permitted anywhere on the Committed Property except as built by Declarant or approved by Declarant.

(f) No seawalls shall be constructed on any property abutting the Lakes.

5.3 Maintenance.

(a) The Foundation shall maintain the Lakes, and the cost and expense of such maintenance, including the cost and expense of aeration and applications of herbicides for aquatic weed control, shall be an Operating Expense. All such determinations as to applications of herbicides shall be made by the Declarant. If any governmental or quasi-governmental agency undertakes the mainte-

nance of any waterbodies located upon the Committed Property, the Foundation shall also have the right, at the discretion of the Board, to undertake an additional higher level of maintenance than would otherwise be undertaken solely by the respective governmental or quasi-governmental agency.

(b) DECLARANT AND THE FOUNDATION SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR INJURY RESULTING FROM THE USE OF HERBICIDE TREATED WATER AND SHALL BE HELD HARMLESS FROM ANY CLAIM OR LOSS ARISING THEREFROM, WHETHER SUCH CLAIM OR LOSS PERTAINS TO A PERSON, ANIMAL, OR ANY PROPERTY.

5.4 Maintenance Easement.

A non-exclusive easement is hereby reserved in favor of Declarant and its designees and the Foundation for ingress, egress, and access over and across all such portions of Bermuda Bay where designated by Declarant for purposes of ingress or egress to the Lakes and over such portion of the Bermuda Bay Community within twelve (12') feet of the boundary of each of the Lakes (the "Lake Maintenance Easements") in order to maintain such bodies of water and the area comprising the Lake Maintenance Easements.

5.5 Lake Easement.

The Lakes shall be subject to the easements set forth in this Declaration as well as to a non-exclusive easement for utility purposes including, without limitation, for irrigation, drainage and such other purposes as Declarant may determine in its sole and absolute discretion, for the benefit of the Uncommitted Property or such other property or Persons as determined by Declarant in its sole and absolute discretion.

5.6 Irrigation and Drainage Facilities.

Any waterbodies that are a Foundation Common Area may be used, at the discretion of Declarant, as part of the drainage facility or irrigation system of any portion of Bermuda Bay Community, including, but not limited to, for storage of water, including Reuse Water.

ARTICLE 6

MEMBERSHIP, VOTING RIGHTS, PROPERTY UNITS, AND USE

6.1 Members.

(a) Every Owner and Declarant shall be Members of the Foundation. Membership shall be appurtenant to and may not be separated from ownership of a Plot.

(b) Members' rights, powers, duties and privileges shall be as set forth in the Governing Documents.

6.2 Voting Rights.

Each Member of the Foundation shall have the following voting rights: one (1) vote may be cast for each Dwelling Unit owned by a Member. One (1) vote may be cast for each Value assigned to a Land Segment. Until the Turnover Date Declarant may cast a number of votes equal to twice the maximum number of Dwelling Units permitted to be constructed by applicable governmental authorities on Committed Property owned by Declarant and thereafter equal to such maximum number of Dwelling Units so permitted to be constructed. If two (2) or more Members, or a corporation, partnership or another legal entity are the Owners of a Plot, then the Member who shall be entitled to cast the vote shall be determined by the method provided for in the By-Laws.

6.3 Ownership by Non-Natural Persons.

If a corporation, partnership or other non-natural Persons own a Plot, it shall designate to the Foundation in writing, one Person or family who shall exercise the rights of Owners under the Governing Documents, including, but not limited to, the rights of use and voting. Such designation shall not be changed more often than once every six (6) months.

6.4 Property Units and Values.

(a) Declarant shall, upon or before its conveying legal title to a Land Segment, by the recordation of an instrument in the Public Records of Indian River County, Florida containing provisions to such effect, attribute a number of Property Units to such Land Segment or shall do so by attributing Property Units to a Land Segment in a Supplement or Neighborhood Covenants. The number of Property Units which Declarant shall so attribute to a Land Segment shall be the maximum number of Dwelling Units that may be built or constructed on such Land Segment unless amended by an instrument executed and recorded by Declarant, in its sole discretion, stating that a greater or lesser number of Dwelling Units may be built or constructed on the Land Segment. Declarant shall incur no liability whatsoever and shall be held harmless by the Foundation and Owners in the event that the number of Dwelling Units built upon such Land Segment is more or less than the number attributed by Declarant.

(b) Upon Declarant's conveyance of legal title to the Land Segment to an independent third party which is not a Person related to Declarant, as determined by Declarant ("Segment Owner"), the Land Segment shall be a "Contributing Plot" (as that term is hereinafter defined).

(c) Until such time, if any, as set forth by Declarant in the instrument attributing the Property Units to such Land Segment, there shall be assigned a Value of one (1.00) for each acre or fractional acre of such Land Segment (time periods for different Land Segments may vary, if Declarant in its discretion determines). Upon the expiration of such time period the number of Values assigned to a Land Segment shall be equal to the number of Property Units assigned thereto. Notwithstanding the foregoing, Declarant may, in its sole discretion, determine that the number of Values assigned to such Land Segment shall immediately upon the conveyance of legal title to such third party be equal to the number of Property Units assigned thereto, in which event the instrument attributing the Property Units to such Land Segment shall so state this fact.

(d) The number of Property Units assigned to the Land Segment shall be reduced (a Property Unit reduced ["Reduced"] by a Dwelling Unit pursuant to the provisions hereof shall herein be referred to as a "Reduced Property Unit") by one (1) for each Dwelling Unit built or constructed on the Land Segment and given a Certificate of Occupancy and conveyed to a bona fide purchaser thereof ("Certified Unit") (i.e., if 100 Property Units are attributed to a Land Segment and the Owner of the Land Segment so conveys 25 Certified Units, then the Land Segment Owner at such time is obligated to pay Operating Expenses for only 75 Property Units and the Owners of such Certified Units are obligated to pay Operating Expenses for each Certified Unit owned by them; and when the Land Segment owner so conveys 100 Certified Units, then the Land Segment Owner shall have no obligation to pay Operating Expenses for Property Units on such Land Segment and the Owners of such Certified Units shall be obligated to pay for each Dwelling Unit owned by them).

(e) If the Land Segment Owner builds fewer Dwelling Units than the number of Property Units assigned to such Land Segment, then such Land Segment Owner may petition the Declarant, in a sworn petition, requesting a reduction in the number of Property Units assigned to such Land Segment. Declarant, in its sole discretion, can so reduce the number of Property Units assigned to such Land Segment, which discretion shall be reasonably exercised. No such reduction shall affect the Assessments assessed against such Land Segment until January 1 of the next calendar year. If Declarant does so exercise its discretion to reduce the number of Property Units assigned to a Land Segment, the same shall be reflected in a written instrument executed by Declarant and the Land Segment Owner which shall be recorded in the Public Records of Indian River County, Florida, and same shall have the effect of reducing the maximum number of Dwelling Units which may ultimately be built on such Land Segment and the obligation of the Segment Owner to pay Operating Expenses for Property Units assigned to the Land Segment all as set forth in such instrument executed by Declarant.

(f) The Declarant may, in its sole and absolute discretion, assign the number of Property Units, if any, to each Land Segment, in accordance with the provisions of this Article 6.4. Any dispute as to the number of Property Units assigned to a Land Segment or to a Property Unit shall be decided by Declarant, whose decision shall be final.

ARTICLE 7
COVENANT TO PAY ASSESSMENTS;
ESTABLISHMENT AND ENFORCEMENT OF
LIENS AND CERTAIN RIGHTS OF DECLARANT

7.1 Affirmative Covenant to Pay Assessments.

In order to (1) fulfill the terms, provisions, covenants and conditions contained in the Governing Documents; and (2) maintain, operate and preserve and improve the Foundation Common Area for the recreation, use, welfare and benefit of the Foundation and Owners and their guests, invitees, lessees and licensees, there is hereby imposed upon each Owner and each Plot the affirmative covenant and obligation to pay to the Foundation (in the manner herein set forth) all Assessments including, but not limited to, the General Assessments, Special Assessments, and late fees as hereinafter provided. Each Owner by acceptance of a deed or other instrument of conveyance conveying a Plot, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Foundation all Assessments and all late fees in accordance with the provisions of this Declaration and consents and agrees to the lien rights hereunder against such Plot. The liability for Assessments and late fees may not be avoided by waiver of the use or enjoyment of Foundation Common Area or by abandonment of the Plot for which the Assessments are made.

7.2 Establishment of Liens.

Any and all Assessments made by the Foundation in accordance with the provisions of this Declaration, plus late fees as provided herein, and costs of collection, including, but not limited to, reasonable attorneys' fees at the investigative, trial and appellate levels, are hereby declared to be a charge and continuing lien upon the Plot against which each such Assessment is made. Each Assessment against a Plot, late fees, and costs of collection thereof, including attorneys' fees at the investigative, trial and appellate levels, shall be the personal obligation of the Owner of each such Plot assessed. Upon an Owner's failure to pay Assessments as provided herein, the Foundation may record a claim of lien amongst the Public Records of Indian River County, Florida, as a written, acknowledged claim of lien by the Foundation setting forth the amount due to the Foundation as of the date the claim of lien is signed. Upon full payment of all sums

secured by that lien, the party making payment shall be entitled to a satisfaction of the claim of lien in recordable form.

7.3 Collection of Assessments and Late Fees.

If any Owner shall fail to pay Assessments, or any installments thereof, charged to such Owner within fifteen (15) days after the same becomes due, then the Foundation shall, in its sole discretion, have any and all of the following remedies, to the full extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Foundation:

(a) To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

(b) To advance on behalf of the Owner(s) in default funds to accomplish the needs of the Foundation up to and including the full amount for which such Owner(s) is liable to the Foundation and the amount or amounts of monies so advanced, late fees, and all costs of collection thereof including, but not limited to, reasonable attorneys' fees at all investigative, trial and appellate levels, may thereupon be collected by the Foundation and such advance by the Foundation shall not waive the default.

(c) To file an action in equity to foreclose its lien at any time after the recordation date thereof. The lien may be foreclosed by an action in the name of the Foundation in like manner as a foreclosure of a mortgage on real property.

(d) To file an action at law against the Owner to collect said Assessment plus late fees, court costs and reasonable attorneys' fees without waiving any lien rights or rights to foreclose by the Foundation.

7.4 Collection by Declarant.

If for any reason the Foundation shall fail to collect the Assessments, then in that event, Declarant shall at all times have the right (but not the obligation): (1) to advance such sums as the Foundation could have advanced as set forth in Article 7.3(b) above; and (2) to collect such Assessments and, if applicable, any such sums advanced by Declarant, by using the remedies available to the Foundation as set forth above; such remedies (including, but not limited to, recovery of attorneys' fees) are hereby declared to be available to Declarant.

7.5 Rights To Pay Assessments and Receive Reimbursement.

Declarant shall have the right, but not the obligation and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Plot.

Further, Declarant shall have the right, but not the obligation, at its sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Foundation when the same are overdue and when lapses in policies or services may occur. Declarant shall be entitled to immediate reimbursement for such overdue Operating Expenses so paid from the Foundation plus any costs of collection including, but not limited to, reasonable attorneys' fees.

7.6 Late Fees.

The Board of Governors shall establish late fees payable upon the failure of any Owner to pay Assessments, or any installments thereof, charged to such Owner. Unless and until changed by the Board the late fee shall be at a rate of five (\$5.00) dollars per diem, commencing from the due date of the Assessment until the delinquent Assessment and all associated costs are paid. The amount and terms of such late fees may be modified by the Board of Governors as it may designate from time to time in its sole discretion. All late fees are a charge and continuing lien upon the Plot against which each such late fee is levied, and may be collected by the Foundation in the same manner as collection of delinquent Assessments.

ARTICLE 8 METHOD OF DETERMINING ASSESSMENTS

8.1 Determining Amount of Budget.

(a) Budget. The total anticipated Operating Expenses for each calendar year shall be separately set forth in a budget (the "Budget") adopted by the Foundation not later than December 1 of the calendar year preceding the calendar year for which the Budget is being adopted.

(b) General Assessment. The total anticipated Operating Expenses or the Total Interim Operating Expenses during the "Interim Period" (hereinafter defined) (other than those Operating Expenses which are properly the subject of a Special Assessment, as hereinafter set forth) shall be apportioned to determine the "General Assessment" as follows:

(i) A value of one (1.00) shall be assigned to each Plot, other than Land Segments, which are not owned by Declarant and not Foundation Common Area.

(ii) There shall be assigned to each Land Segment that is a Contributing Plot an amount of Values as set forth in Article 6.4 hereof.

(iii) Subject to the provisions of Article 8.1(c) immediately below (which provisions are only applicable during the

"Interim Period", hereinafter defined, or any extension thereof), the General Assessment for each Plot shall be the product arrived at by multiplying the total anticipated Operating Expenses reflected by the Budget, other than those Operating Expenses which are properly the subject of a Special Assessment, by a fraction, the numerator of which is the Value assigned to the Plot as set forth in this Article 8.1 above and the denominator of which shall be the total of all Values assigned to all Plots in existence as of the date the Budget was adopted. The total number of Plots will be adjusted from time to time in accordance with this Declaration. All questions regarding the number of Plots in existence shall be determined by the Foundation.

(c) General Assessments During Interim Period: The term "Interim Period" shall mean a period of time commencing with the date of this Declaration and continuing through December 31, 1992. Declarant reserves the right, in its sole and absolute discretion, to extend the Interim Period beyond December 31, 1992, and thereafter on one (1) or more occasions to again extend it. The Foundation shall be advised in a written notice of any such extension of the Interim Period and the amount of the new Interim Assessment at least sixty (60) days prior to the termination of the Interim Period or any extension thereof. During the initial Interim Period, it is covenanted and agreed by Declarant that General Assessments shall not exceed an annual amount of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) (the "Interim Assessment") and that Declarant shall pay the difference, if any, between the amount of Interim Assessments and Special Assessments collected by the Foundation during such Interim Period and the amount of money spent by the Foundation for Operating Expenses during such Interim Period. Thereafter, should Declarant elect to extend the Interim Period as aforesaid, the amount of such Interim Assessment during such extended Interim Period shall be the amount set forth by Declarant in the notice to the Foundation. Notwithstanding anything contained herein, the Interim Period shall terminate upon the Turnover Date. Notwithstanding any provision of the Declaration or the Governing Documents upon the termination of the Interim Period or any extensions thereof, there shall be assigned to each acre of Committed Property owned by Declarant and which is not a Foundation Common Area, a Value of one (1.00), notwithstanding whether any of such acreage has been platted into Lots or contains Dwelling Units, and no additional values shall be assigned to such Lots or Dwelling Unit owned by Declarant. The provisions of this Article 8.1(c) may not be amended without Declarant's prior written consent.

(d) Any income accruing to the Foundation during the Interim Period from Special Assessments or due to rental or user fees shall be credited against any amount that Declarant may have to pay to the Foundation during the Interim Period.

8.2 General Assessment Payments.

The General Assessment shall be an annual Assessment payable in advance subject to the right of the Board to permit payment of the General Assessments in installments so long as same is paid on a current basis. If such an installment is not paid on a current basis when due, then the entire General Assessment shall be due and payable in its entirety. The General Assessments and installments thereof, if any, may be adjusted from time to time by the Foundation to reflect changes, including but not limited to, changes in the number of Values for Contributing Plots. When a Contributing Plot comes into existence or if a new Value is assigned to a Contributing Plot, such Contributing Plot shall be deemed assessed the amount of such Assessment or installment thereof which would have been assessed against such Contributing Plot if it had such Value at the time such Assessment was originally made, prorated from the date the Contributing Plot received such Value through the end of the period in question.

8.3 Special Assessments.

"Special Assessments" include, in addition to other Assessments designated as Special Assessments whether or not for a cost or expense which is included within the definition of "Operating Expenses", those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring improvements for or on the Foundation Common Area or the cost (whether in whole or in part) of reconstructing or replacing such improvements and those assessments assessed against a Plot or Plots but not all Plots. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any Interim Assessment, and any such Special Assessments assessed against Contributing Plots and Owners interest shall be paid by such Owners in addition to any General Assessments. Special Assessments shall be paid in such installments or in a lump sum as the Foundation shall, from time to time, determine. Special Assessments may be assessed against individual Owners as further provided in this Declaration, including, but not limited to, any cost for damage caused by an Owner or such Owner's guests to Foundation Common Area as provided herein. Declarant shall have the right to approve all Special Assessments before they are made. This right of approval of Special Assessments by Declarant shall end on the Turnover Date. NOTWITHSTANDING ANYTHING CONTAINED IN THIS DECLARATION OR THE OTHER GOVERNING DOCUMENTS, DECLARANT SHALL NEVER BE OBLIGATED TO PAY SPECIAL ASSESSMENTS AND PROPERTY OWNED BY DECLARANT SHALL NEVER BE ASSESSED FOR SAME.

8.4 Liability of Owners for Assessments.

By the acceptance of a deed or other instrument of conveyance of Plot each Owner, other than Declarant, acknowledges

that each Contributing Plot, and the Owners thereof, are jointly and severally liable for their own Assessment, including but not limited to, General Assessments, Special Assessments, as well as all Assessments and other charges for which they are liable as provided for herein. Such Owners further recognize and covenant that they are jointly and severally liable with the other Owners of all Contributing Plots for the Operating Expenses. Accordingly, it is recognized and agreed by each Owner who is or becomes a Contributing Plot Owner for himself and his heirs, executors, successors and assigns that in the event such Owners fail or refuse to pay their General Assessment or any portion thereof or their respective portions of any Special Assessments or other Assessments, due to the nonpayment by such other Owners, and such increased General Assessment or Special or other Assessment can and may be enforced by the Foundation and Declarant in the same manner as all other Assessments hereunder as provided in this Declaration.

8.5 Contributing Plots.

Subject to the provisions of Article 8.1(c) hereof regarding Plots owned by Declarant, all Plots shall be Contributing Plots provided that a Land Segment shall not be a Contributing Plot until it's legal title has been conveyed to a Segment Owner.

ARTICLE 9 OPERATING EXPENSES AND CERTAIN ASSESSMENT CLASSIFICATIONS

The Operating Expenses, which the Foundation is obligated to assess and collect, and which the Owners are obligated to pay as provided herein or as may be otherwise provided in the Governing Documents, include, but are not limited to, the following expenses of the Foundation Common Area and the Foundation.

9.1 Taxes.

Any and all taxes and special assessments levied or assessed at any and all times upon the Foundation Common Area or other property owned by the Foundation or any improvements thereto or thereon by any and all taxing authorities or districts, and against any and all personal property and improvements, which are now or which hereafter may be placed thereon or owned by the Foundation, including any interest, penalties and other charges which may accrue thereon.

9.2 Utility Charges.

All charges levied by utilities or districts providing services for the Foundation Common Area whether supplied by a private or public firm, including, without limitation, all charges

for water, gas, electricity, telephone, sewer, and any other type of utility or any other type of service charge.

9.3 Insurance.

The premiums on the policy or policies of insurance which the Foundation, in its sole discretion determines to obtain, provided, however, that the Foundation shall obtain and maintain the following insurance coverage:

(1) Property insurance in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all buildings and improvements now or hereafter located upon the Foundation Common Area and such insurance shall afford protection against at least the following:

(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and for sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

(b) such insurance may also afford protection against such other risks as are customarily covered with respect to areas similar to the Foundation Common Area serving such function.

(2) A comprehensive policy of public liability insurance and, if appropriate, owners, landlord and tenant policies naming the Foundation and, until the Turnover Date, the Declarant as named insureds thereof insuring against any and all claims or demands made by any Person or Persons whomsoever for injuries received in connection with, or arising from, the operation, maintenance and use of the Foundation Common Area and any improvements and buildings located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000.00) for damages incurred or claimed by any one Person for any one occurrence and not less than Five Million Dollars (\$5,000,000.00) for damages incurred or claimed for any one occurrence and for not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) property damage per occurrence with no separate limits stated for the number of claims. Such coverage shall include as appropriate, without limitation, protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, liability for false arrests, liability for electronic monitoring systems, libel and slander liability, host liquor liability and such other risks as are customarily covered with respect to areas similar to the Foundation Common Area in developments similar in construction, location and use.

(3) Such other forms of insurance and in such coverages as the Foundation shall determine to be required or beneficial for

the protection or preservation of the Foundation Common Area and any buildings and improvements now or hereafter located thereon or in the best interests of the Committed Property or the Foundation.

9.4 Reconstruction of Structure or Improvements.

Any and all sums necessary to repair, replace, construct or reconstruct any Structure or improvements upon the Foundation Common Area damaged by any casualty not covered in whole or in part by insurance. Any difference between the amount of insurance proceeds received with respect to such damage and the amount of funds necessary to repair, replace, construct or reconstruct the building or improvement so damaged shall be an Operating Expense provided same shall be the subject of a Special Assessment, and the Foundation will levy a Special Assessment for the funds necessary to pay such Operating Expense within ninety (90) days from the date such damage was incurred.

9.5 Expenses Under the Operating Agreement.

Expenses required to be paid by the Foundation under the Operating Agreement if entered into.

9.6 Maintenance, Repair and Replacement.

Any and all expenses necessary to maintain, repair, operate, protect and replace the Foundation Common Area shall be an Operating Expense.

9.7 Lighting.

The cost of installing, maintaining, and operating any street lights now or hereafter located on the Foundation Common Area or the Committed Property, as determined by the Declarant, to the extent any of such costs and charges are not paid for by governmental agencies or the utility company providing services with respect thereto.

9.8 Electronic Monitoring System and Ancillary Personnel.

The cost and expense of operating electronic monitoring systems for Foundation Common Area, if any, and the cost of employing any personnel ancillary thereto, and operating and maintaining gate houses, ancillary facilities and vehicles used for monitoring or ancillary services.

9.9 Irrigation.

Expenses of the Irrigation System (as hereinafter defined) including, but not limited to, expenses of providing irrigation in accordance with Article 11.4 hereof.

9.10 Administrative and Operational Expenses.

The costs of administration for the Foundation in the performance of its functions and duties under the Governing Documents including, but not limited to, costs for secretarial and book-keeping services, salaries of employees, legal and accounting fees and contracting expenses. In addition, the Foundation may retain a management company or companies or contractors (ANY OF WHICH MANAGEMENT COMPANIES OR CONTRACTORS MAY BE, BUT ARE NOT REQUIRED TO BE, A SUBSIDIARY, AFFILIATE, OR AN OTHERWISE RELATED ENTITY OF DECLARANT) to assist in the operation of the Foundation Common Area, or portions thereof and to perform or assist in the performance of certain obligations of the Foundation under the Governing Documents and the fees or costs of any management company or contractor so retained shall be deemed to be part of the Operating Expenses. Further, the Foundation may employ the necessary personnel and contract with the necessary Persons or entities to carry out the obligations hereunder including maintenance and security functions.

9.11 Compliance with Laws.

The Foundation shall take such action as it determines necessary or appropriate in order for the Foundation Common Area and the Structure thereon to be in compliance with all applicable laws, statutes, ordinances and regulations of any governmental authority, whether federal, state or local. The cost and expense of such action taken by the Foundation shall be an Operating Expense.

9.12 Indemnification.

Subsequent to the Turnover Date the Foundation covenants and agrees that it will indemnify, defend and hold harmless Declarant, and any related corporations, including, but not limited to, parent corporations and their employees from and against any and all claims, suits, actions, causes of action and/or damages arising from any personal injury, loss of life and/or damage to property sustained on or about Committed Property or other property serving the Foundation, or resulting or arising out of the operation of the Foundation and improvements thereof and thereon, or resulting from or arising out of activities or operation of the Foundation, and from and against all costs, expenses, counsel fees (including, but not limited to, all investigative, trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred by Declarant arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments and/or decrees which may be entered thereon. The costs and expense of fulfilling this covenant of indemnification set forth in this Paragraph shall be an Operating Expense to the extent such matters are not covered by the Foundation's insurance, provided that the amount of any Assessment

arising therefrom shall be in addition to, and not part of, the General Assessment during the Interim Period.

9.13 Failure or Refusal of Contributing Unit Owners to Pay Assessments.

Funds needed due to the failure or refusal of Owners to pay Assessments levied shall themselves be deemed to be Operating Expenses and properly the subject of an Assessment.

9.14 Extraordinary Items.

Extraordinary items of expense under the Governing Documents such as expenses due to casualty losses, force majeure and other extraordinary circumstances shall be the subject of a Special Assessment.

9.15 Capital Payment.

A "Capital Payment" account shall be established in an amount estimated by the Declarant to be necessary to pay extraordinary expenses which may be incurred by the Foundation during the period of time that the Bermuda Bay Community is being developed, to make purchases for and improvements to the Foundation Common Area and to purchase initial and future equipment, property and supplies. The amount of the initial Capital Payment shall be Five Hundred Dollars (\$500.00) per Plot. The amount of future Capital Payments shall be established by Declarant, in its sole and absolute discretion, at the time of conveyance of title by Declarant to the Owners. In addition, the Capital Payment account may be used to make any deposits required by utility companies or to prepay insurance premiums upon Foundation Common Area or otherwise required by the Governing Documents for the protection of Committed Property, the Owners, the Foundation, the Board, or in and about the operation of the Foundation. Prior to and subsequent to the Turnover Date, Capital Payments may only be used to pay expenses set forth in this Article 9.15 and for other capital expenses and may not be used for normal day to day expenses. However, the Foundation may use funds from the Capital Payment account in the case of an emergency when the use of such funds are necessary in order to protect Committed Property, the Owners, the Foundation, the Board or in and about the operation of the Foundation, in accordance with the provision of the Governing Documents; provided that immediately after the use of such Capital Payments the Foundation shall fully replace the funds so used from monies collected by Assessments. The Foundation shall, if necessary, assess a Special Assessment for such purpose. Further, no Capital Payments shall be used for the purpose of any litigation, whether at the investigative, trial or appellate levels. The Capital Payment shall be paid by the Owners, other than Declarant, to the Foundation in addition to any other Assessment. A Land Segment Owner shall pay the Capital Payment for each Property Unit assigned to the Land Segment so owned at such time as is set forth

in the instrument executed by Declarant assigning the Property Units to the Land Segment pursuant to the provisions of Article 6.4 of this Declaration. The Owner of any other Plot shall pay the Capital Payment at such time as title to the Plot is conveyed to such Owner. In the event that a "Certified Unit" "Reduces" a "Reduced Property Unit" (as those terms are defined in Article 6.4 of this Declaration) for which a Capital Payment has not been paid, then the Owner of the Certified Unit shall pay the Capital Payment for such Certified Unit at the time title to the Certified Unit is conveyed to such Owner. Each Owner shall pay the Capital Payment upon conveyance of title to such Owner provided that Capital Payments shall only be paid to the Foundation once for each Lot, or Dwelling Unit. If a Land Segment Owner has paid a Capital Payment for a Reduced Property Unit, then the Owner of the Certified Unit which Reduced the Reduced Property Unit shall not pay an additional Capital Payment for such Certified Unit. Further, the Owner of a Plot shall not pay the Capital Payment if the Capital Payment has already been paid for the such Plot. Any unused portion of the aforesaid Capital Payment may be used and applied for any proper capital purposes of the Foundation. Capital Payments shall never be required from Declarant. Capital Payments shall be paid in addition to the Interim Assessment, General Assessment and Special Assessment.

9.16 Drainage Facilities.

The cost and expense of maintaining and clearing drainage facilities, as set forth in Article 5.6 hereof, shall be an Operating Expense.

9.17 Transportation, Shuttle, Parking or Valet Services.

If the Foundation operates a transportation, shuttle, parking or valet service for Persons using the Beach Access Facility, or otherwise as determined by Declarant, the cost and expense of the vehicles and the operation of the service shall be an Operating Expense; provided, however, that the Foundation shall have the right (but not the obligation) to charge a fee for the use of such service in order to offset such Operating Expense.

9.18 Miscellaneous Expenses.

The cost of any item, or costs or expenses pertaining to or for the benefit of the Foundation or the Foundation Common Area, or any part thereof, including the landscaping of Foundation Common Area, not herein specifically enumerated and which is determined to be an appropriate item of Operating Expense by the Board shall be an Operating Expense.

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ARTICLE 10
NEIGHBORHOODS

10.1 Higher Level of Services.

Each Neighborhood, upon the affirmative vote, written consents, or a combination thereof, of the Owners representing sixty percent (60%) of Plots within the Neighborhood, may request that the Foundation provide a higher level of service or special services for the benefit of Plots in such Neighborhood. The Foundation shall then provide such services and the cost of such services shall be assessed against all the Plots in such Neighborhood as a Special Assessment.

10.2 Variations.

Declarant reserves the right, and the power, without the consent of any other Person:

(a) To amend the specific provisions of this Declaration insofar as they apply to one or more Neighborhoods without amending those provisions with respect to all Neighborhoods.

(b) To Supplement this Declaration by recording separate covenants, conditions, restrictions and other provisions applying to any specific Neighborhood.

ARTICLE 11
GENERAL AND PROCEDURAL PROVISIONS

11.1 Easements.

(a) There is hereby reserved, for the purpose of installing, operating and maintaining governmental, public or private utility facilities and for ingress and egress and for other purposes incidental to the development of the Bermuda Bay Community, those easements shown upon any current plat of any part of the Bermuda Bay Community and as may be shown on any future recorded plats of any parts of the Bermuda Bay Community, and there is also hereby reserved such easements for such purposes as Declarant in its sole discretion may in the future determine.

(b) Declarant hereby reserves the right and the power, during a period of thirty (30) years from the date of the recordation of this Declaration, to declare and file of record, additional easements granting the full free right, power and authority to lay, operate and maintain such drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, communication lines, cable television lines, and such other and further public service facilities as Declarant or the Foundation may deem necessary, along, through, in, over and under a strip of land up to ten (10')

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feet in width from all sides, front and rear lines of any Plot and no Structure shall be placed on such ten (10') foot strip; provided that in the case of attached Dwelling Units, the requirement for such ten (10') foot strip shall not apply to any side, front or rear line which provides the boundary between any attached Dwelling Units. The duration of any such easement shall be as set forth in an instrument of record. Said easements and the rights granted shall not be inconsistent with the then existing improvements on the applicable portions of the Plot.

11.2 General Access Easement.

A non-exclusive access easement is hereby reserved in favor of those entitled to use any facilities as set forth herein, including, without limitation, the Beach Access Facility or other facilities or amenities, over such portions of the Bermuda Bay Community only to the extent as are reasonably necessary to provide pedestrian and vehicular access to such facilities. The Foundation shall have the right to promulgate and enforce Rules and Regulations concerning the use of the access easement provided for herein.

11.3 Easements and Cross-Easements.

Declarant, for itself, its nominees and the Foundation, reserves the right to impose upon the Bermuda Bay Community henceforth and from time to time such easements and cross-easements for ingress and egress and the installation, maintenance, construction and repair of facilities or utilities, including, but not limited to, electric power, telephone, governmental purposes, sewer, water, gas, drainage, irrigation, cable, lighting, television transmission, security, garbage and waste removal and the like and for such other purposes as it deems to be in the best interest of, and necessary and proper for, the Bermuda Bay Community or the Committed Property.

11.4 Irrigation System.

(a) Foundation shall own, operate, maintain and administer an irrigation system ("Irrigation System") in Bermuda Bay. The cost and expense of this Irrigation System, including, but not limited to, the cost and expense of purchasing water, shall be an Operating Expense. NEITHER DECLARANT NOR FOUNDATION MAKE ANY REPRESENTATIONS OR WARRANTIES TO OWNERS, ORAL OR WRITTEN, IMPLIED OR EXPRESS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THE CONTINUED (OR FUTURE) AVAILABILITY, QUALITY, OPERATION, FAILURE OF OPERATION, CESSATION, MAINTENANCE, AND ADMINISTRATION OF THIS IRRIGATION SYSTEM.

(b) Declarant has been advised that treated wastewater effluent ("Reuse Water") may be available from the City of Vero Beach for irrigation purposes in Bermuda Bay. The Foundation, in

its sole and absolute discretion, may enter into an agreement with the City of Vero Beach ("Reuse Water Agreement"), to purchase Reuse Water from the City of Vero Beach for use in the Irrigation System. The cost and expense for the purchase and use of such water under the Reuse Water Agreement, if entered into, shall be an Operating Expense. In the event that the Reuse Water Agreement is entered into, it shall contain a representation to the Foundation by the City of Vero Beach that the Reuse Water shall meet applicable governmental treatment standards. The Foundation also reserves the right to assign or convey the Irrigation System, in whole or in part, to a governmental or quasi-governmental entity. SINCE THE TREATMENT, SUPPLY, AND DELIVERY OF THE REUSE WATER IS WITHIN THE EXCLUSIVE RESPONSIBILITY AND CONTROL OF THE CITY OF VERO BEACH, NEITHER DECLARANT NOR FOUNDATION SHALL BE LIABLE OR RESPONSIBLE IN ANY WAY WITH RESPECT TO THE SUPPLY AND USE OF REUSE WATER IN THE IRRIGATION SYSTEM, AND OWNERS HEREBY AGREE TO HOLD DECLARANT (AND ITS SUBSIDIARIES AND AFFILIATED ENTITIES) AND FOUNDATION HARMLESS IN CONNECTION WITH THE SUPPLY AND USE OF REUSE WATER IN THE IRRIGATION SYSTEM.

**11.5 Declaration and General Protective
Covenants Run With the Land.**

The covenants, reservations, restrictions and other provisions of this Declaration shall run with and bind the Committed Property subject hereto and shall inure to the benefit of the Declarant and all Owners subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from (i) the date this Declaration is recorded, or (ii) the date of the last addition of land to the Committed Property in accordance with the provisions of Article 2, whichever is later, but not more than forty (40) years from the date of this Declaration, after which time these covenants, conditions, restrictions, and other provisions shall automatically be extended for successive periods of ten (10) years, unless an instrument signed by the then Owners of at least two-thirds (2/3) of the Plots assigned has been recorded agreeing to change or terminate (if not prohibited by other provisions of this Declaration) these covenants, conditions, restrictions or provisions in whole or in part.

11.6 Completion of Construction - Remedy.

When the construction of any Structure is begun, work thereon must be prosecuted diligently and completed within a reasonable time. If for any reason work is discontinued or there is no substantial progress toward completion for a continuous sixty (60) day period, then Declarant shall have the right to notify the Owner of its intentions herein, enter the Plot and take such steps as might be required to correct the undesirable appearance or existence of the Structure, including, but not limited to, demolition and/or removal thereof, and/or pursue any of the remedies under this Declaration as Declarant determines.

The reason for such correction shall be solely in the discretion of Declarant and may include, but not be limited to, aesthetic grounds. The Owner shall be liable for all costs and attorneys' fees incurred in such action which shall be a continuing lien against said Plot collectable in accordance with Article 7. The provision of this Article 11.6 shall not apply to Structures constructed by Declarant or the Foundation.

11.7 Non-Liability of Declarant.

The Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any Person other than itself. Any provision of this Declaration which requires the consent of Declarant shall be subject to Declarant's right to withhold its consent in its sole discretion.

11.8 Amendment of Declaration.

(a) In addition to any other right of amendment or modification provided for in this Declaration, in which case those provisions shall apply, Declarant may, in its sole discretion, by an instrument filed of record, modify, enlarge, amend, waive or add to the covenants, conditions, restrictions and other provisions of this Declaration so long as the same do not substantially impair the general development plan of the Bermuda Bay Community.

(b) Except as set forth in Article 11.8(a) above, the process of amending or modifying this Declaration shall be as follows:

(1) Until the Turnover Date, all amendments or modifications shall be made only by Declarant without the requirement of the Foundation's consent or the consent of the Owners; provided, however, that the Foundation shall, forthwith but not more than ten (10) days after request of Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time, request. Failure to so join and consent to an amendment or modification, if any, shall not be cause to prevent such modification or amendment from being made by Declarant or to affect the validity thereof.

(2) After the Turnover Date, this Declaration may be amended (a) by the consent of the Owners of two-thirds (2/3) of all Contributing Plots together with (b) the approval or ratification of a majority of the Board. The aforementioned consent of the Contributing Plot Owners may be evidenced by a writing signed by the required number thereof or by the affirmative vote of the required number thereof at any regular or special meeting of the Foundation called and held in accordance with the By-Laws, evidenced by a certificate of the Secretary or an Assistant Secretary of the Foundation.

(3) Amendments for correction of scrivener's errors or other non-material changes may be made by Declarant alone until the Turnover Date and thereafter by the Board of Governors of the Foundation alone without the need of consent of the Contributing Plot Owners.

(4) Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant or the Foundation under this Declaration or any other of the Governing Documents without specific written approval of such Declarant or Foundation affected thereby.

(5) After the Turnover Date, a true copy of any amendment to this Declaration shall be sent certified mail by the Foundation to Declarant within five (5) days of its adoption.

(6) Notwithstanding anything contained herein, Supplements are not amendments and need only be executed by Declarant.

(7) Notwithstanding anything contained herein, the Neighborhood Covenants are not amendments and need be executed only by Declarant.

11.9 Other Documents.

Declarant, the Foundation, or other Person provided for herein or in any applicable recorded instrument shall have such rights, powers, duties and privileges as set forth herein or in the Articles of Incorporation, By-Laws and other constituent documents of such entity; however, no such Person may have rights, duties, powers or privileges that are in conflict with the provisions of this Declaration, which shall prevail in all events of conflict.

11.10 Severability.

If any covenant, condition, restriction or other provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, then such holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

11.11 Dissolution.

In the event of dissolution of the Foundation, each Plot shall continue to be subject to the Assessments specified in this Declaration, and each Owner shall continue to be personally obligated to Declarant or the successor or assigns of the Foundation as the case may be for such assessment to the extent that such assessments are required to enable Declarant or any such

successors or assigns acquiring any real property previously owned by the Foundation to properly maintain, operate and preserve it. The provisions of this Article 11.11 shall only apply with regard to the maintenance, operation and preservation of property which has been Foundation Common Area and continues to be so used for the common use and enjoyment of Owners.

11.12 Gender.

Whenever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

11.13 Notices.

(a) To Declarant. Notice to Declarant as may be required or desired herein shall be in writing and delivered or mailed to Declarant at its principal place of business as shown by the records of the Secretary of the State of Florida, or at any other location designated by Declarant.

(b) To Foundation. Notice to the Foundation as may be required or desired herein or in the By-Laws shall be in writing and delivered or mailed to the Foundation at its principal place of business as shown by the records of the Secretary of the State of Florida, or at any other location designated by the Foundation.

(c) To Owner. Notice to any Owner of a violation of any of these restrictions, or any other notice as may be required herein shall be in writing and shall be delivered or mailed to the Owner at the address shown on the tax rolls of Indian River County, Florida, or to the address of the Owner, as shown on the deed recorded in the Public Records of Indian River County, Florida, or to the address of the Owner as filed with the Secretary of the Foundation, or if an Owner be a corporation, to its principal place of business as shown by the records of the Secretary of State of Florida or its state of incorporation.

11.14 Construction.

The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the general development plan of the Bermuda Bay Community and the purposes set forth herein, including the Preamble.

11.15 Approval of Foundation Lawsuits by Owners.

Notwithstanding anything contained herein to the contrary, the Foundation shall be required to obtain the approval of three-fourths (3/4) of all Owners (at a duly called meeting of the Owners at which a quorum is present) prior to the payment of legal or other fees to Persons engaged by the Foundation for the pur-

poses of suing, or making or preparing any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the Governing Documents;
- (c) the enforcement of the use and occupancy restrictions contained in the Governing Documents, including, but not limited to, those against tenants in the event the Foundation had the right to so enforce; or
- (d) in an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Bermuda Bay Community or any portion thereof.

11.16 Conveyance, Assignment, Turnover.

Upon the Turnover Date:

(a) Declarant shall convey to the Foundation any portion of the Foundation Common Area which it has not previously conveyed. Such conveyance shall be made in accordance with Article 4.3 of the Declaration.

(b) Except as set forth in this Article 11.16, Declarant shall, no later than the Turnover Date, assign to the Foundation and the Foundation must accept such assignment, all of its rights, powers, duties, obligations, and interest in connection with the enforcement of the terms, provisions and conditions created or provided for by this Declaration or the other Governing Documents which it then possesses.

(c) Notwithstanding anything contained in this Article 11.16, or elsewhere in this Declaration, Declarant shall have the right to retain and use, in connection with Lots or Plots it owns; any and all of the rights and privileges it has reserved in this Declaration, including, but not limited to, those rights and privileges reserved in Article 3 and Article 4 hereof; provided that Declarant shall no later than three (3) years after the Turnover Date assign all such rights and privileges it then has to the Foundation and the Foundation must accept such assignment.

(d) Notwithstanding anything contained in this Article 11.16 or elsewhere in this Declaration, Declarant shall have those rights, privileges and remedies that Owners and Members have for the Lots or Plots it owns.

(e) All assignments made in accordance with this Article 11.16 shall be by written instrument executed by Declarant and recorded in the Public Records of Indian River County, Florida. No notice of assignment shall be required to be given to any

Person other than the Foundation. No notice of assignment shall be required to be given to any Person other than the Foundation. Upon the recordation of the assignment, Declarant shall not be liable or responsible for, in any manner whatsoever, the action (or inaction) of the Foundation or its successors in interest hereunder.

(f) This Article 11.16 may not be suspended, superseded or modified in any manner unless such amendment is consented to by Declarant in writing.

11.17 Disclaimer.

(a) NEITHER THE FOUNDATION, NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE BERMUDA BAY COMMUNITY NOR SHALL THEY BE LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN, IF ANY. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY PLOT, AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE FOUNDATION, ITS BOARD AND DECLARANT, DO NOT REPRESENT OR WARRANT THAT: ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, GATEHOUSE, ROVING PATROL, ELECTRONIC MONITORING SYSTEM OR OTHER SUCH SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE FOUNDATION MAY NOT BE COMPROMISED OR CIRCUMVENTED; THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SUCH SYSTEMS WILL PREVENT LOSS; NOR THAT FIRE PROTECTION, BURGLAR ALARM SYSTEMS, GATEHOUSE, ROVING PATROL OR OTHER SUCH SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY PLOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE FOUNDATION, ITS BOARD AND DECLARANT, ARE NOT INSURERS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY PLOT AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR OWNER ASSUMES ALL RISKS OF LOSS OR DAMAGE TO PERSON OR PROPERTY. ALL OWNERS HEREBY AGREE TO HOLD DECLARANT (AND ITS SUBSIDIARIES AND AFFILIATED ENTITIES), FOUNDATION, AND THEIR SUCCESSORS AND ASSIGNS, OFFICERS, DIRECTORS, GOVERNORS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY INJURIES, DAMAGES, LOSSES, OR CLAIMS ARISING FROM OR IN CONNECTION WITH THE OCCURRENCE OF ANY CRIMINAL OR OTHER UNLAWFUL ACTIVITY. DECLARANT, FOUNDATION, AND THEIR SUCCESSORS AND ASSIGNS, OFFICERS, DIRECTORS, GOVERNORS, AGENTS, AND EMPLOYEES, SHALL NOT BE BOUND BY ANY PRIOR OR PRESENT TERMS, STATEMENTS, REPRESENTATIONS, CONDITIONS, OBLIGATIONS OR WARRANTIES, ORAL OR WRITTEN, IMPLIED OR EXPRESS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE NOT CONTAINED IN THIS DECLARATION.

(b) NEITHER DECLARANT NOR THE FOUNDATION IS RESPONSIBLE FOR THE SECURITY OF THE OWNERS AND THEIR FAMILY MEMBERS, TENANTS, INVITEES, LICENSEES AND GUESTS AND THE GUESTS, INVITEES AND LICENSEES OF THEIR TENANTS. THE BERMUDA BAY COMMUNITY IS IN THE JURISDICTIONAL LIMITS OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, AND THE INDIAN RIVER SHORES POLICE DEPARTMENT WILL BE RESPONSIBLE

JURISDICTIONAL LIMITS OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, AND THE INDIAN RIVER SHORES POLICE DEPARTMENT WILL BE RESPONSIBLE FOR THE SAFETY OF THE OWNERS. ALL OWNERS ARE ADVISED TO NOTIFY THE INDIAN RIVER SHORES POLICE DEPARTMENT OF ANY AND ALL HEALTH AND PROPERTY EMERGENCIES IN BERMUDA BAY COMMUNITY.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and its corporate seal to be affixed hereto, on the day and year first above written.

DECLARANT:

WESTINGHOUSE TREASURE COAST
COMMUNITIES, INC.

By: 

Name: W. BUNTEMEYER

Title: President

Address: 3300 University Drive
Coral Springs, FL 33065

Attest: 

Name: A. N. MALANOS

Title: Secretary

Address: 3300 University Drive
Coral Springs, FL 33065

APPROVED

MRF

JOINED IN BY:

BERMUDA BAY FOUNDATION, INC.

By: 

Name: J.P. MCGOWAN

Title: President

Address: 3300 University Drive
Coral Springs, FL 33065

Attest: 

Name: J.P. TARAVELLA, JR.

Title: Secretary

Address: 3300 University Drive
Coral Springs, FL 33065

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to take acknowledgements, W. Buntmeyer and A. N. Malanos, the President and Secretary, respectively, of WESTINGHOUSE TREASURE COAST COMMUNITIES, INC., to me known to be the Persons who signed the foregoing instrument as such officers, and they severally acknowledged that the execution thereof was their free act and deed as such officers for the uses and purposes therein expressed and that the said instrument is the act and deed of said Florida corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 20th day of September, 1991.

Grace K. Stackhouse
Name: Grace K. Stackhouse
NOTARY PUBLIC

[SEAL]

My Commission Expires: NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. JUNE 1, 1995
BONDED THRU GENERAL INS. UND.

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to take acknowledgements, J. P. McGowan and J.P. Taravella, Jr., the President and Secretary, respectively, of BERMUDA BAY FOUNDATION, INC., to me known to be the Persons who signed the foregoing instrument as such officers, and they severally acknowledged that the execution thereof was their free act and deed as such officers for the uses and purposes therein expressed and that the said instrument is the act and deed of said Florida corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 20th day of September, 1991.

Grace K. Stackhouse
Name: Grace K. Stackhouse
NOTARY PUBLIC

[SEAL]

My Commission Expires: NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. JUNE 1, 1995
BONDED THRU GENERAL INS. UND.