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**AMENDED AND RESTATED  
DECLARATION AND GENERAL PROTECTIVE COVENANTS  
FOR PORT ORANGE PLANTATION**

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**AMENDED AND RESTATED  
DECLARATION AND GENERAL PROTECTIVE COVENANTS  
FOR PORT ORANGE PLANTATION**

THIS AMENDED AND RESTATED DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR PORT ORANGE PLANTATION ("Declaration") is made as of the 30<sup>th</sup> day of Nov, 2006, by D.R. HORTON, INC.-JACKSONVILLE, a Delaware corporation, its successors and assigns ("Declarant"), and is joined in by PORT ORANGE PLANTATION HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit ("Association").

WHEREAS, that certain Declaration and General Protective Covenants for Port Orange Plantation was recorded on the 24th day of April, 2004 in Official Records Book 5304, Page 803 *et seq.*, of the Public Records of Volusia County, Florida, as amended by that certain First Amendment to Declaration and General Protective Covenants for Port Orange Plantation, recorded on the 24th day of August, 2004 in Official Records Book 5387, Page 3368, *et seq.*, of the Public Records of Volusia County, Florida (hereinafter collectively referred to as the "Original Declaration"); and

WHEREAS, pursuant to Section 7 of Article XIII of the Original Declaration, the Declarant may amend the Original Declaration, for so long as it holds title to any Lot affected by the Original Declaration and said amendment by Declarant shall not require the consent of any mortgagees, Owners of Loti nor the Association; and

WHEREAS, Declarant is desirous of amending and modifying the Original Declaration by restating in its entirety the provisions thereof, it being the intent hereof, that this Declaration shall replace the provisions of the Original Declaration thereto, in its entirety and this Declaration shall constitute the covenants, conditions and restrictions for Port Orange Plantation; and

WHEREAS, Declarant desires to develop the Property (as hereinafter defined) as a planned community to be known as "Port Orange Plantation" (as hereinafter defined) on certain real property that more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, in order to develop and maintain Port Orange Plantation as a planned community and to preserve the values and amenities of such community, it is necessary to declare, commit and subject the Property and the improvements now or hereafter constructed thereon to certain covenants, restrictions, reservations, regulations, burdens, liens, and easements; and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance and enforcement; and

WHEREAS, the Association is joining in this Declaration in order to acknowledge its duties, responsibilities and obligations hereunder.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any

part thereof, their heirs, successors and assigns.

ARTICLE I  
DEFINITIONS

The terms used in this Declaration shall be defined as set forth herein unless expressly provided otherwise.

Section 1. "ADDITIONAL PLAT" shall mean the plat of any portion of the Property which is not included in the Plat, if any, and the plat of any Additional Property provided a Supplemental Declaration for such Additional Property is recorded amongst the Public Records of the County. "Additional Plat" shall also mean the replat of all or any portion of the Plat or any other plat of all or any portion of the Property.

Section 2. "ADDITIONAL PROPERTY" shall mean any real property (other than the Property) that may be submitted by Declarant to the terms and provisions of this Declaration by a Supplemental Declaration which shall be executed by the owner of the Additional Property and need not be joined in by any other person or Owner. No portion of any Additional Property shall be encumbered by this Declaration unless and until such property is added by a Supplemental Declaration executed by the fee owner thereof and Declarant. In the event any Additional Property becomes encumbered by this Declaration, then, and only then in such event, the term "Property" as used herein shall also mean the Additional Property.

Section 3. "AMENDMENT(S)" shall mean any and all amendments to this Declaration, all of which shall be consecutively numbered beginning with the "First Amendment to the Declaration and General Protective Covenants for Port Orange Plantation" and each of which shall be properly adopted pursuant to the terms of the Port Orange Plantation Documents and recorded in the Public Records of the County; provided, however, the failure to so consecutively number such amendments shall not impair their validity hereunder and such amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records of the County. "Amendment(s)" shall also mean any and all amendments to any Supplemental Declaration, as recorded in the Public Records of the County.

Section 4. "ARCHITECTURAL CONTROL COMMITTEE" or "COMMITTEE" shall mean the committee created pursuant to Article VII hereof.

Section 5. "ARTICLES" shall mean the Articles of Incorporation of the Association which have been filed in the Office of the Secretary of State of the State of Florida, a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, as such Articles may be amended from time to time.

Section 6. "ASSESSMENT" shall mean assessments for which all Owners are obligated to the Association and includes "Individual Lot Assessments" and "Special Assessments" (as such terms are defined in Article VII hereof) and any and all other assessments which are levied by the Association in accordance with the Port Orange Plantation Documents.

Section 7. "ASSOCIATION" shall mean and refer to PORT ORANGE PLANTATION HOMEOWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, its successors and

assigns, existing pursuant to the Articles, which Association is responsible for the ownership, administration, operation, maintenance, preservation, enforcement and architectural control of Port Orange Plantation as provided in this Declaration. The "Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.

Section 8. "ASSOCIATION PROPERTY" shall mean such portions of the Property which are not included in any Lot, except those areas dedicated or to be dedicated to the public by the Plat or Additional Plat, if any, and which are or shall be owned or maintained by the Association, as set forth in this Declaration and/or the Plat or Additional Plat, if any, for the common use and enjoyment of the Owners within Port Orange Plantation, together with landscaping, personal property and any other Improvements thereon, including, without limitation, all of the following if and to the extent located thereon: all structures, recreation areas (if any), open spaces, private streets (if any), asphalt bike paths, sidewalks, irrigation facilities, entry or other lighting, entrance features, fountains, monument walls, monument signs, site walls, retaining walls, littoral plantings and decorative street signs, but specifically excluding any public utility installations thereon, the Surface Water and Storm Water Management System, including lakes, retention areas, preserved wetlands and uplands, and all portions of any "Community Systems" (as hereinafter defined) not made Association Property pursuant to Article II, Section 6 hereof, and any other property of Declarant not intended to be made Association Property. In addition, such portions of the Property as are declared to be Association Property in any Supplemental Declaration, less whatever portions of the Property are declared to be withdrawn from the provisions of this Declaration in any Supplemental Declaration, shall be Association Property. Association Property shall also be deemed to include easements granted for the benefit of the Association.

Section 9. "BOARD" shall mean the board of directors or other legally recognized governing body of the Association.

Section 10. "BYLAWS" shall mean the Bylaws of the Association, which have been or will be adopted by the Board, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference, as such Bylaws may be amended from time to time.

Section 11. "COMMUNITY SYSTEMS" shall mean and refer to any and all television (cable, satellite or otherwise), telecommunication, internet access, alarm/monitoring, utility or other lines, conduits, wires, satellites, amplifiers, towers, antennae, equipment, materials, installations and fixtures (including those based on, containing or serving future technological advances not now known) installed by Declarant, an affiliate of Declarant, any other entity in which Declarant or an affiliate of Declarant may have an interest (financial or otherwise), or any third party expressly granted the rights by Declarant to provide Community Systems within the Property, or pursuant to any grant of easement or authority by Declarant and serving the Association Property and/or more than one Lot.

Section 12. "COMPLETED LOT" shall mean a Lot on which the construction of a Home has been completed for which Home a certificate of occupancy or equivalent therefor has been issued by the appropriate governmental agency, and the title to which Lot has been conveyed by Declarant.

Section 13. "COMPLETED LOT OWNER" shall mean the Owner of a Completed Lot.



Section 14. "COUNTY" shall mean Volusia County, Florida.

Section 15. "DECLARANT" shall mean and refer to D.R. Horton, Inc.-Jacksonville, a Delaware corporation, and any successor or assign thereof to which D.R. Horton, Inc.-Jacksonville, specifically assigns all or part of the rights of Declarant hereunder by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant. An Owner shall not, solely by the purchase of a Home and/or Lot, be deemed a successor or assign of Declarant under the Port Orange Plantation Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

Section 16. "DECLARATION" shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration(s) or Amendments hereto, which may be recorded amongst the Public Records.

Section 17. "DIRECTOR" shall mean a member of the Board.

Section 18. "HOA ACT" shall mean and refer to the homeowners' association act, Chapter 720, Florida Statutes, as amended through the date of recording this Declaration amongst the Public Records of the County.

Section 19. "HOME" shall mean a residential dwelling unit constructed within Port Orange Plantation which is designed and intended for use and occupancy as a single-family residence and includes but is not limited to a detached single-family home, provided, however, that no portion of any Community System, even if installed in a Home, shall be deemed to be a part of a Home unless and until same is made such pursuant to Article 11, Section 6 hereof, if at all. Upon completion of construction of a Home on a Lot, the Lot and the Improvements thereon are sometimes collectively referred to as a Home in this Declaration and the Port Orange Plantation Documents.

Section 20. "IMPROVEMENT" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within Port Orange Plantation, including, but not limited to, buildings, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler systems, private streets (if any), driveways, fences, underground footers and other foundation supports, stairs, landscaping, trees, hedges, plantings, poles, swings, play sets and structures, tennis courts, swimming pools, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball courts, backboards and hoops, signs, site and perimeter walls, gazebos, benches, mailboxes, Decorative Street Lights and signs.

Section 21. "INSTITUTIONAL MORTGAGE" shall mean a mortgage held by an Institutional Mortgagee on any property within Port Orange Plantation.

Section 22. "INSTITUTIONAL MORTGAGEE OR INSTITUTIONAL LENDER" shall mean any lending institution owning a first mortgage encumbering any Home or Lot within Port Orange Plantation, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any

subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution," including the Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Declarant and which hold a mortgage on any portion of the Property securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in the community as an institutional lender; or Declarant, its successors and assigns.

Section 23. "INTEREST" shall mean the maximum nonusurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

Section 24. "LEGAL FEES" shall mean: (i) all fees for attorney and paralegal services incurred in connection with negotiations, mediation, arbitration, litigation or preparation for same (whether or not such an action is actually begun) through and including all trial and appellate levels and post-judgment or collection proceedings; and (ii) all costs incurred with respect to the matters set forth in (i), above.

Section 25. "LOT" shall mean and refer to any parcel of land within Port Orange Plantation as shown on the Plat or any Additional Plat upon which a Home is permitted to be constructed, together with the Improvements thereon, and any portion of the Property within Port Orange Plantation that is declared to be a Lot by a Supplemental Declaration, but does not include a Lot that has been withdrawn from the provisions of this Declaration by a Supplemental Declaration; provided, however, that no portion of any Community System shall be deemed to be part of a Lot unless and until same is made such pursuant to Article II, Section 6 hereof, if at all. Upon completion of construction of a Home on a Lot, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot in this Declaration and the Port Orange Plantation Documents.

Section 26. "MEMBERS" shall mean and refer to all of the Owners who are also members of the Association, as provided herein.

Section 27. "NOTICE AND HEARING" shall mean written notice and a public hearing before a tribunal appointed by the Board at which the Owner concerned shall have an opportunity to be heard in person or by counsel, at Owner's expense, in the manner set forth in Article X herein.

Section 28. "OPERATING EXPENSES" shall mean the expenses for which Owners are liable to the Association as described in this Declaration and any other Port Orange Plantation Documents and include, but are not limited to: (a) the costs and expenses incurred by the Association in owning, administering, operating, maintaining, financing, or repairing (but not reconstructing, replacing or improving), the Association Property or any portion thereof and Improvements thereon, all other property owned by the Association, and (b) all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other Port Orange Plantation Documents.

Section 29. "OWNER" shall mean and refer to the record owner, whether one or more persons or

entities, of the fee simple title to any Lot within Port Orange Plantation, and includes Declarant for as long as Declarant owns fee simple title to a Lot, but excluding therefrom those having such interest as security for the performance of an obligation.

Section 30. "PLAT" shall mean and refer to the plat of PORT ORANGE PLANTATION PHASE I as recorded in Plat Book 51, Page 52, of the Public Records of the County. In the event an Additional Plat is recorded in the Public Records of the County, then the term "Plat" as used herein shall also mean and refer to the Additional Plat(s).

Section 31. "PROPERTY" shall mean and refer to that certain real property described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of this Declaration and/or the Association; provided, however, Declarant reserves the right to add property and withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

Section 32. "PORT ORANGE PLANTATION" shall mean that planned development located in Volusia County, Florida, which encompasses the Property and is initially intended to comprise eighty-eight (88) Homes and the Association Property, but subject to change in accordance with this Declaration. Port Orange Plantation will initially consist of the land set forth in Exhibit "A" attached hereto and made a part hereof and may be expanded to include additional property or reduced by withdrawal of property, all by the recording of one or more Supplemental Declaration(s).

Section 33. "PORT ORANGE PLANTATION DOCUMENTS" shall mean in the aggregate this Declaration, the Articles, the Bylaws, the Plat, the Additional Plat, if any, and all of the instruments and documents referred to herein and therein, including, but not limited to, any Amendment(s) and Supplemental Declaration(s), all as may be further amended and/or supplemented from time to time.

Section 34. "SUPPLEMENTAL DECLARATION" shall mean any instrument executed by Declarant which, when recorded in the Public Records of the County, shall: (a) commit Additional Property, if any, to the provisions of this Declaration, and shall be the only method of committing such property to the provisions of this Declaration, (b) withdraw any portion(s) of the Property from the effect of this Declaration, (c) designate portion(s) of the Property or Additional Property as Association Property hereunder, and/or (d) be for such other purposes as are provided in this Declaration. A Supplemental Declaration may also be used to add additional covenants, restrictions, reservations, regulations, burdens, liens, and easements upon the Property or any portion thereof; remove any existing covenant, restriction, reservation, regulation, burden, lien or easements from the Property or any portion thereof; declare certain properties to be or not to be Association Property; and/or add properties to or withdraw properties from the Property and the provisions of this Declaration. The Association shall join in the execution of any Supplemental Declaration at the request of Declarant but such joinder shall not be required to make any such Supplemental Declaration effective. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby.

Section 35. "ST. JOHN'S RIVER WATER MANAGEMENT DISTRICT" OR "DISTRICT" shall mean and refer to the St. Johns River Water Management District.

Section 36. "ST. JOHN'S RIVER WATER MANAGEMENT DISTRICT PERMIT" OR "DISTRICT PERMIT" shall mean that certain permit issued by the St. John's River Water

Management District affecting the Property, a copy of which is attached as Exhibit "D" hereto and made a part hereof, as same may be amended or modified from time to time.

Section 37. "SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM" shall mean a system of structures and other improvements, including, without limitation, control structures, culverts and swales, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over drainage, environmental degradation and water pollution, or to otherwise affect the quality and quantity of discharge from the system, as permitted pursuant to Chapter 40C-4, 40C-40 or 40C-42, Florida Administrative Code. The Surface Water or Stormwater Management System is located upon and designed to serve the Property and possibly other properties around the Property.

Section 38. "TURNOVER DATE shall mean the date upon which "Class A Members" (as defined in Article V.D.1 of the Articles), including Declarant, shall assume control of the Association and elect the Board, as more particularly described in Article V.D.2 of the Articles.

## ARTICLE II DESCRIPTION OF PORT ORANGE PLANTATION

Section 1. GENERAL PLAN OF DEVELOPMENT. Port Orange Plantation comprises the Property encompassing, or which will encompass, Lots and Association Property, as more particularly defined by this Declaration and, in addition, lands which Declarant may add, but shall in no way be obligated to add, by one or more Supplemental Declaration(s). The Property initially declared hereunder is described in Exhibit "A" attached hereto. Port Orange Plantation is initially intended to comprise eighty-eight (88) Homes, together with the Association Property, all in accordance with, but subject to, the terms of this Declaration. Notwithstanding the foregoing, Declarant hereby reserves the right to modify its plan of development of Port Orange Plantation (including, without limitation, the right to modify the site plan of Port Orange Plantation; the right to add or change recreational facilities, if any, amenities, Home product types, and number of Homes to be constructed within Port Orange Plantation); and/or the right to add land to Port Orange Plantation or to withdraw land from Port Orange Plantation. Therefore, in the event Declarant modifies its plan of development of Port Orange Plantation and/or adds land to Port Orange Plantation or withdraws land from Port Orange Plantation, it is hereby acknowledged by each Owner that the number of Lots, the layout of Lots and/or the size of Lots within Port Orange Plantation may change. Without limiting the generality of the foregoing, Declarant does not intend for the total number of Homes within Port Orange Plantation to exceed four hundred twenty-five (425). Declarant's general plan of development further contemplates that the Homes to be constructed within Port Orange Plantation shall be whatever types of structures Declarant may choose which are in conformance with this Declaration. Declarant's general plan of development of Port Orange Plantation may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to Port Orange Plantation, as well as any changes thereto.

Additional Property will become a part of Port Orange Plantation if, and only if, Declarant in its sole discretion adds Additional Property to Port Orange Plantation by recording a Supplemental Declaration to such effect. Declarant hereby reserves an easement for ingress and egress and for utilities and drainage over, under and across the Property for the benefit of any Additional Property; provided, however, no such easement may be granted upon any portion of the

Property that lies directly beneath a Home.

Declarant expressly reserves the right as to the Property to (i) commence construction and development of the Property if and when Declarant desires; (ii) develop the Property upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of development of the Property (including, without limitation, the right to modify the site plan and master plan of Port Orange Plantation, the right to change the recreational facilities and amenities, and the right to change the Home product types and number of Homes to be constructed within Port Orange Plantation) in such manner as Declarant, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct Port Orange Plantation according to the present plan of development nor as obligating Declarant to declare any Additional Property to be Property.

Section 2. ASSOCIATION PROPERTY. The Association Property is planned to consist of: (a) the property indicated on the Plat and Additional Plat(s), if any, as Association Property or as property or easements reserved for, dedicated or granted to the Association, (b) all the property indicated on the Plat as Tracts A, B, C, D and E; (c) any easements assigned or granted by Declarant to the Association or property or facilities conveyed by Declarant or others to the Association; and (d) any other property designated as Association Property in this Declaration or any Supplemental Declaration. The Association Property shall be used for those purposes as set forth on the Plat and Additional Plat(s), if any, and include, as applicable, landscaping, irrigation, signage, lakes, drainage, preserves, conservation areas, open space, buffer, storm water management, irrigation and recreational as well as other proper purposes by the Association and the Owners and their family members, guests, invitees and tenants in accordance with the Port Orange Plantation Documents. Association Property may not be altered, modified, removed or replaced by Owners or their family members, guests, invitees or tenants.

Such portions of the Association Property upon which Declarant has constructed, or Declarant or the Association hereafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located, or to be located, thereon. Declarant and the Association reserve the right, but shall not be obligated, to construct additional facilities upon the Association Property. Declarant's decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant, and Association's decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of the Association.

In the event of any doubt, conflict or dispute as to whether any portion of the Property is or is not Association Property under this Declaration, Declarant may, without the consent of the Association or then existing Owners, record in the public records of the County, a Supplemental Declaration resolving such issue and such Supplemental Declaration shall be dispositive and binding. After Declarant no longer owns any portion of the Property, the Association may, without the consent of then existing Owners, record the aforesaid Supplemental Declaration, which shall have the same dispositive and binding effect.

DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR RECREATION AREAS, IF ANY. ANY INDIVIDUAL USING RECREATION AREAS, IF ANY, SHALL DO SO AT HIS OR HER OWN RISK AND HEREBY

HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

Section 3. COSTS. All costs associated with operating, maintaining, repairing and replacing the Association Property shall be the obligation of the Association. The Association Property shall be conveyed to the Association in accordance with the provisions of Article III, Section 6 hereof.

Section 4. PRIVATE USE. For the term of this Declaration, the Association Property (except as otherwise specifically provided in this Declaration) is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, and the Owners, and their family members, guests, invitees and tenants, but only in accordance with this Declaration.

A. Notwithstanding anything in this Declaration to the contrary, however, Declarant hereby expressly reserves for itself and its affiliates the right to use the Association Property (including, without limitation, all guest parking spaces, if any) for such period of time as Declarant determines to be necessary in connection with the sale and marketing by Declarant and/or its affiliates of Homes in Port Orange Plantation and in any other communities developed or to be developed by Declarant or its affiliates, including, but not limited to, the holding of sales and marketing meetings, the use of "model row(s)" if one or more, and engaging in sales promotions and related sales and marketing activities for the general public.

B. Except to the extent herein provided and in the Port Orange Plantation Documents, the Association Property shall be for the sole and exclusive use of the Owners and residents of Port Orange Plantation and their family members, guests, invitees and tenants.

C. The administration, management, operation and maintenance of the Association Property shall be the responsibility of the Association, as provided herein and in the Port Orange Plantation Documents.

D. The right to use the Association Property shall be subject to the rules and regulations established by the Association, as the same may be amended from time to time.

Section 5. MODEL ROW. Declarant hereby reserves the right to construct and/or operate a "model row(s)" in Port Orange Plantation. The "model row(s)" may contain models for Port Orange Plantation and/or other communities being developed by Declarant or affiliate(s) of Declarant, as Declarant and/or any of Declarant's affiliates may so determine, in their sole discretion. The "model row(s)" may also contain parking, landscaping and fencing across streets, drives, roads and/or roadways as Declarant may determine in its sole discretion. In the event that Declarant and/or any of Declarant's affiliates constructs a "model row(s)" in Port Orange Plantation, such "model row(s)" may be used for such period of time that Declarant and/or any of Declarant's affiliates determine to be necessary in its or their sole discretion. Each Owner, by acceptance of a deed or title to a Lot in Port Orange Plantation, acknowledges and agrees that: (i) Declarant and/or any of Declarant's affiliates have a right to construct and/or operate a "model row(s)"; (ii) Declarant and/or any of Declarant's affiliates have an easement over Port Orange Plantation for ingress and egress to and from the "model row(s)" and to use and show the models to prospective purchasers in Port Orange Plantation or other communities being developed by Declarant and/or any of Declarant's affiliates, for so long as such "model row(s)" exists; and (iii) Owner shall not interfere in any manner

whatsoever in the sales process by Declarant and/or any of Declarant's affiliates, including, without limitation, the carrying of signs, the posting of signs on Lots or Homes, or other types of demonstrations in or around Port Orange Plantation or any public right-of-way adjacent to the Property. Each Owner acknowledges and agrees that any such activities interfere with the quiet enjoyment of Port Orange Plantation by the other Owners, are detrimental to the value of the Homes within Port Orange Plantation, and interfere with Declarant's and/or its affiliates' ability to conduct their respective business.

Section 6. COMMUNITY SYSTEMS. Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the Community Systems located within the Property, or all or any portion of the rights, duties or obligations with respect thereto to the Association or any other person or entity (including an Owner, as to any portion of a Community System located on/in such Owner's Lot). Without limiting the generality of this Section 6, if and when any of the aforesaid persons and/or entities receive such a conveyance, sale, transfer or assignment, such person and/or entity shall automatically be deemed vested with such rights of Declarant with regard thereto as are assigned by Declarant in connection therewith; provided, however, that if the Association is the applicable entity, then any Community Systems or portions thereof shall be deemed Association Property hereunder and the Association's rights, duties and obligations with respect thereto shall be the same as those applicable to other Association Property unless otherwise provided by Declarant. Any conveyance, transfer, sale or assignment made by Declarant pursuant to this Section 6: (i) may be made with or without consideration, (ii) shall not require the consent or approval of the Association or any Owner, and (iii) if made to the Association, shall be deemed to have been automatically accepted (with all rights, duties, obligations and liabilities with respect thereto being deemed to have been automatically assumed). In recognition of the intended increased effectiveness and potentially reduced installation and maintenance costs and user fees arising from the connection of all Lots and Association Property in the Property to the applicable Community Systems, each Owner and occupant of a Home shall, by virtue of the acceptance of a deed or title to a Lot or other right of occupancy thereof, be deemed to have consented to and ratified any and all agreements to which the Association is a party which is based upon (in terms of pricing structure or otherwise) a requirement that all Lots be so connected. The foregoing shall not, however, prohibit the Association or Community Systems provider from making exceptions to any such 100% use requirement in its reasonable discretion. WITH RESPECT TO COMMUNITY SYSTEMS, ALL PERSONS ARE REFERRED TO ARTICLE VI, SECTION 6 AND ARTICLE ~~XIII~~ SECTION 18 HEREOF, WHICH SHALL AT ALL TIMES APPLY TO THIS SECTION.

**ARTICLE III**  
**ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY;**  
**CONVEYANCE OF ASSOCIATION PROPERTY**

Section 1. ADDITIONS. Declarant may from time to time, in its sole discretion, by recording appropriate Supplemental Declaration(s) in the Public Records of the County, add any Additional Property or any other real property to the Property governed by this Declaration, and may declare all or part of such Additional Property or other property (including any Improvements thereon) to be Lots or Association Property. Upon the recording of a Supplemental Declaration, the property described therein shall be deemed part of the Property as if it were originally included therein and

subject to this Declaration. Any such Supplemental Declaration may submit any Additional Property or any other real property to such modifications of the covenants, restrictions, reservations, regulations, burdens, liens and/or easements contained in this Declaration as may be necessary or convenient to reflect or adapt to any changes in circumstances or differences in the character of any such Additional Property or other property. Nothing contained in this Section 1 shall be construed to require the joinder by or consent of the Owners or the Association to any such Supplemental Declaration; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of Declarant. In addition, nothing herein shall require Declarant to add any Additional Property.

Section 2. DESIGNATION OF ADDITIONAL ASSOCIATION PROPERTY. Declarant may, from time to time, by recording Supplemental Declarations in the County, designate additional portions of the then existing Property owned by it to be Association Property.

Section 3. DISCLAIMER OF IMPLICATION. Only the real property described in Exhibit "A" hereto is submitted and declared as the Property subject to this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required pursuant to this Declaration, no other property (including any Additional Property) shall in any way be deemed to constitute a portion of the Property or be affected by the covenants, restrictions, reservations, regulations, burdens, liens, and easements expressly binding the Property as provided by the terms of this Declaration.

Section 4. ABSENCE OF OBLIGATION. Nothing in this Declaration shall be construed to require Declarant to add any Additional Property to the Property encumbered by this Declaration or to require Declarant to declare any portion of any properties added to the Property to be Association Property, nor shall anything in this Declaration be construed to require Declarant to declare any portion or portions of the existing Property as Association Property, except to the extent herein specifically provided.

Section 5. WITHDRAWAL. Notwithstanding anything herein to the contrary, Declarant reserves the absolute right at any time to withdraw portions of the Property from the provisions of this Declaration by recording an appropriate Supplemental Declaration in the County. Any such Supplemental Declaration must be executed by Declarant, the Owner of each Lot located on the Property sought to be withdrawn (if any) and each holder of an Institutional Mortgage on a Lot located on the Property sought to be withdrawn (if any), in order to be effective. Nothing contained in this Section shall be construed to require the joinder by or consent of the Owners of Lots on the portion of the Property which is not withdrawn by such Supplemental Declaration, such Owners' Institutional Mortgagees holding mortgages on Lots on the portion of the Property which is not withdrawn by such Supplemental Declaration, or the Association.

Section 6. TITLE TO THE ASSOCIATION PROPERTY. To the extent herein provided, the Association Property is hereby dedicated to the joint and several use in common of the Owners of all Lots that may, from time to time, constitute part of the Property. When title to all Lots which are subject to the provisions of this Declaration has been conveyed to non-Declarant purchasers, or five (5) years after the conveyance of the first Home and Lot to a non-Declarant purchaser, whichever occurs first (or earlier at Declarant's option, exercisable from time to time, as to any portions of the Association Property), Declarant or its successors and assigns shall convey and transfer to the Association, by quitclaim deed, the fee simple title to the Association Property free and clear of any mortgages and the Association shall accept such conveyance, holding title for the Owners as



aforesaid. Such conveyance shall be subject to: (i) taxes and assessments with respect to the Association Property from and after the date of recording this Declaration; (ii) all laws, ordinances, regulations, restrictions, prohibitions and other requirements imposed by governmental authorities, including, without limitation, all building, zoning, land use and environmental laws, ordinances, codes and regulations; (iii) matters which would be disclosed by an accurate survey of the Association Property; (iv) easements, covenants, conditions, restrictions, reservations, limitations, agreements and other matters of record; and (v) the terms and provisions of this Declaration, as the same may have been modified, amended and/or supplemented from time to time.

At the time of conveyance of the Association Property or any portion thereof, the Association shall be required to accept the Association Property, together with the personal property and Improvements appurtenant thereto, if any. The Association hereby agrees to accept the Association Property and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Association Property and the personal property and Improvements appurtenant thereto being conveyed. IN THAT REGARD, THE ASSOCIATION AND EACH OWNER KNOWINGLY AND VOLUNTARILY RELINQUISHES AND WAIVES, AND DECLARANT EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AS TO THE ASSOCIATION PROPERTY AND PERSONAL PROPERTY AND IMPROVEMENTS WHETHER ARISING FROM CUSTOM, USAGE OR TRADE, COURSE OF CONDUCT, COURSE OF DEALING, CASE LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. TO THE EXTENT THAT BY LAW OR OTHERWISE ANY OF THE WARRANTIES RELINQUISHED, WAIVED OR DISCLAIMED CANNOT BE RELINQUISHED, WAIVED OR DISCLAIMED, IN WHOLE OR IN PART, ALL SECONDARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES ARE SPECIFICALLY EXCLUDED AND DISCLAIMED (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM CLAIMS OF PROPERTY DAMAGE, LOSS OF USE, PERSONAL INJURY OR EMOTIONAL DISTRESS).

The Association shall accept this conveyance of the Association Property (together with the personal property and Improvements appurtenant thereto) and shall pay all costs of such conveyance including documentary stamps and other taxes of conveyance, recording charges, title insurance expenses and insurance fees. The conveyance shall not, however, impair in any way Declarant's rights and easements as set forth in this Declaration.

Commencing upon the date this Declaration is recorded, and notwithstanding that title thereto has not yet been conveyed to the Association, the Association shall be responsible for the maintenance of the Association Property in a continuous and satisfactory manner without cost to the general taxpayers of the County. The Association shall be responsible for the payment of real estate taxes, if any, against the Association Property including taxes on any Improvements and any personal property thereon accruing from and after the date this Declaration is recorded.

The Owners (including Declarant as to Lots owned by it) shall have no personal liability for any damages: (i) for which the Association is legally liable, or (ii) arising out of, relating to, or in connection with the existence or use of any Association Property or any other property required to be maintained by the Association.

Subject to the foregoing, Declarant may mortgage any or all portions of the Association Property to finance construction and development expenses provided that the mortgagee recognizes the rights of Owners under this Declaration and neither the Association nor any Owner is personally liable for paying the mortgage. In such event, neither the Association nor the Owners shall be required to join in or be entitled to consent to such mortgage. The Association Property shall be released from any such mortgage no later than the date same is conveyed to the Association.

Section 7. PARKING RIGHTS. The Association may maintain upon the Association Property parking spaces for Owners, occupants, visitors and guests. The use of such parking spaces by Owners, occupants, visitors and guests shall be subject to duly adopted rules and regulations of the Association, as the same may be amended from time to time.

#### ARTICLE IV OWNERS' PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner and family member, guest, tenant, agent or invitee of an Owner shall, except as may otherwise be provided in this Declaration, have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of Association Property within the Property (except as may otherwise be specifically provided elsewhere in this Declaration), in common with all other Owners, their family members, guests, tenants, agents and invitees, which easement shall be appurtenant to, and shall pass with a deed and/or title to each Owner's Lot. This right shall be subject to the following conditions and limitations:

A. The right and duty of the Association to reasonably limit the number of guests, invitees or tenants of an Owner using the Association Property.

B. The right and duty of the Association to levy Assessments against each Lot for the purpose of operating, maintaining, repairing and replacing the Association Property and facilities thereon in compliance with the provisions of this Declaration and the restrictions on portions of the Property from time to time recorded by Declarant.

C. The right of the Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the use of the Association Property.

D. The right of the Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the Lots for the purposes of enhancing the aesthetic uniformity of the Property.

E. The right of the Association in accordance with its Articles, Bylaws, and this Declaration, with the vote or written assent of two-thirds (2/3) of the total voting interests, to borrow money for the purpose of improving the Association Property and facilities thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners.

F. The right of the Association to dedicate, release, alienate, or transfer all or any

part of the Association Property to any public agency, authority, or utility for such purposes and subject the Association Property to such conditions as maybe agreed to by the Association. No such dedication, release, alienation, or transfer shall be effective unless Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation or transfer.

G. The right of the Association, without any vote of the Owners, to grant easements and rights-of-way, where necessary or desirable, for utilities, water and sewer facilities, cable television, and other services over the Association Property to serve the Association Property and other portions of the Property without vote of the Owners.

H. The right of Declarant, Declarant's affiliates and each of their respective officers, directors, partners, employees, agents, licensees, and invitees to the nonexclusive use of the Association Property and the facilities thereon, without charge, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes, and to grant (without consent of the Association and/or vote of the Owners) easements and rights-of-way as provided in the Declaration.

I. The right of the Association, by action of the Board, to reconstruct, replace, or refinish any Improvement or portion thereof upon the Association Property, in accordance with the original design, finish, or standard of construction of such Improvement.

J. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs, and ground cover upon any portion of the Association Property, except as may be prohibited under the Surface Water or Stormwater Management District Permit.

K. The right, however not the duty, of the Association by action of the Board to seek the vacation of publicly dedicated streets, if any, upon the Property.

L. The easements provided elsewhere in this Declaration, designated on the Plat, or on the Additional Plat(s), if any, including, but not limited to, those set forth in this Article IV.

M. The right of the Association to provide for the maintenance, preservation and architectural control of Lots, Improvements and other properties as set forth in this Declaration.

N. The right of the Association and Declarant and their respective employees, agents, licensees, and invitees to come upon the Property (including, without limitation, Association Property as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient for the Association and/or the Declarant to carry on its respective duties, obligations, responsibilities under, and all other work referred to in, this Declaration (including, without limitation, Declarant's development and construction of Port Orange Plantation and Homes therein).

Section 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, such Owner's right of enjoyment to the Association Property to the members of such Owner's family, or to the tenants who reside in such Owner's Home, subject to this Declaration, all of the rules and regulations presently in effect and any which may become effective in the future, and subject further to reasonable regulation by the Board.

Section 3. RECOGNITION OF EASEMENTS. Each Owner, by acceptance of a deed or other instrument of conveyance, recognizes and consents to the easements reserved and/or granted with

respect to the Property under this Declaration.

Section 4. EASEMENTS FOR VEHICULAR TRAFFIC. In addition to the general easements for use of the Association Property reserved herein, there shall be, and Declarant hereby reserves, grants, and covenants for itself and all future Owners, their family members, guests, invitees and tenants, Institutional Mortgagees of the Property (or portions thereof), and to the Association, that all of the foregoing shall have a perpetual nonexclusive easement for vehicular traffic over any private streets, drives, roads and/or roadways, if any, within or upon the Property.

Section 5. ACCESS EASEMENT. Declarant hereby reserves perpetual, nonexclusive easements of ingress and egress over and across: (i) any private streets, drives, roads and/or roadways and driveways, if any, within or upon the Property, and (ii) all other portions of the Property, any of the foregoing of which are necessary or convenient for enabling Declarant to carry on and complete the work referred to in this Declaration. All of the foregoing easements shall be for the use of Declarant, Declarant's employees, contractors and agents, Declarant's successors and assigns, Owners, and the respective tenants, employees, agents, invitees, and licensees of Declarant and Owners.

Section 6. GRANT AND RESERVATION OF EASEMENTS. Declarant hereby reserves and grants the following perpetual, nonexclusive easements over and across the Property as covenants running with the Property for the benefit of the Owners, the Association, and Declarant as hereinafter specified for the following purposes:

A. Utility and Services Easements. All of the Property shall be subject to an easement or easements to provide for: (i) installation, service, repair and maintenance of the equipment required to provide utility services other than Community Systems to the Association Property and the Lots, including, but not limited to, power, lights, telephone, gas, water, sewer, irrigation and drainage, and (ii) governmental services, including, but not limited to, police, fire, mail, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

B. Easement for Encroachment. All of the Property shall be subject to an easement or easements for encroachment in favor of each Owner in the event any portion of such Owner's Home or appurtenant Improvements installed by Declarant such as stucco, a fence or underground footer now or hereafter encroaches upon any of the Lots as a result of minor inaccuracies in survey or construction, by design, or due to settlement or movement. Such encroaching Improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvements in favor of the Owner thereof or such Owner's designees.

D. Easement to Enter Upon Lots. An easement or easements for ingress and egress in favor of the Association including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Port Orange Plantation Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Association Property and to maintain any Lot in the event the Owner thereof fails to do so.

E. Easement Over Association Property. An easement of enjoyment in favor of

all Owners, their family members, guests, invitees and tenants in and to the Association Property which shall be appurtenant to and shall pass with a deed or title to every Lot in the Property, subject to the following:

(1) the right of the Association to suspend the right to use the Association Property of any Owner and such Owner's family members, guests, invitees and tenants for any period during which Assessments against such Owner's Lot remain unpaid, subject to the notice and hearing provisions in Article X, Section 1 herein;

(2) the right of the Association to grant permits, licenses and easements over the Association Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; and

(3) all provisions set forth in the Port Orange Plantation Documents.

F. Easement for Roof Overhang. An easement or easements, as shown on the Plat and Additional Plat, if any, to provide for the roof overhang of a Home in favor of the Owner thereof, including rights of access for persons or equipment necessary to maintain, repair and replace such roof overhang.

G. Surface Water or Stormwater Management System Easement.

(1) Blanket Surface Water or Stormwater Management System Easement. The plan for the development of the Property includes the construction of a Surface Water or Stormwater Management System, which may include, without limitation, retention lakes, swales, conduits, weirs, pipes, and/or berms across the rear of certain Lots and access easements to the Surface Water or Stormwater Management System as may be shown on the plat or otherwise dedicated. Declarant hereby reserves for itself, its successors and assigns, and grants to the Association and its designees, a perpetual, nonexclusive easement over and across all areas of the Surface Water or Stormwater Management System for the drainage of stormwater from the Property. Portions of the Surface Water or Stormwater Management System may be located entirely within Lots.

(2) Surface Water or Stormwater Management System Maintenance. Except as specifically set forth herein to the contrary, the Association shall be responsible for the maintenance, operation, and repair of the Surface Water or Stormwater Management System. Such maintenance shall include the exercise of practices which allow the Surface Water or Stormwater Management System to provide drainage, water storage, conveyance, or other capabilities in accordance with all the permits, statutes, rules, and regulations pertaining to surface water management, drainage, and water quality promulgated by the District, Florida Department of Environmental Protection, and all other local, state and federal authorities having jurisdiction. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the Surface Water or Stormwater Management System to provide drainage, water storage, conveyance and other stormwater management capabilities as permitted by the District.

The Association shall maintain and control the water level and quality of the Surface Water or Stormwater Management System and the bottoms of any retention lakes or

drainage easements which retain or hold stormwater on a regular basis. The Association shall have the power, as may be required by any applicable governmental entity, to control and eradicate plants, fowl, reptiles, animals, fish, and fungi in and on any portion of the retention lakes or drainage easement. The Owners of Lots adjacent to or containing any portion of the Surface Water or Stormwater Management System, shall maintain all shoreline vegetation and the grade and contour of all embankments to the water's edge (as it may rise and fall from time to time) irrespective of ownership of such land, keep the grass, plantings, and other lateral support of the embankments in a clean and safe manner and to prevent erosion and shall remove trash and debris as it may accumulate in the system, from time to time. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the Surface Water or Stormwater Management System to provide drainage, water storage, conveyance or other surface water capabilities as permitted by the District. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be consistent with the District Permit as originally issued or any modification that may be approved by the District. In order to provide adequate assurance that the Surface Water or Stormwater Management System will adequately function, the following maintenance procedures shall be followed:

(a) The Association shall inspect or cause to be inspected all inlets and control structures for vandalism, deterioration or accumulation of sand and debris.

(b) The Association shall assure that all debris or sand shall be removed from the inlets and control structures and any orifice system.

(c) The Association shall inspect and repair or cause to be inspected and repaired all skimmer boards around control structures as necessary.

(3) Surface Water or Stormwater Management System Maintenance Easement. The Association is granted a perpetual, nonexclusive easement for ingress and egress, at all reasonable times and in a reasonable manner, over and across the Surface Water or Stormwater Management System and over any portion of a Lot which is a part of the Surface Water or Stormwater Management System, or upon which a portion of the Surface Water or Stormwater Management System is located to operate, maintain, and repair the Surface Water or Stormwater Management System as required by the District Permit. Such right expressly includes the right to cut any trees, bushes or shrubbery, to make any gradings of soil, construct or modify and berms placed along the rear of any Lots as part of the Surface Water or Stormwater Management System, or take any other action reasonably necessary, following which Declarant or the Association shall restore the affected property to its original condition as nearly as practicable; provided, however, that Declarant or the Association shall not be required to replace or repair fences, walks, structures, landscaping, or other improvements which are removed or damaged. Declarant or the Association shall give reasonable notice of its intent to take such action to all affected Owners, unless, in the opinion of Declarant or the Association, an emergency exists which precludes such notice. The right granted herein may be exercised at the sole option of Declarant or the Association and shall not be construed to obligate Declarant or the Association to take any affirmative action in connection therewith. The Owners of Lots adjacent to or containing a portion of the retention areas are granted a perpetual, nonexclusive easement for ingress and egress over and across the Surface Water or Stormwater Management System for the purpose of providing maintenance and erosion control to the embankments of such retention areas.

(4) Improvements. No docks, bulkheads, or other structures, permanent or temporary, shall be constructed on, over, or under any portion of the Surface Water or Stormwater Management System without the prior written consent of the Association and the approval of the Committee or Declarant, which consent or approval may be withheld for any reason. Any improvements to the Surface Water or Stormwater Management System permitted by the Association and installed by the Owner shall be maintained by such Owner in accordance with the maintenance provisions of this Declaration. All improvements to the Surface Water or Stormwater Management System may also require the prior written approval of the District. After receiving the approval of the Committee, Owner shall be solely liable for obtaining all governmental permits necessary or convenient to construct such Improvement.

(5) Use and Access. Declarant and the Association shall have the right to adopt reasonable rules and regulations from time to time in connection with the use of the surface waters of any portion of the Surface Water or Stormwater Management System, and shall have the right to deny such use to any person who, in the opinion of Declarant or the Association, may create or participate in a disturbance or nuisance on any part of the Surface Water or Stormwater Management System. The use of such surface waters by the Owners shall be subject to and limited by the rules and regulations of Declarant and the Association, all permits issued by governmental authorities, and any rights granted to other persons pursuant to the rules and regulations of Declarant and the Association. No gas or diesel driven watercraft shall be operated on any portion of the Surface Water or Stormwater Management System, including retention lakes. Swimming is strictly prohibited in the retention lakes.

(6) LIABILITY. NEITHER DECLARANT NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY WHATSOEVER TO OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE RETENTION LAKES AND DRAINAGE FACILITIES OR ANY PART OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM. EACH OWNER, FOR ITSELF AND ITS GUESTS, TENANTS, OR INVITEES, RELEASES DECLARANT AND THE ASSOCIATION FROM ANY LIABILITY IN CONNECTION THEREWITH.

DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR THE RETENTION LAKES AND/OR ANY PORTIONS OF THE ASSOCIATION PROPERTY. ANY INDIVIDUAL USING THE RETENTION LAKES AND/OR ANY PORTIONS OF THE ASSOCIATION PROPERTY SHALL DO SO AT HIS OR HER OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS (INCLUDING, WITHOUT LIMITATION, THOSE FROM PROPERTY DAMAGE, INJURY AND/OR DEATH) ARISING FROM SUCH USE.

NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, RETENTION AREA, CANAL, CREEK, MARSH AREA, STREAM OR OTHER WATERBODY WITHIN OR ADJACENT TO THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-

GOVERNMENTAL AGENCY OR ENTITY AS REFERENCED HEREIN. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID AREAS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED TO, OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY RELATED TO ANY CHANGES IN **THE** QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES CONTAINED WITHIN OR ADJACENT TO THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY THEIR ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT WITHIN THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR BOTTOMS.

(7) Wetlands, Jurisdictional Land Swales. This Declaration is subject to the rights of the State of Florida over portions of the Property that may be considered wetlands, marshes, sovereignty or jurisdictional lands, and every Owner shall obtain any permit necessary prior to undertaking any dredging, filling, mowing, improving, landscaping, or removal of plant life existing on his Lot.

Further, certain Lots may be improved with swales constructed within Lots that are contiguous to any jurisdictional lands. The Owners thereof shall not remove or modify the swales without the consent of the applicable governmental entities. Any Owner who alters or otherwise modifies any swale, including mowing, shall repair and restore any such swale to be in full compliance with the applicable District Permits, at such Owner's sole cost and expense and shall indemnify and hold the Declarant and the Association harmless from such violation.

(8) Rights of the District. Notwithstanding any other provisions contained elsewhere in this Declaration, the District shall have the rights and powers enumerated in this paragraph. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, and repair of the Surface Water or Stormwater Management System. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved in writing by the District. No person shall alter the drainage flow of the Surface Water or Stormwater Management System, including any buffer areas, swales, treatment berms or swales, without prior written approval of the District. Any amendment to this Declaration that alters the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have prior written approval of the District. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the



Surface Water or Stormwater Management System must be assigned to and accepted by an entity approved in writing by the District.

(9) Indemnity. Declarant may be required to assume certain duties and liabilities for the maintenance of the Surface Water or Stormwater Management System or drainage system within the Property under the Plat or Additional Plat(s), if any, permits, or certain agreements with governmental agencies. The Association further agrees that subsequent to the recording of this Declaration, it shall hold Declarant harmless ~~from~~ suits, actions, damages, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising out of any occurrence in, upon, at or from the maintenance of the Surface Water or Stormwater Management System occasioned in whole or in part by any action, omission of the Association or its agents, contractor, employees, servants, or licensees but not excluding any liability occasioned wholly or in part by the acts of the Declarant, its successors or assigns. Upon completion of construction of the Surface Water or Stormwater Management System or drainage system Declarant shall assign all its rights, obligations and duties thereunder to the Association. The Association shall assume all such rights, duties and liabilities and shall indemnify and hold Declarant harmless therefrom.

(10) Declarant's Rights. Declarant, its successors and assigns shall have the unrestricted right, without approval or joinder of any other person or entity: (i) to designate the use of, alienate, release, or otherwise assign the easements shown on the Plat or Additional Plat, if any, of the Property or described herein, (ii) to plat or replat all or any part of the Property owned by Declarant, and (iii) to widen or extend any right of way shown on the Plat or Additional Plat, if any, of the Property or convert a Lot to use as a right of way, provided that Declarant owns the lands affected by such change. Owner of Lots subject to easement shown on the Plat or Additional Plat, if any, of the Property shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under the easement area. The Owners of Lots subject to any easements shall not construct any improvements on the easement areas, alter the flow of drainage, or landscape on such areas with hedges, trees, or other landscaping items that might interfere with the exercise of the easement rights. Any Owner who constructs any improvements or landscaping on such easement areas shall remove the improvements or landscape items upon written request of Declarant, the Association, or the grantee of the easement.

H. Plat Easement(s). The Plat and/or Additional Plat(s), if any, may contain additional easements not discussed herein, granted in favor of the Association or others, for the specific purposes as described therein.

Section 7. EASEMENT FOR COMMUNITY SYSTEMS. Notwithstanding anything to the contrary in this Declaration, Declarant and its affiliates, and its and their designees shall have a perpetual exclusive easement over, across, upon and under the Association Property and the Lots for the installation, operation, maintenance, repair, replacement, alteration and expansion of Community Systems.

Section 8. DECLARATION OF RECIPROCAL CROSS EASEMENTS. Nonexclusive cross easements in, on, over, under, through, and across the Property for stormwater drainage lines, piping, infrastructure together with appurtenances related thereto and utilized in connection therewith and stormwater flowage and storage pursuant to the terms of the Declaration of Reciprocal Cross

Easements which has been recorded in Official Records Book 5835, Page 819 of the Public Records of the County.

Section 9. ASSIGNMENTS; ADDITIONAL EASEMENTS. The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any city, county or state government or agency thereof, or any duly licensed or franchised public utility, or any other designee of Declarant. Declarant shall have and hereby reserves the right to grant and/or reserve additional easements over, under and upon the Property or portions thereof (including the portion of Lots where no physical structure of the Home is located) which may be necessary or desirable by Declarant. The Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without any further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Property or portions thereof in accordance with the provisions of this Declaration.

Notwithstanding anything in this Declaration to the contrary, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

ARTICLE V  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION;  
BOARD; DURATION OF THE ASSOCIATION

Section 1. MEMBERSHIP AND VOTING RIGHTS. Membership in the Association shall be established and terminated as set forth in the Articles. Each Member shall be entitled to the benefit of, and be subject to, the provisions of the Port Orange Plantation Documents. The voting rights of the Members shall be as set forth in the Articles.

Section 2. BOARD. The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

Section 3. DURATION OF ASSOCIATION. The duration of the Association shall be perpetual, as set forth in the Articles. In the event of termination, dissolution or final liquidation of the Association, the responsibilities for the operation and maintenance of the Surface Water or Stormwater Management System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and must be approved by the Surface Water or Stormwater Management District prior to such termination, dissolution or liquidation

ARTICLE VI  
COVENANT TO PAY ASSESSMENTS; ESTABLISHMENT OF LIENS;  
COLLECTION OF ASSESSMENTS; COLLECTION BY DECLARANT;  
CERTAIN RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES

Section 1. AFFIRMATIVE COVENANT TO PAY ASSESSMENTS. In order to: (a) fulfill the terms, provisions, covenants, conditions, restrictions, reservations, regulations, burdens, liens, and easements contained in the Port Orange Plantation Documents; and (b) maintain, operate and preserve the Association Property for the use, safety, welfare and benefit of the Members and their family members, guests, invitees and tenants, there is hereby imposed upon each Completed Lot and each Completed Lot Owner, the affirmative covenant and obligation to pay to the Association

commencing from and after the first conveyance of a Home from Declarant as evidenced by the recordation of a deed in the Public Records of the County (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Lot Assessments and Special Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments in accordance with the provisions of the Port Orange Plantation Documents.

The following expenses of the Association are hereby declared to be Operating Expenses which the Association 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 Port Orange Plantation Documents: (1) any and all taxes and tax liens which may be assessed or levied at any and all times against the Association Property, the Community Systems or against any and all personal property or Improvements thereon; (2) all charges levied for Community Systems or other utilities providing services for the Association Property or to Owners on a bulk basis, such as water, gas, electricity, telephone, cable television, telecommunication services, home monitoring, sanitation, sewer and any type of utility or any other type of service charge which is not separately billed to an Owner; (3) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Association Property and directors and officers liability insurance for the officers and directors of the Association; (4) any sums necessary for the maintenance and repair of the Association Property and all Improvements located thereon; (5) administrative and operational expenses; (6) all sums necessary for the maintenance and repair of the Surface Water or Stormwater Management System to be maintained by the Association, including but not limited to work within retention areas, drainage structures and drainage easements; and (7) any and all expenses deemed to be Operating Expenses by the Association and/or under this Declaration. Reserves for replacements are specifically excluded from Operating Expenses. The Board may, if it so determines, include reserves in the Association's annual budget. In addition, any expense which is required by the Declaration to be the matter of Special Assessment shall not be deemed to be an Operating Expense. Expenses which are required to be the matter of Special Assessment include, by way of example but not by way of limitation, the following: the cost of reconstructing, replacing or improving the Association Property or any portion thereof or Improvements thereon; any casualty loss affecting the Association or the Association Property to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; any judgment against the Association (or against a Director or Directors if and to the extent such Director is, or such Directors are, entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such Director or Directors to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such Director or Directors) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; and Legal Fees incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution or settlement thereof or otherwise), except Legal Fees incurred by the Association in connection with the collection of Assessments or other charges which Owners are obligated to pay pursuant to the Port Orange Plantation Documents or the enforcement of the use and occupancy restrictions contained in the Port Orange Plantation Documents, and except Legal Fees incurred for lawsuits not approved pursuant to Section 12 of Article XIII below.

The Operating Expenses with respect to the Association Property are payable by each Owner to the Association notwithstanding the fact that Declarant may not have as yet conveyed title

to the Association Property to the Association.

**Section 2. ESTABLISHMENT OF LIENS.** Each Assessment against a Lot, together with Interest thereon and costs of collection, including, but not limited to, Legal Fees, shall be the personal obligation of the Owner of such Lot. Any and all Assessments made by the Association in accordance with the provisions of the Port Orange Plantation Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Lot against which each such Assessment is made. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, in the event an Institutional Mortgagee of record obtains a deed or title to a Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of a deed or title, its successors or assigns, shall not be liable for the share of Assessments pertaining to such Lot or chargeable to the former Owner thereof which became due prior to the acquisition of a deed or title as a result of the foreclosure or deed in lieu thereof, unless the Assessment against the Lot in question is secured by a claim of lien for Assessments that is recorded prior to the recordation of the mortgage which was foreclosed or with respect to which a deed in lieu of foreclosure was given.

**Section 3. COLLECTION OF ASSESSMENTS.** In the event any Owner shall fail to pay any Assessment, or installment thereof, charged to such Owner within fifteen (15) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies to the 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 Association:

1. To accelerate the entire amount of any Assessment for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.
2. To advance on behalf of the Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Owner(s) is (are) liable to the Association and the amount or amounts of monies so advanced, together with Interest and all costs of collection thereof, including, but not limited to, Legal Fees, may thereupon be collected by the Association from the Owner(s) and Parcel Owner(s) and such advance by the Association shall not waive the default.
3. To file an action in equity to foreclose its lien at any time after the effective date thereof as provided in Section 2 hereinabove. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.
4. To file an action at law to collect said Assessment plus Interest and all costs of collection thereof, including, but not limited to, Legal Fees, without waiving any lien rights or rights of foreclosure of the Association.
5. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five (\$25.00) and No/100 Dollars to defray additional collection costs.

6. To suspend the use rights of the Owner(s) in default to the Association Property, subject to the Notice and Hearing provisions in Article X, Section 1 herein.

7. To suspend the right of the Owner(s) in default to vote on any matter on which Owners have the right to vote if such Owner is delinquent in payment of assessments for more than ninety (90) days.

Section 4. COLLECTION BY DECLARANT. In the event for any reason the Association shall fail to collect the Assessments, Declarant shall at all times have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments and, if applicable, any such sums advanced by Declarant, together with Interest and costs of collection, including, but not limited to, Legal Fees.

Section 5. RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES TO PAY ASSESSMENTS AND RECEIVE REIMBURSEMENT. Declarant and any Institutional Mortgagee(s) shall have the right, but not the obligation, jointly or individually, 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 Lot(s). Further, Declarant and any Institutional Mortgagee shall have the right, but not the obligation, jointly or individually, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association in the event the same are overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagee paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Fees, and the Association shall execute an instrument in recordable form acknowledging such reimbursement obligation(s) and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

Section 6. COMMUNITY SYSTEMS SERVICES. The Association shall have the right to enter into one or more agreement(s) ("Bundled Service Agreements") for receipt of television (via cable, satellite or otherwise), entertainment, telecommunication, internet, monitored alarm and/or other services (collectively, "Bundled Services") for Homes in Port Orange Plantation. Any and all costs and expenses incurred by the Association under or pursuant to any Bundled Service Agreements entered into by the Association for Bundled Services will be assessed against all Completed Lot Owners. It is contemplated that there may be features and services that are or will be available in addition to and not part of the Bundled Services (each, an "Optional Service"). Notwithstanding anything to the contrary contained in this Declaration, the costs and expenses charged to the Association under the Bundled Services Agreements shall be apportioned equally, but only amongst those Homes with respect to which the Association is being charged under or pursuant to the Bundled Services Agreement except to the extent, if any, that any Owner elects to receive an Optional Service (being a service not automatically received by all Owners entitled to receive Bundled Services pursuant to the Bundled Services Agreements). Each Owner who receives an Optional Service, if any, shall be responsible for paying for the costs thereof. The foregoing shall in no way obligate Declarant or the Association to enter into any Bundled Services Agreement.

Section 7. COLLECTION BY ASSOCIATION. Subject to the provisions of Article VII below, the Association shall initially collect all assessments and other sums due the Association. Each Owner will receive one or more statements annually or each quarter, as applicable, from the

Association which lists the amounts owed to the Association.

**ARTICLE VH**  
**METHOD OF DETERMINING ASSESSMENTS**  
**AND ALLOCATION OF ASSESSMENTS**

Section 1. DETERMINING AMOUNT OF ASSESSMENTS. The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Port Orange Plantation Documents. Each Completed Lot shall be assessed its pro rata portion of the total anticipated Operating Expenses, which shall be the "Individual Lot Assessment" as to each Completed Lot. Operating Expenses shall be divided by the total number of Lots, which is planned to total eighty-eight (88), but subject to change in accordance with this Declaration. Notwithstanding anything in Port Orange Plantation Documents to the contrary, only a "Completed Lot" shall be obligated to pay Assessments. Further, any Assessment for legal expenses incurred by the Association for lawsuits shall be deemed an Operating Expense which is properly the subject of Special Assessment and not the subject of an Individual Lot Assessment, except the legal fees incurred by the Association in connection with the collection of assessments or other charges which Owners are obligated to pay pursuant to Port Orange Plantation Documents or the enforcement of the use and occupancy restrictions contained in Port Orange Plantation Documents.

Section 2. ASSESSMENT PAYMENTS. Individual Lot Assessments shall be payable quarterly, in advance, on the first day of the fiscal quarter. Notwithstanding the foregoing, the Board has the right to change the method and frequency of the payments of Individual Lot Assessments. Individual Lot Assessments, and the quarterly payments thereof, may be adjusted from time to time by the Board due to changes in the Budget or in the event the Board determines that an Assessment or any installment thereof is either less than or more than the amount actually required.

Section 3. SPECIAL ASSESSMENTS. "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Port Orange Plantation Documents and 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 Association Property or the cost (whether in whole or in part) of reconstructing or replacing such Improvements. In addition, Special Assessments may be levied against particular Lots and/or Owners to the exclusion of others. 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 Individual Lot Assessment. Any Special Assessments assessed against Lots and the Owners thereof shall be paid by such Owners in addition to any other Assessments and shall be assessed in the same manner as the Individual Lot Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the Turnover Date shall require the affirmative assent of at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws; provided, however, the Board acting alone and without the consent of Members may levy Special Assessments for the following: i) in the event of a casualty loss to repair and replace Association Property which is not insurable (e.g., landscaping, fencing, etc.), not insured, under insured, or where insurance coverage was denied by the insurance carrier after the casualty loss; ii) to obtain funds to cover insurance deductibles in the event of a casualty loss; and iii) any Special Assessment authorized by Article XI, Sections B or C herein. Prior to the Turnover Date, a Declarant-controlled

Board may make a Special Assessment without such vote of the Members. Special Assessments are not included in the guarantee set forth in Article VII, Section 5 below.

Section 4. LIABILITY OF OWNERS FOR INDIVIDUAL LOT ASSESSMENTS. By the acceptance of a deed or other instrument of conveyance of a Lot in the Property, each Owner thereof acknowledges that each Lot and the Owners thereof are jointly and severally liable for their own Individual Lot Assessments and their applicable portion of any Special Assessments, as well as for any and all other Assessments for which they are liable, as provided for herein. Such Owners M e r recognize and covenant that they are jointly and severally liable with the Owners of all Lots for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessment and the limitations on the liability of Institutional Mortgagees and their successors and assigns). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner, for such Owner and such Owner's heirs, executors, successors and assigns, that in the event any Owner fails or refuses to pay such Owner's Individual Lot Assessment or any portion thereof, or such Owner's respective portion of any Special Assessment or any other Assessment, then the other Owners may be responsible for increased Individual Lot Assessments or Special Assessments or other Assessments due to the nonpayment by such other Owner, and such increased Individual Lot Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments hereunder as provided in the Port Orange Plantation Documents.

Section 5. GUARANTEED ASSESSMENT DURING GUARANTEE PERIOD. Declarant covenants and agrees with the Association and the Owners that, for the period commencing with the date of recordation of this Declaration and ending upon the sooner to occur of the following: (i) the Turnover Date; or (ii) one (1) year from the date of recordation of this Declaration ("Guarantee Period"), Individual Lot Assessment will not exceed the dollar amount set forth in the initial Budget of the Association ("Guaranteed Assessment") and that Declarant will pay the difference ("Deficit"), if any, between (a) the Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment) incurred by the Association during the Guarantee Period (as same may be extended as hereinafter provided), and (b) the sum of (x) the amounts assessed as Guaranteed Assessments against Owners during the Guarantee Period (as same may be extended as hereinafter provided), (y) the "Ongoing Capital Contributions" set forth in Article VII, Section 7 hereof and (z) any other income of the Association during the Guarantee Period (as same may be extended as hereinafter provided). Thus, during the Guarantee Period (as same may be extended as hereinafter provided), Owners shall not be obligated to pay Assessments other than the Guaranteed Assessment, Special Assessments and the Owners' respective Ongoing Capital Contributions. The Deficit, if any, to be paid by Declarant pursuant to this Section 5 shall be determined by looking at the Guarantee Period (as same may be extended as hereinafter provided) as a whole, without regard to quarterly, annual or any other accounting or fiscal periods and without regard to intraperiod allocations. In that regard, in the event it is determined at the end of the Guarantee Period (as same may be extended as hereinafter provided) that there is a Deficit and Declarant has previously advanced funds to the Association in excess of the Deficit during the Guarantee Period (as same may be extended as hereinafter provided), Declarant shall be entitled to the immediate repayment from the Association of the amount of funds advanced by Declarant in excess of the Deficit. Declarant hereby reserves the right to extend the Guarantee Period from time to time to a date ending no later than the Turnover Date at Declarant's sole election by providing written notice to the Association of

such election prior to the expiration of the Guarantee Period (as same may have been previously extended). Declarant also reserves the right to increase the amount of the Guaranteed Assessment during any such extended Guarantee Period. Special Assessments are not included in this guarantee. Special Assessments may include assessments for items such as capital expenditures or amounts needed to supplement repair expenses not covered by insurance.

After the Guarantee Period (as same may have been previously extended) terminates, each Owner shall be obligated to pay Assessments as set forth in Article VII, Section 1 hereof, and, commencing at such time, Declarant shall no longer be required to pay the Deficit, if any.

Section 6. DECLARANT'S GUARANTEED ASSESSMENT NOT THE OBLIGATION OF INSTITUTIONAL MORTGAGEES. Notwithstanding anything to the contrary herein contained, it is specifically understood and declared that each Owner, by the acceptance of a deed or other instrument of conveyance of a Lot within the Property, shall be deemed to have acknowledged and agreed that no Institutional Mortgagee (other than Declarant) or any successor or assign of such Institutional Mortgagee, or any person acquiring a deed or title to any part of the Property by reason of the foreclosure or otherwise of an Institutional Mortgagee shall be deemed to have made, assumed or otherwise undertaken any covenants or obligations of Declarant: (i) to guarantee the level and/or duration of any Guaranteed Assessments provided for under any of the Port Orange Plantation Documents; or (ii) to pay the difference between the actual Operating Expenses and the Guaranteed Assessments, if any, assessed against Lots and the Owners thereof during the Guarantee Period (as same may have been previously extended) as may be provided for in any of the Port Orange Plantation Documents; provided, however, that an Institutional Mortgagee may, at its option, determine to continue the obligation of Declarant to guarantee the amount of the Assessments as herein provided. Additionally, a successor declarant shall not be deemed to guarantee the level and/or duration of any Guaranteed Assessments provided for under any of the Port Orange Plantation Documents or be obligated or pay the difference between the actual Operating Expenses and the Guaranteed Assessments, if any, assessed against Lots and the Owners thereof during the Guarantee Period (as same may have been previously extended) unless such obligation is assumed in writing by such successor declarant.

Section 7. ONGOING CAPITAL CONTRIBUTION. Each Owner who purchases a Lot with a Home thereon shall pay to the Association at the time legal title is conveyed to such Owner, an "Ongoing Capital Contribution" in the amount of Two Hundred Fifty and 00/100 Dollars (\$250.00). Ongoing Capital Contributions are not advance payments of Individual Lot Assessments and shall have no effect on future Individual Lot Assessments, nor will they be held in reserve. To ensure that the Association will have sufficient cash available to pay for start-up expenses, Operating Expenses and other expenses, Declarant may from time to time advance to the Association the Ongoing Capital Contribution applicable to any Lot(s) prior to the time legal title to such Lot(s) is conveyed to the Owner(s) thereof. In the event Declarant advances the Ongoing Capital Contribution applicable to any Lot, then, at the time legal title to such Lot is conveyed to the Owner thereof, the Ongoing Capital Contribution to be paid by such Owner to the Association pursuant to this Section 7 shall be paid directly to Declarant in reimbursement of the advance, instead of to the Association. Ongoing Capital Contributions (whether paid by Owner or advanced by Declarant) may also be used to offset Operating Expenses, both during the Guarantee Period (as same may have been previously extended) and thereafter.



Section 8. WAIVER OF USE. No Owner, other than Declarant, may exempt himself from personal liability for Assessments duly levied by the Association. No Owner may release the Lot owned by such Owner from the liens and charges hereof either by waiver of the use and enjoyment of the Association Property and the facilities thereon or by abandonment of such Owner's Home.

## ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

Section 1. MEMBERS OF THE COMMITTEE. The Architectural Control Committee, sometimes referred to in this Declaration as the "Committee," shall be comprised of three (3) members. The initial members of the Committee shall consist of persons designated by Declarant. Each of said persons shall hold office until all Lots and Homes have been conveyed or such earlier time as Declarant may, at its sole option, elect. Thereafter, each new member of the Committee shall be appointed by the Board and shall hold office until such time as such new member has resigned, or has been removed, or such new member's successor has been appointed, as provided herein. Members of the Committee, other than those designated by Declarant, may be removed at any time without cause. The Board shall have the sole right to appoint and remove all members of the Committee other than those designated by Declarant.

Section 2. REVIEW OF PROPOSED CONSTRUCTION.

A. No Improvements, including, by way of example and not of limitation, accessory structures, exterior lighting fixtures, brick pavers, stamped concrete, concrete flatwork, basketball goals, gym sets and play structures, buildings, fences, walls, pools, roofs, gutters or rain spouts, antennae, aerials, microwaves, reception devices, mailboxes, external enclosures or attachments (including entry screen and patio screen enclosures), or landscaping (including hedges, massed plantings and trees) shall be commenced, erected, installed, altered, modified, painted, planted, or maintained on the Property, including the Lots, nor shall any canopies, shutters, or window coverings be attached to or placed upon outside walls or roofs of any Home or building by any Owner other than Declarant, unless such Improvements have been reviewed by and received the written approval of the Committee in accordance with Paragraph B herein below. Any Owner desiring to make Improvements shall submit two (2) complete sets of plans and specifications prepared by an architect, landscape architect, engineer or other person determined by the Committee to be qualified, showing the nature, dimensions, materials and location of the same, together with the security deposit if required by the Committee, to be held and disbursed by the Association in accordance with Section 3 herein below. In addition to the foregoing, the Committee may establish and charge a review fee on a case by case basis, in the sole discretion of and in an amount set by the Committee. If a review fee is charged by the Committee, it shall be non refundable in any event, whether or not the application submitted by an Owner is approved. Notwithstanding anything in this Article VII to the contrary, if it is determined that any of the terms of Article VII conflict with any of the terms or provisions of Article X, Section 18, then the terms or provisions of Article X, Section 18 shall supersede and control to the extent of such conflict.

B. The Committee shall approve proposed plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated will not be detrimental to the appearance of the surrounding area of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Committee may also issue and amend from time to time rules or

guidelines setting forth procedures for the submission of plans and specifications. If the proposed construction, alterations or additions are to a portion of the Improvements which the Association is obligated to maintain, said approval shall also be subject to approval by the Board. The Committee may condition its approval of proposed plans and specifications in such a manner as it deems appropriate and may require the submission of additional information prior to approving or disapproving such plans.

C. The Committee shall have thirty (30) days after delivery of all required materials to give written approval or rejection of any such plans and, if written approval is not given within such thirty (30) day period, such plans shall be deemed rejected, provided, however, that in any event, no such addition, construction or alteration shall be made by any Owner which is detrimental to or inconsistent with the harmony, appearance or general scheme of the Property as a whole.

D. Unless otherwise required by applicable governmental laws, statutes, ordinances, rules or regulations, no fence, wall, gate, hedge, or other structure shall be erected or maintained on any Lot, except as originally installed by Declarant or Declarant's assignee, or accept any approved in writing by the Committee as provided herein.

E. Notwithstanding anything to the contrary in this Declaration, in no event shall any fence or other Improvement (including, without limitation, landscaping) be permitted if such fence or other Improvement shall in any way interfere with the flow of rainfall runoff to or through the Surface Water or Stormwater Management System.

F. Notwithstanding any provision in this Article to the contrary, the approval of the Committee shall not be required for any additions, changes or alterations within any Homes if such additions, changes or alterations are not visible from the outside of such Homes. All changes and alterations shall be subject, independently, to all applicable governmental laws, statutes, ordinances, codes, rules and regulations.

G. Notwithstanding anything to the contrary herein contained, no construction, reconstruction, addition or alteration by Declarant shall require the prior approval or any certificate of consent of the Committee or any security deposit.

**Section 3. SECURITY DEPOSIT FOR IMPROVEMENTS; INDEMNIFICATION.** Any Owner desiring to make Improvements may be required by the Committee, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the Committee, at the time of the Owner's submission of plans and specifications for review and approval by the Committee, up to a Five Thousand Dollar (\$5,000.00) security deposit to cover costs of incidental damage caused to Association Property, an adjacent Home or Lot, or any property (real or personal) by virtue of such Owner's construction of Improvements. The Committee shall have the sole and absolute discretion to determine whether a security deposit is required for the Improvements being requested. The Association shall not be obligated to place the security deposit in an interest bearing account. The Owner shall be entitled to the return of the security deposit upon: (i) such Owner's written notice to the Committee that the Improvements covered by the security deposit have been completed in accordance with the plans and specifications approved by the Committee; and (ii) the Committee's (or its duly authorized representative's) inspection of such Improvements

confirming completion; provided, however, should any incidental damage be caused to Association Property by virtue of such Owner's construction of Improvements, the security deposit shall not be returned to Owner until such damages have been repaired. In the event that Owner has not repaired such damages to the Association Property to the satisfaction of the Committee, Association shall have the right (but not the obligation), after five (5) days notice to the offending Owner, to repair such incidental damage and to use so much of the security deposit held by the Association to reimburse itself for the costs of such work. Further, the offending Owner hereby agrees to indemnify and reimburse the Association for all reasonable costs expended by the Association that exceed the security deposit, including Legal Fees, if any, incurred in connection therewith. Should any incidental damage be caused to an adjacent Lot or Home by virtue of such Owner's construction of Improvements, the Owner of the adjacent Lot (the "Adjacent Lot Owner") shall, at such Adjacent Lot Owner's sole option: (a) remedy such damage and submit to the Association a receipt, invoice or statement therefor for reimbursement from the offending Owner's security deposit; or (b) allow the offending Owner to repair such incidental damage to the Adjacent Lot Owner's Lot or Home, at the offending Owner's sole cost and expense, and upon receipt by the Association of written notice from the Adjacent Lot Owner that such incidental damage has been repaired, the offending Owner shall be entitled to a return of the security deposit being held by the Association, if any.

Notwithstanding anything contained in this Section to the contrary, the Association's return of the security deposit being held by it for any such Improvements shall be based solely on considerations set forth above. The Association's return of the security deposit does not and shall not be construed to constitute a determination by members and representatives of the Committee, the Declarant, and/or the Association of the structural safety, approval or integrity of any Improvement, conformance with building or other codes or standards, or the proper issuance of governmental permits and approvals for any Improvement.

Section 4. MEETINGS OF THE COMMITTEE. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Article VIII, Section 9 below. In the absence of such designation, the vote of any two (2) members of the Committee shall constitute an act of the Committee.

Section 5. NO WAIVER OF FUTURE APPROVALS. The approval of the Committee of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant. Similarly, the denial of approval by the Committee of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant.

Section 6. COMPENSATION OF MEMBERS. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the

performance of their duties hereunder.

Section 7. INSPECTION OF WORK. Inspection of work and correction of defects therein shall proceed as follows:

A. Upon the completion of any work for which approved plans are required under this Article, the submitting party shall give written notice of completion to the Committee.

B. Within thirty (30) days after written notice of completion, the Committee or its duly authorized representatives may inspect such Improvement. If the Committee finds such work was not done in substantial compliance with the approved plans, it shall notify the submitting party in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and shall require the submitting party to remedy such noncompliance.

C. If upon the expiration of fifteen (15) days from the date of such notification the submitting party shall have failed to remedy such noncompliance, notification shall be given to the Board in writing of such failure. Upon such notice, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the submitting party shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board's ruling. If the submitting party does not comply with the Board's ruling within such period, the Board, at its option, may remove the Improvement, remedy the noncompliance, or proceed in court to compel compliance and the submitting party shall reimburse the Association, upon demand, for all expenses incurred in connection therewith, including Interest and Legal Fees. If such expenses are not promptly repaid by the submitting party to the Association, the Board shall levy an Assessment against such submitting party for reimbursement, and said Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as liens for Operating Expenses.

D. If, for any reason, notification is not given to the submitting party of acceptance within thirty (30) days after receipt of said written notice of completion from the submitting party, the Improvement and/or alteration shall be deemed to be in compliance with said approved plans.

Section 8. NON-LIABILITY OF COMMITTEE MEMBERS. Neither the Committee nor any member thereof, nor its duly authorized Committee representative, nor Declarant, shall be liable to the Association or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall have any liability. The Committee's review and approval or disapproval of plans submitted to it for any proposed Improvement shall be based solely on considerations of the overall benefit or detriment to the community as a whole. The Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes or standards, and no member or representative of the Committee or the Association, nor Declarant, shall be liable for the safety, soundness, workmanship, materials or usefulness for any purpose of any such Improvement or alteration proposed by the plans. By submitting a request for review and approval by the Committee, an Owner shall be deemed to have and does automatically agree to indemnify defend and hold harmless the Committee, the Association and the Declarant (and each of their respective officers, directors,

partners, affiliates, members and representatives) from and against any and all claims, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, Legal Fees) arising from, relating to or in any way connected with the Improvement or alterations for which such request was submitted. Furthermore, approval by the Committee of any request does not excuse Owner from also obtaining approvals from all applicable governmental authorities.

Section 9. VARIANCE. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require; provided, however, the Committee shall not give or authorize (and the Committee is hereby prohibited from giving or authorizing) any variance with respect to: (i) the type of fencing permitted by Section 2.D of this Article VIII above, or (ii) the displaying of any signs for the sale or renting of the Home as prohibited in Section 11 of Article X below. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the Improvements for which the variance was granted.

Section 10. DECLARANT EXEMPTION. Declarant is hereby exempt from having to comply with the requirements of this Article VIII in their entirety.

#### ARTICLE **IX** MAINTENANCE AND REPAIR OBLIGATIONS

Section 1. BY THE ASSOCIATION.

A. The Association, at its expense, shall be responsible for the operation, maintenance, repair and replacement of all of the Improvements and facilities located over, through and upon the Association Property (except public utilities and Community Systems, to the extent same have not been made Association Property). Should any incidental damage be caused to any Home by virtue of the Association's failure to maintain the Association Property as herein required or by virtue of any work which may be performed or caused to be performed by the Association in the maintenance, repair or replacement of any Association Property, the Association shall, at its expense, repair such incidental damage. The Association shall not, however, be responsible for any loss of use, any hardship, an Owner's time or any other consequential or punitive damages.

B. The Association shall operate, maintain, repair and replace the irrigation system constructed over, through and upon the Association Property (or any portions thereof) as it shall deem appropriate. Except as provided in Section 2.B of this Article **IX**, the Association shall be responsible for the costs of operation, maintenance, repair and replacement of the irrigation system in connection with the Association Property, including any monthly fees and other costs of water and/or electric usage, if any.

There is hereby reserved in favor of the Association the right to enter upon the Association Property and any and all Lots for the purpose of operating, maintaining, repairing and replacing the irrigation system over, through and upon the Association Property within the Property.

In accordance with the provisions of this Declaration, the Association shall operate, maintain and repair the Surface Water or Stormwater Management System constructed over,

through and upon the Property. Such maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or stormwater management capabilities as permitted by District. Any repair or construction of the Surface Water or Stormwater Management System shall be as permitted or, if modified, as approved by the District. There is hereby reserved in favor of the Association the right to enter upon the Association Property and the Lots for the purpose of operating, maintaining, repairing, and replacing the Surface Water or Stormwater Management System over, through and upon the Property. The Association shall be responsible for all costs associated with all cleaning, maintenance, repairs and replacement of any portion of the Surface Water or Stormwater Management System necessary to maintain the system in its original condition and use. In the event the Association fails to maintain the Surface Water or Stormwater Management System in accordance with this Declaration and/or the District Permit, as the same may be amended from time to time, then the District shall have the right to commence an action against the Association, including, without limitation, monetary penalties and injunctive relief, to compel the Association to maintain the portions of the Surface Water or Stormwater Management System for which the Association is responsible in accordance with this Declaration and/or the District Permit. The registered agent for the Association shall retain a copy of the District Permit for the Association's benefit.

C. The Association shall be responsible for the maintenance, repair and replacement of all private streets, drives, roads and roadways, if any, located upon the Association Property and there is hereby reserved in favor of the Association the right to enter upon any and all parts of the Association Property and Lots for such purpose. To the extent permitted by the appropriate governmental authority, the Association may, but shall not be obligated to, also provide maintenance of all city, County, district or municipal properties which are located within or in a reasonable proximity of the Property to the extent that their deterioration or unkempt appearance would adversely affect the appearance of the Property, including the right to enhance the landscaping in any public right of way.

D. The Association shall be responsible for the maintenance, repair and replacement of any common lighting located in Port Orange Plantation; provided, however, the Association shall not be responsible for the maintenance, repair and replacement of any lighting provided by the municipal electric service.

E. Neither the Association nor any Owner shall alter the slopes, contours, or cross sections of the lakes, lake banks and littoral zones or chemically, mechanically, or manually remove, damage or destroy any plants in any of the littoral zones, except upon the written approval from the applicable governmental authority. The Association shall be responsible for maintaining the required survivorship and coverage of the planted littoral areas, to ensure the ongoing removal of prohibited and invasive non-native plant species from these areas, and to comply with all governmental regulations applicable to the lakes, lake banks and littoral zones.

F. Any property designated as open space, landscape buffer, undisturbed natural buffer, preserve area, or conservation or wetland area on any plat, permit, or other document recorded in the Public Records of the County shall be preserved and maintained by the owner of such property in a natural open condition. The Association or any subsequent owner shall not do anything that diminishes or destroys the open space, landscape buffer, undisturbed natural buffer, preserve area, or conservation area, and such areas shall not be developed for any purpose except that which

improves or promotes the use and enjoyment of such areas as open space.

G. The Association, by action of its Board, may make minor and insubstantial alterations and Improvements to the Association Property having a cost not in excess of Five Thousand Dollars (\$5,000). All other alterations and Improvements must first be approved by at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. No alteration or Improvement may be made to the Association Property which materially and adversely affects the rights of the Owner of any Lot to the enjoyment of such Owner's Lot or the Association Property unless the Owner and all mortgagees holding recorded mortgages on such Lot consent thereto in writing.

H. All expenses incurred by the Association in connection with the services, operation, maintenance, repair and replacement described in Paragraphs A through G above, inclusive, are Operating Expenses, payable by each Owner under the provisions of this Declaration concerning Assessments. Should the maintenance, repair or replacement provided for in Paragraphs A through F of this Section 1 be caused by the negligence of or misuse by an Owner, such Owner's family, guests, servants, invitees, or tenants, such Owner shall be responsible therefor, and the Association shall have the right to levy an Assessment against such Owner's Lot and said Assessment shall constitute a lien upon the appropriate Lot and Home with the same force and effect as liens for Operating Expenses.

I. The Association has a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of Port Orange Plantation.

## Section 2. BY THE OWNERS.

A. The Owner of each Lot must keep and maintain the Lot and the Improvements thereon, including all equipment and appurtenances, in good order, condition and repair, and must perform promptly all maintenance and repair work within, upon and outside of such Owner's Home which, if omitted, could adversely affect Port Orange Plantation, the other Owners or the Association and its Members. The Owner of each Lot shall be responsible for any damages caused by a failure to so maintain such Lot, Improvements and Home. The Owners' responsibility for maintenance, repair and replacement shall include, but not be limited to, all of the physical structures constructed in, upon, above or below the Lot, and physical items attached or connected to such structures that run beyond the boundary line of the Lot which exclusively service or benefit the Lot and Home. Without limiting the generality of the foregoing, the Owner of each Lot shall keep all drainage structures (such as catch basins) located on the Owner's Lot clear of grass, leaves and other debris. Additionally, the painting, caulking and maintenance of the exterior surface of the walls, doors, windows and roof of the physical structures of the Home shall be performed by the Owner, and the exterior surface of such walls, doors, windows and roof shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. The Owner of a Lot further agrees to pay for all utilities (including, without limitation, those provided by the Community Systems), such as telephone, cable or satellite television, telecommunication systems, home monitoring, water (including water associated with irrigation), sewer, sanitation, electric, etc., that may be separately billed or charged to each Home. The Owner of each Lot shall be responsible for insect and pest control within the Home and the Lot. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at such Owner's

own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

In addition to the foregoing, the Owner of each Home shall be required to maintain appropriate climate control, keep his or her Home clean, promptly repair any leaks and take necessary measures to retard and prevent mold, fungi, mildew and mycotoxins from accumulating in the Home. Each Owner shall be required to clean and dust such Owner's Home on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover any heating, ventilation or air-conditioning ducts, and to properly maintain and have serviced on a regular basis, the Home's HVAC system. Each Owner of a Home shall be responsible for damage to such Owner's Home and personal property as well as any injury to the Owner of a Home and/or occupants of the Home resulting from the Owner's failure to comply with these terms. Each Owner of a Home shall be responsible for the repair and remediation of all damages to the Home caused by mold, fungi, mildew and mycotoxins. While the foregoing are intended to minimize the potential developments of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of same. Declarant does not make any representations or warranties regarding the existence or development of molds, fungi, mildew or mycotoxins, and each Owner on behalf of themselves and their family members, guests, invitees, tenants, successors and assigns shall be deemed to and by acceptance of a deed or title to the Home or by use of the Home, waives and expressly releases any such warranty and claims for loss or damages (including, without limitation, property damage and/or personal injury) resulting from the existence and/or development of same. References in this section regarding climate control and air conditioning shall only be applicable to those portions of the Home that are air conditioned.

B. The Owner of each Lot shall maintain and care for any sod, lawns and landscaping which are encompassed within the Lot including, without limitation, the irrigation system installed thereon. In addition to the foregoing, the Owner of each Lot shall maintain and care for the grassed areas (including, without limitation, all landscaping thereon, if any) located between the front and/or side lot line of such Owner's Lot and the edge of the roadway in front and/or side of such Owner's Lot. The Owner of each Lot abutting a lake or retention area shall also maintain the area encompassed between the rear property line and the water's edge. "Maintenance and care" within the meaning of this Subsection B shall include irrigating, mowing, edging, fertilizing, trimming of trees and landscaping, spraying of lawns, and replacement of sod, trees and landscaping (including, without limitation, replacement of any dead or dying trees so that, at a minimum, the initial landscaping provided by Declarant is maintained). All lawns shall be maintained free from unsightly bald spots or dead grass and shall be uniform in texture and appearance with surrounding lawns in Port Orange Plantation. Nothing shall be planted in any open space, landscape buffer and/or undisturbed natural buffer, if any, by any Owner.

Declarant may have constructed one or more drainage swales upon each Lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such



Lot from time to time. Each Lot Owner shall be responsible for the maintenance, operation and repair of the swales on the Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swale shall be authorized and any damage to any drainage swale, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Owner(s) of the Lot(s) upon which the drainage swale is located.

C. The Owner of each Lot shall maintain, repair and replace as needed any fencing on their Lot, clean, maintain and repair the driveway on their Lot, and keep the sidewalk located on and/or adjacent to their Lot clean and free from any stains, trash, debris and/or impediments to pedestrian traffic.

D. Each Owner of a Lot abutting a lake shall also be responsible for maintaining and repairing the portion of the lake bank slopes on his or her Lot.

E. In addition to the above, the Owner of each Home shall be responsible to fix leaks in and otherwise maintain and repair the roof of such Owner's Home; replace any dead or obviously dying trees on their Lot; and maintain, repair and replace any fences on their Lot, except as otherwise provided in Article ~~IX~~, Section 1.E hereof. The Owner of each Home shall also clean, maintain and repair the driveway located on its Lot and keep the sidewalks located on its Lot clean and free from any impediments to pedestrian traffic.

F. If a Home is damaged by fire or other casualty, its Owner shall properly and promptly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Home unless otherwise authorized by the Board and shall be otherwise subject to all provisions of Article VIII hereof.

G. Each Owner shall keep such Owner's Home insured in an amount not less than its full insurable value against loss or damage by fire or other hazards. Evidence of such coverage shall be furnished to the Association promptly upon the Board's request.

H. If an Owner fails to comply with the foregoing provisions of this Section 2, the Association may proceed in court to compel compliance. Further, if the failure to comply relates to the Owner's obligations to maintain insurance, the Association shall be entitled, although not obligated, to obtain the required coverage itself and to levy on the offending Owner an Assessment equal to the cost of premiums, and any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

I. If a failure to comply with the provisions of this Section 2 relates to the Owner's obligation to maintain and care for the Home, landscaping or any other area required to be maintained and cared for by the Owner, then, in addition to the exercise of all other remedies, the Association or Declarant shall have the right but not the obligation, upon fifteen (15) days written notice, to enter the Lot of the Owner for the purpose of performing the maintenance and care referred to, set forth and described in the notice and to levy on the offending Owner an Assessment equal to

the cost of performing such maintenance and care. Any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses. The determination of whether an Owner is failing to properly maintain and care for the property for which he has the maintenance responsibility under this Declaration or any of the other Port Orange Plantation Documents shall be determined in the sole discretion of the Association or Declarant.

**Section 3. DAMAGE TO BUILDINGS.** The Owner of any Home which has suffered damage may apply to the Committee for approval for reconstruction, rebuilding, or repair of the Improvements therein. The Committee shall grant such approval only if, upon completion of the work, the exterior appearance of the Improvement(s) will be substantially similar to that which existed prior to the date of the casualty. If the obligation for repair falls upon the Association, the Committee approval will not be required prior to the commencement of such work, so long as the exterior appearance of the Improvements will be substantially similar to that which existed prior to the date of the casualty.

The owner or owners of any damaged building (including, without limitation, the Owner of a Lot and/or Home), the Association, and the Committee shall be obligated to proceed with all due diligence hereunder and the responsible parties shall commence reconstruction within three (3) months after the damage occurs and complete reconstruction within one (1) year after the damage occurs, unless prevented by causes beyond his or her or their reasonable control.

Declarant shall be exempt from the provisions of this Section 3, provided that any such reconstruction, rebuilding or repairs made by Declarant shall be consistent, as to the exterior appearance, with the Improvements as they existed prior to the damage or other casualty.

## ARTICLE X USE RESTRICTIONS

All of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, and any and all additional rules and regulations which may, from time to time, be adopted by the Association, except as provided in Article X, Section 19 below:

**Section 1. ENFORCEMENT.** Failure of an Owner to comply with any limitations or restrictions in this Declaration or any of the Port Orange Plantation Documents or with any rules and regulations promulgated by the Association shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. Without limiting the generality of the foregoing, an Owner shall also be responsible for the payment of any and all Legal Fees incurred by the Association in connection with the enforcement of this Declaration or any of the Port Orange Plantation Documents or with any rules or regulations promulgated by the Association, whether or not an action is actually begun. Any such Legal Fees shall be paid not later than thirty (30) days after written notice thereof and if not paid within such thirty (30) day period, shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

Notwithstanding the rights of the Association hereunder to enforce to the terms and provisions of the Port Orange Plantation Documents, the District shall also have the right to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel the Association to correct any failure by the Association to operate, maintain and repair

the Surface Water or Stormwater Management System in accordance with the District Permit.

In addition to all other remedies, the Association may suspend, for a reasonable period of time, any or all of the rights of any or all of an Owner or an Owner's tenants, guests or invitees to use Association Property and facilities (including, without limitation, cable television and other services provided by Community Systems); may suspend the voting rights of an Owner if such Owner is delinquent in payment of assessments for more than ninety (90) days; and may levy reasonable fines against any Owner or any Owner's tenant, guest or invitee for failure of such Owner, and/or such Owner's family, guests, invitees, tenants or employees to comply with any of the Port Orange Plantation Documents, provided the following procedures are adhered to:

A. Notice. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without notice of at least fourteen (14) days to the Owner sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine.

B. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as applicable, not later than twenty-one (21) days after said meeting.

C. Payment. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

D. Fines. An Owner shall be responsible for all Legal Fees incurred in connection with the collection of a fine whether or not an action at law to collect said fine is commenced. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration.

E. Failure to Pay Assessments. Notice and Hearing as provided in Subparagraphs A and B above shall not be required with respect to the imposition of suspension of use rights or fines upon any Owner because of such Owner's failure to pay Assessments or other charges when due.

F. Access. Suspension of use rights to Association Property shall not impair the right of an Owner or tenant of a Lot and/or Home to have vehicular and pedestrian ingress to and egress from such Lot and/or Home, including, but not limited to, the right to park.

Section 2. OCCUPANCY OF HOME. The Fair Housing Amendments Act of 1988 (Public Law 100-430, approved September 13, 1988) ("Fair Housing Act"), which became effective in March, 1989, and as amended effective December 31, 1995, provides that communities cannot reject families with children. Therefore, neither Declarant nor the Association shall have the authority to

prohibit children.

Section 3. NUISANCES. No obnoxious or offensive activity shall be carried on or about the Lots or in or about any Improvements, Homes, or on any portion of Port Orange Plantation nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Homes which is a source of annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Homes or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements, Homes or Lots. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Board.

Section 4. PARKING AND VEHICULAR RESTRICTIONS. Parking upon the Property shall be restricted to the driveway and garage located upon each Lot and designated parking areas within the Association Property. No parking on the streets or swales is permitted. No Owner shall keep any vehicle on any Lot which is deemed to be a nuisance by the Board. No Owner shall conduct repairs taking more than twenty-four (24) hours (except in an emergency or except within the garage of the Home with the garage door closed) or restorations of any motor vehicle, boat, trailer, or other vehicle upon any Lot. No commercial vehicle, trailer, recreational vehicle, motor home, boat or boat trailer may be parked or stored on the Property except in the garage of a Home located upon a Lot. No bus or tractor-trailer or any other truck larger than a full-size pickup truck may be parked on the Property, except temporarily as in the case of a moving van or other such vehicle necessary to provide service to an Owner and with the exception of any vehicles necessary for any construction activity being performed by or on behalf of Declarant.

Section 5. NO IMPROPER USE. No improper, offensive, hazardous or unlawful use shall be made of any Home nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. All valid laws, zoning ordinances, orders, rules, regulations, codes and other requirements of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, ordinances, orders, rules, regulations, codes or other requirements of any governmental agency having jurisdiction thereover relating to any Home or Lot shall be corrected by, and at the sole expense of, the Owner of said Home and/or Lot.

Section 6. LEASES. No portion of a Home (other than an entire Home) may be rented. All leases shall provide, and if they do not so provide then the leases shall be deemed to provide, that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles, the Bylaws, applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Homes. The Owner of a leased Home shall be jointly and severally liable with such Owner's tenant for compliance with the Port Orange Plantation Documents and to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinate to any lien filed by the Association whether before or after such lease was entered into.

Within five (5) days following execution of a lease for a Home, but in no event later

than occupancy of the Home by a tenant, Owner shall: (a) notify the Association in writing with the name of the tenant and all of tenant's family members or others that will be occupying the Home, and (b) provide the Association with a true, correct and complete copy of the lease agreement. In the event Owner fails to timely comply with the foregoing, such lease shall be null and void and of no further force or effect, and Owner shall be in violation of this Declaration.

Section 7. ANIMALS AND PETS. No animals, livestock or poultry of any kind of size shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept subject to the rules and regulations governing their keeping adopted by the Board. In no event shall the number of pets exceed two (2) for any Lot. No permitted pet may be kept, bred or maintained for any commercial purpose. No permitted pet may be kept if the pet becomes a nuisance or annoyance to any neighbor, as determined by the Board. No dogs or other pets shall be permitted to have excretions on the Property, except in locations designated by the Board. The Association will promulgate rules and regulations from time to time designating other rules as necessary to regulate pets.

Section 8. ADDITIONS AND ALTERATIONS. No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any improvement, addition, or alteration to the exterior of such Owner's Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, including doors, garage doors, driveways and walkways, without the prior written approval of: (i) the Committee as set forth in Article VIII of this Declaration, which approval may be withheld for purely aesthetic reasons, and (ii) all applicable governmental entities.

Section 9. INCREASE IN INSURANCE RATES. No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

Section 10. SLOPES AND TREES. No Owner may engage in any activity which will change the slope or drainage of a Lot, including, without limitation, lake bank slopes. No additional trees are permitted to be planted on the Property and no trees are permitted to be removed from the Property (other than dead or dying trees which are being replaced with trees of the same species) without the prior written consent of Declarant for as long as Declarant owns a Lot, and thereafter without the prior written consent of the Committee. No Owner may alter the slopes, contours or cross-sections of the lakes, lake banks, littoral zones, canals, or canal banks; or chemically, mechanically or manually remove, damage or destroy any plants in any littoral zones.

Section 11. SIGNS. No sign, display, poster, advertisement, notice, lettering or other advertising device of any kind whatsoever (including, without limitation, "For Sale," "For Rent" or "By Owner" or any other signs for the sale or renting of homes) may be exhibited, displayed, inscribed, painted or affixed in public view of any portion of any building or other Improvement in the Property (including, without limitation, a Home) without the prior written consent of the Board, which consent may be given, withheld or conditioned in the sole and absolute discretion of the Board. Neither the Board nor the Committee shall consent to any type of "For Sale," "For Rent," "By Owner" or similar sign for the renting or sale of a Home so long as Declarant owns a Lot in Port Orange Plantation or so long as Declarant or any of Declarant's affiliates (or any of their respective successors or assigns) are conducting sales and marketing of Homes in Port Orange Plantation or other communities developed or marketed by Declarant or its affiliates, whichever is later. Signs,

regardless of size, used by Declarant or any of Declarant's affiliates, or any of their successors or assigns, for advertising or marketing during the construction and sale period of Port Orange Plantation or other communities developed and/or marketed by Declarant or its affiliates and other signs authorized by Declarant shall be exempt from this Section 11. Such sign or signs as Declarant may be required to erect under the terms of an Institutional Mortgage shall also be exempt from this Section 11. This provision may not be amended without the prior written consent of Declarant.

Section 12. TRASH AND OTHER MATERIALS. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Association Property, or other portions of the Property, except in sanitary, self-locking containers located in appropriate areas (i.e., areas not visible from the street or any other Lot other than at times of scheduled trash pick up), and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, offensive, detrimental or a nuisance to Owners or to any other property in the vicinity thereof or to its occupants. No clothing or other household items shall be hung, dried, or aired in such a way as to be visible from the Association Property or another Lot. No stripped vehicles, lumber or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of the Property (except when accumulated during construction by Declarant, during construction approved by the Committee, or when accumulated by the Association for imminent pick-up and discard).

Section 13. TEMPORARY STRUCTURES. No tent, shack, shed or other temporary building or Improvement, other than separate construction, service and sales trailers to be used by Declarant, Declarant's affiliates, and/or their respective agents and contractors, for the construction, service and sale of Port Orange Plantation or other communities, shall be placed upon any portion of the Property, either temporarily or permanently. No trailer, motor home or recreational vehicle shall be: (a) used as a residence, either temporarily or permanently, or (b) parked upon the Property, unless fully enclosed in a garage.

Section 14. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, boring or mining operations of any kind shall be permitted upon or on any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 15. SEWAGE DISPOSAL. No individual sewage disposal system shall be permitted on any of the Property, provided that a central sewage disposal system is being operated in accordance with the requirements of the governmental regulatory body having jurisdiction over said central system.

Section 16. WATER SUPPLY. No individual water supply system shall be permitted on any of the Property, provided that one or more central water supply systems are being operated in accordance with requirements of the governmental body having jurisdiction over said central system, except that wells are permitted for the irrigation of landscaping only, provided that a stain tank is installed in conjunction with the irrigation well.

Section 17. FENCES. Any fence placed upon any Lot must be approved by the Committee, as provided in Article VIII hereof, prior to installation. The Owner assumes complete responsibility to maintain the fence, including, but not limited to, trimming any grass, ivy or other plants from the

fence. In the event the Committee approves the installation of a fence, it shall also have the right to require installation of landscaping, also subject to the Committee's approval, at the time the fence is installed.

Notwithstanding that an Owner has obtained the approval of the Committee to install a fence or landscape materials, as provided hereinabove, such installation shall be at the Owner's sole risk so long as Declarant has not yet begun or is engaged in the construction of a Home on an adjacent Lot. In the event such construction activity on an adjacent Lot causes damage to or destruction of such Owner's fence or landscape materials or any part thereof, the Owner on whose Lot the fence and/or landscaping has been damaged shall be required, at the Owner's expense, to repair or replace such fence and/or landscape materials in conformance with the requirements of the Committee's approval of the initial installation of the fence and/or landscape materials and Declarant shall have no liability for any such damage or destruction. Such repair or replacement shall commence as soon as construction on the adjacent Lot has been completed and shall be pursued to completion with due diligence. For purposes of this paragraph, the term "landscape materials" shall include landscape materials located on or adjacent to any property line of a Lot, including, by way of example and not of limitation, hedges, shrubs and trees, whether associated with a fence or not.

In addition, the installation of any fence placed upon any Lot is subject to easements which run with the land. In the event that any fence is approved by the Committee and is permitted to cross any such easements, such Committee's approval is still subject to Owner first receiving written approval from the grantee of such easements and all other applicable governmental authorities. In the event the grantee of any such easement which runs with the land (i.e., FPL, utility provider or the County), its successors and/or assigns, requires the removal of any fence upon the Lot, then the Owner of said Lot shall, at the Owner's sole cost and expense, immediately remove the fence. The Owner of a Lot when installing any fence upon the Lot shall comply with all valid laws, zoning ordinances, codes, rules and regulations of all applicable governmental bodies, as applicable, in addition to the Committee approval required by Article VIII hereof.

Section 18. ANTENNAE. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those satellite dishes that are one (1) meter (19.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association is empowered to adopt, and amend from time to time, rules governing the types of antennae which may be permitted and restrictions relating to safety, location and maintenance of antennae. The Association may also adopt (and amend from time to time) and enforce reasonable rules limiting installation of permissible satellite dishes or antennae to certain specified locations, not visible from the street or neighboring properties, and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible satellite dishes or antennae. Any permissible satellite dishes or antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. Further, any Owner desiring to install permissible satellite dishes or antennae may, but is not obligated to, submit plans and specifications for same to the Committee to ensure

compliance with the Association's rules governing the types of permissible satellite dishes and antennae and restrictions relating to safety, location and maintenance of satellite dishes and antennae. This Section 18 shall not apply to Declarant.

Section 19. DECLARANT EXEMPTION. Declarant plans to undertake the work of constructing Homes and Improvements upon the Property and may undertake the work of constructing other buildings upon adjacent land or other property being developed or marketed by Declarant or its affiliates. The completion of the aforementioned work and the sale, rental and other transfer of Homes by Declarant and Declarant's affiliates are essential to the establishment and welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither the Owners, the Association, nor the Architectural Control Committee shall do ~~any~~ whatsoever to interfere with any of Declarant's or Declarant's affiliates' activities relating to the constructing of Homes and Improvements upon the Property, the constructing of other buildings upon adjacent land or any other property being developed or marketed by the Declarant or its affiliates, or the sale, rental and/or other transfer of Homes by Declarant or its affiliates. In this respect, Declarant hereby reserves the right for itself and its employees, agents, licensees, and invitees to come upon any and all portions of the Property (including, without limitation, the Association Property as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient to enable Declarant to carry on its work and other activities including, without limitation, Declarant's development and construction of Port Orange Plantation and the Homes therein.

In general, the restrictions and limitations set forth in this Article X shall not apply to Declarant or to Lots owned by Declarant. Declarant shall specifically be exempt from any restrictions which interfere in any manner whatsoever with Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article X in addition to whatever remedies at law to which it might be entitled.

#### ARTICLE XI DAMAGE OR DESTRUCTION TO ASSOCIATION PROPERTY

Damage to or destruction of all or any portion of the Association Property shall, notwithstanding any provision in this Declaration to the contrary, be handled as follows:

A. If insurance proceeds are sufficient to effect total restoration of damaged or destroyed Association Property, then the Association shall cause such Association Property to be repaired and reconstructed substantially as it previously existed.

B. If insurance proceeds are insufficient to effect total restoration of the Association Property, and the cost of restoration would require a Special Assessment against each Lot in an amount of Five Thousand Dollars (\$5,000.00) or less (Such amount is based on the value of the dollar in 2006 and shall be increased each year thereafter based upon increases in the Consumer Price Index), then the Association shall cause the Association Property to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment proportionately against each of the Lots in accordance with the provisions of Articles VI and VII herein.



C. If the insurance proceeds are insufficient to effect total restoration of the Association Property and the cost of restoration of the Association Property would require a Special Assessment against each Lot in an amount greater than Five Thousand Dollars (\$5,000.00) (Such amount is based on the value of the dollar in 2006 and shall be increased each year thereafter based upon increases in the Consumer Price Index), then by the written consent or vote of a majority of the voting interests, they shall determine whether: (i) to rebuild and restore either: (a) in substantially the same manner as the Improvements existed prior to the damage or destruction; or (b) in a manner less expensive, and in the event of (a) or (b) to raise the necessary rebuilding and restoration fund by levying pro rata restoration and construction Special Assessments against all Lots; or (ii) to not rebuild and to retain available insurance proceeds. In the event it is decided that the damaged or destroyed Association Property shall not be rebuilt, the remains of any structure or structures shall be torn down and hauled away, so as not to be a safety hazard or visual nuisance, and the land shall be fully sodded and landscaped or otherwise treated in an attractive manner. Notwithstanding anything contained herein to the contrary, any decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements shall not be effective without the prior written approval of Declarant (which approval shall be given, conditioned or withheld in Declarant's sole and absolute discretion) as long as Declarant owns any portion of the Property.

D. Each Owner shall be liable to the Association for any damage to the Association Property not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of such Owner's family, tenants, invitees and guests, both minors and adults.

E. In the event that the repairs and replacements were paid for by any Special Assessments as well as insurance proceeds and regular Assessments, then, if after the completion of and payment for the repair, replacement, construction or reconstruction there shall remain any excess in the hands of the Association, it shall be presumed that the monies disbursed in payment of any repair, replacement, construction and reconstruction were first disbursed from insurance proceeds and regular Assessments and any remaining funds shall be deemed to be the remaining Special Assessments which shall be returned to the *Owners* by means of a pro rata distribution in accordance with the collection of such Special Assessments.

## ARTICLE XII INSURANCE AND CONDEMNATION

The Association shall purchase and maintain the following insurance coverages subject to the following provisions, and the cost of the premiums therefor shall be a part of the Operating Expenses:

Section 1. CASUALTY INSURANCE. Property and casualty insurance (including as applicable, windstorm coverage) 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 Improvements and personal property which are owned by the Association and now or hereafter located upon the Association Property, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Association Property in developments similar to Port Orange Plantation in construction, location and use.

Section 2. PUBLIC LIABILITY INSURANCE. A comprehensive policy of public liability

insurance naming the Association and, until Declarant no longer owns any Lot with the Property, Declarant as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance and use of the Association Property and any Improvements 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; not less than Three Million Dollars (\$3,000,000.00) for damages incurred or claimed by more than one person for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000.00) property damage per occurrence with no separate limits stated for the number of claims. The Association may also obtain worker's compensation insurance and other liability insurance including, but not limited to, insurance for lawsuits related to employment contracts in which the Association is a party, as it may deem desirable.

Section 3. FIDELITY COVERAGE. Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Board and all others who handle and are responsible for handling funds of the Association shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

Section 4. DIRECTORS' COVERAGE. Adequate directors' and officers' liability coverage, which coverage shall be effective from and after the date the Association is created.

Section 5. OTHER INSURANCE. The Board may obtain such other forms of insurance as the Board may determine and in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Association Property and any Improvements now or hereafter located thereon or in the best interests of the Association and/or its officers and directors.

Section 6. CANCELLATION OR MODIFICATION. All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least ten (10) days prior written notice to the Association and to each first mortgage holder, if any, named in the mortgage clause.

Section 7. FLOOD INSURANCE. If determined appropriate by the Board or if required by an Institutional Mortgagee, a master or blanket policy of flood insurance covering the Association Property, if available under the National Flood Insurance Program, shall be purchased, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one hundred percent (100%) of the current replacement cost of all buildings and other insurable property located in the flood hazard area.

Section 8. CONDEMNATION. In the event the Association receives any award or payment arising from the taking of any Association Property or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Board and approved by at least two-thirds (2/3) of the total voting interests, and the remaining balance thereof, if any, shall then be distributed pro rata to Owners and mortgagees of Lots as their respective interests may appear.

Section 9.     WAIVER OF SUBROGATION. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement of said persons, but only to the extent that such insurance proceeds are received in compensation for such loss.

**ARTICLE XIII**  
**GENERAL PROVISIONS**

Section 1.     CONFLICT WITH OTHER PORT ORANGE PLANTATION DOCUMENTS. In the event of any conflict between the provisions of this Declaration and the provisions of the Articles and/or Bylaws and/or rules and regulations promulgated by the Association, the provisions of this Declaration, the Articles, the Bylaws and the rules and regulations, shall control in that order.

Section 2.     NOTICES. Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at 2180 West SR 434, Suite 5000, Longwood, Florida 32779-50444, or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 9456 Philips Highway, Suite 1, Jacksonville, Florida 32256, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners.

Section 3.     ENFORCEMENT. The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Lot and/or Home), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to reimbursement of all costs thereof including, but not limited to, Legal Fees, from the non-prevailing party. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System.

Section 4.     INTERPRETATION. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of recreational facilities and Association Property. Article, Section and Paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

Section 5. SEVERABILITY. In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

Section 6. CERTAIN RIGHTS OF DECLARANT. Notwithstanding anything to the contrary herein contained, no Improvements constructed or installed by Declarant shall be subject to the approval of the Association, the Owners or the provisions and requirements of this Declaration, although it is the intent of Declarant to create a community with a common scheme of development. Notwithstanding the other provisions of this Declaration, Declarant reserves for itself, and Declarant and its nominees shall have, the right to enter into and transact on the Property any business necessary to consummate the sale, lease or encumbrance of Homes or real property within or outside Port Orange Plantation, including, but not limited to, the right to maintain models and a sales and/or leasing office, a construction office and/or a service office, place signs, employ sales, leasing, construction and service personnel, use the Association Property and show Homes, and Declarant further reserves the right to make repairs to the Association Property and to carry on construction activity for the benefit of the Property. Declarant, and its nominees, may exercise the foregoing rights without notifying the Association or the Owners. Any such models, sales and/or leasing office, construction office, service office, signs and any other items pertaining to such sales, leasing, construction or service efforts shall not be considered a part of the Association Property and shall remain the property of Declarant. In addition, the Declarant hereby has, shall have and hereby reserves the right to enter upon the Association Property (including, without limitation, all drainage, lake maintenance, canal maintenance, and utility easements whether located on a Lot or Association Property) in order for Declarant to final-out and/or close-out any and all approvals, permits, orders, conditions and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of Port Orange Plantation and all Improvements therein, and for Declarant to comply and adhere to the same, and such rights shall survive the date of Turnover and continue for such period of time as is necessary for Declarant to fully comply with all such governmentally issued approvals, permits, orders, conditions and/or requirements. Without limiting the generality of the foregoing, in exercising any such rights, Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all such approvals, permits, orders, conditions and/or requirements without compensation to the Association or the Owners. This Section 6 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is

consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Port Orange Plantation Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section 6, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Property as a result of the foreclosure of any mortgage encumbering any portion of the Property securing any such loan to Declarant, or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section 6, are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Port Orange Plantation Documents.

Declarant shall also have the right, but not the obligation, to conduct inspections and tests **from** time to time of all or any portion of the Association Property in order to ascertain the physical condition of the Improvements and to determine if maintenance, repair or replacement of any such Improvement is necessary. If Declarant conducts any such tests or inspections, it shall pay all costs thereof and restore the affected portion of the Property to its condition immediately prior to the inspections and tests. Declarant shall have such rights of entry on, over, under, across and through the Property as may be reasonably necessary to exercise the rights described in this Section 6. Declarant's right of inspection shall exist whether or not the Turnover Date has occurred. In the event Declarant exercises its inspection right(s), it is acknowledged by the Association and all Owners that Declarant is performing any such inspection(s) for its own benefit and not for the benefit of the Association and/or the Owners and further, Declarant shall have no obligation to inform the Association and/or the Owners of the result of any such inspection.

ALL OWNERS, OCCUPANTS AND USERS OF PORT ORANGE PLANTATION ARE HEREBY PLACED ON NOTICE THAT DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, EXCAVATION, CONSTRUCTION *AND* OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO PORT ORANGE PLANTATION. BY THE ACCEPTANCE OF THEIR DEED OR TITLE OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, *AND* BY USING ANY PORTION OF PORT ORANGE PLANTATION, EACH SUCH OWNER, OCCUPANT *AND* USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES **(I)** THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, **(II)** NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO PORT ORANGE PLANTATION WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), **(III)** DECLARANT AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, **(IV)** ANY PURCHASE OR USE OF ANY PORTION OF PORT ORANGE PLANTATION HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING AND **(V)** THIS ACKNOWLEDGMENT *AND*

AGREEMENT IS A MATERIAL INDUCEMENT TO ~~BUY~~ TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF PORT ORANGE PLANTATION.

Section 7. DISPUTES AS TO USE. In the event there is any dispute as to whether the use of the Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Property shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

Section 8. AMENDMENT AND MODIFICATION. The process of amending or modifying this Declaration shall be as follows:

1. Until the Turnover Date, all amendments or modifications shall only be made by Declarant without the requirement of the Association's consent or the consent of the Owners so long as such amendments or modifications do not materially impair the common plan of development of Port Orange Plantation; provided, however, that the Association shall, forthwith upon 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. Notwithstanding the foregoing, until the Turnover Date, any amendments to this Declaration (including without limitation, any amendment which results in the annexation of additional lands into the Property, the merger or consolidation of the Association with any other property owners association, the dedication of any part of the Association Property for public use, and the conveyance, mortgaging, or encumbrance of any part of the Association Property) must have prior written approval of the Federal Housing Administration or Veterans Administration in accordance with the United States Department of Housing and Urban Development regulations, if the Federal Housing Administration or Veterans Administration is the insurer of any mortgage encumbering a Lot.

2. After the Turnover Date, this Declaration may be amended by: (i) the consent of the Owners owning 67% of all Lots; together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners owning 67% of the Lots may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws and evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

3. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent of the 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, the Association or of any Institutional Mortgagee under the Port Orange Plantation Documents without the specific written approval of such party affected thereby. In addition and notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section 6 of this Article XIII and any such amendment

shall be deemed to impair and prejudice the rights of Declarant.

5. A true copy of any Amendment to this Declaration shall be sent certified mail by the Association to Declarant and to all Listed Mortgagees holding a mortgage on any portion of the Property requesting notice. The amendment shall become effective upon the recording amongst the Public Records of the County of said amendment or any Supplemental Declaration to this Declaration which sets forth any amendment or modification to this Declaration.

6. Notwithstanding anything contained herein to the contrary, Declarant may, without the consent of any Owners (and subject to Federal Housing Administration or Veterans Administration approvals as set forth above), file any amendments to this Declaration which may be required by an Institutional Mortgagee for the purpose of **satisfying** such Institutional Mortgagee's development criteria or such other criteria as may be established by such mortgagee's secondary mortgage market purchasers, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; provided, however, any such Declarant's filed amendments must be in accordance with any applicable rules, regulations and other requirements promulgated by the United States Department of Housing and Urban Development.

7. Any proposed amendment to the Declaration which would affect the Surface Water or Storm Water Management System (including environmental conservation areas, if any, and the water management portions of the Association Property), shall be submitted to the District for a determination of whether the proposed amendment necessitates a modification of the District Permit.

Section 9. **DELEGATION.** The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant.

Section 10. **TERM.** This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property, and inure to the benefit of Declarant, the Association and the Owners and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date of recording this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such fifty (50)-year term or any such ten (10)-year extension there is recorded amongst the Public Records of the County an instrument agreeing to terminate this Declaration signed by Owners owning two-thirds (2/3) of the Lots and Institutional Mortgagees holding first mortgages encumbering two-thirds (2/3) of all Lots encumbered by first mortgages held by Institutional Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the fifty (50)-year term or the ten (10)-year extension during which such instrument was recorded.

In the event this Declaration is terminated or the Association ceases to exist for any reason, the Owners shall be jointly and severally responsible for the costs to maintain and shall maintain the Association Property in the manner described herein. This provision shall survive the termination of this Declaration and shall run with the Property in perpetuity. Any Owner may, however, petition the Circuit Court for the appointment of a Receiver to manage the affairs of the Association in the event of dissolution of the Association.

Section 11. RIGHTS OF MORTGAGEES.

A. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Port Orange Plantation Documents and the books, records and financial statements of the Association to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Home upon written request to the Association.

B. Rights of Listed Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot and the legal description of such Lot, the Association shall provide such Listed Mortgagee with timely written notice of the following:

(1) Any condemnation, loss or casualty loss which affects any material portion of the Association Property;

(2) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(3) Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot; and

(4) Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform such Owner's obligations under the Port Orange Plantation Documents, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

C. Right of Listed Mortgagee to Receive Financial Statement. Any Listed Mortgagee shall, upon written request made to the Association, be entitled to financial statements of the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

Section 12. APPROVAL OF ASSOCIATION LAWSUITS BY OWNERS. Notwithstanding anything contained herein to the contrary, in order to prevent the Board from incurring expenses not contemplated by the Port Orange Plantation Documents, the Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating 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 Port Orange Plantation Documents;



(c) the enforcement of the use and occupancy restrictions contained in the Port Orange Plantation Documents;

(d) dealing with an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Association Property or to Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths [3/4] of the Owners); or

(e) filing a compulsory counterclaim.

**Section 13. COMPLIANCE WITH PROVISIONS.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot except as elsewhere herein provided does consent and agree to, and shall be conclusively deemed to have consented and agreed to, every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property. Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than Declarant.

**Section 14. SECURITY.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. NOTWITHSTANDING THE FOREGOING, NEITHER DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE, IF ANY, WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE. ALL OWNERS AGREE TO HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY, AND NEITHER THE ASSOCIATION, DECLARANT NOR ANY SUCCESSOR DECLARANT GUARANTEES OR WARRANTS, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH MONITORING SYSTEM OR SECURITY SERVICE, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES, DAMAGE, INJURY, DEATH OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY LOT OR HOME, AND TENANTS, GUESTS, AND INVITEES OF ANY OWNER ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, DECLARANT, AND ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT: (a) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE), IF ANY,

RECOMMENDED BY, OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY, DECLARANT OR THE COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (b) THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEM (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE) WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD AND THE COMMITTEE, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS OR GUARANTORS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR HOMES, AND TO THE CONTENTS OF LOTS OR HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD AND THE COMMITTEE, DECLARANT, AND ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS, WARRANTIES AND/OR GUARANTIES, NOR HAS ANY OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE) RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

Section 15. COVENANT RUNNING WITH THE LAND. All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Lots and Homes and the Property and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of Declarant and subsequent Owner(s) of the Homes, Lots and Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. All present and future Owners, tenants, and occupants of the Lots and Homes, as applicable, shall be subject to and shall comply with the provisions of this Declaration and the Articles, Bylaws and applicable rules and regulations as they exist and may from time to time be amended. The acceptance of a deed of conveyance of a Lot, or the entering into a lease of or occupancy of a Home, shall constitute an adoption and ratification by such Owner, tenant, or occupant of the provisions of this Declaration, and the Articles, Bylaws, and applicable rules and regulations of the Association, as they may be amended from time to time. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

Section 16. NO PUBLIC RIGHT OR DEDICATION. Nothing contained in this Declaration shall be deemed to be a **gift** or dedication of all or any portion of the Association Property to the public, or for any public use.

Section 17. NO REPRESENTATIONS OR WARRANTIES. NO REPRESENTATIONS OR

WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE ASSOCIATION PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

Section 18. CERTAIN RESERVED RIGHTS OF DECLARANT WITH RESPECT TO COMMUNITY SYSTEMS. Without limiting the generality of any other applicable provisions of this Declaration, and without such provisions limiting the generality hereof, Declarant hereby reserves and retains to itself:

(a) the title to any Community Systems and a perpetual exclusive easement over, under and across the Property for the placement and location thereof;

(b) the right to connect, from time to time, the Community Systems to such receiving or intermediary transmission source(s) as Declarant may in its sole discretion deem appropriate, in location(s) on the Property as Declarant may determine in its sole discretion, including, without limitation, companies licensed to provide CATV or satellite service(s) in the County, for which service(s) Declarant shall have the right to charge any users a fee (which shall not exceed any maximum allowable charge provided for in the applicable ordinances of the County);

(c) the continuing right to air conditioned space within and/or on the Association Property as Declarant may determine in its sole discretion to install, operate, maintain, repair and replace the equipment serving, providing or running the Community Systems, which location may include, without limitation, room(s) within any clubhouse or other Improvements constructed on the Association Property; and

(d) the exclusive right to offer and provide from time to time to the Association, the Lots and the Lot Owners, any and all Bundled Services through the Community Systems.

Neither the Association nor any officer, director, employee, committee member or agent thereof (including any management company) shall be liable for any damage to property, personal injury or death arising from or connected with any act or omission of any of the foregoing during the course of performing any duty or exercising any right privilege (including, without limitation, performing maintenance work which is the duty of the Association or exercising any remedial maintenance or alteration rights under this Declaration) required or authorized to be done by the Association, or any of the other aforesaid parties, under this Declaration or otherwise as required or permitted by law.

Section 19. ASSOCIATION AND DECLARANT AS ATTORNEY-IN-FACT. Each Owner, by reason of having acquired ownership of a Lot, whether by purchase, gift, operation of law or otherwise, and each occupant of a Home, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed to his or her automatic consent to any rezoning, replatting, covenant in lieu of unity of title, change, addition or deletion made in, on or to Port Orange Plantation by

Declarant (hereinafter, collectively, the "Modifications") and, in respect thereto, each Owner of a Lot and occupant of a Home hereby designates the Association to act as agent and attorney-in-fact on behalf of such Owner or occupant to consent to any such Modification. If requested by Declarant, each Owner shall evidence his or her consent to a Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Owner, by reason of having acquired ownership of such Owner's Lot, hereby agrees to execute, at the request of Declarant, any document and/or consent which may be required by any government agency to allow Declarant and/or its affiliates to complete the plan of development of Port Orange Plantation, as such plan may be hereafter amended, and each such Owner hereby further appoints Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of each such Owner, any and all of such documents and/or consents. This power of attorney is irrevocable and is coupled with an interest. The provisions of this Section 19 may not be amended without Declarant's prior written consent.

Section 20. DECLARANT'S RESERVATION OF RIGHTS. Notwithstanding anything contained in the Port Orange Plantation Documents to the contrary, Declarant reserves the right to change the zoning of any **portion** of the Property now existing or hereafter changed to be other than single-family residential (e.g., multi-family residential or commercial) and/or to make such uses of all or any part of the Property as shall be permitted by applicable zoning regulations as they may exist from time to time. Declarant, however, is not obligated by this Declaration to cause any portion of the Property to be rezoned or developed for any such uses. In the event Declarant changes the zoning of the Property, Declarant hereby reserves the right to amend this Declaration or to create one or more sub-declarations subjecting such property(ies) to additional or different specified or prohibited uses.

Additionally, in the event Declarant changes the zoning of the Property or any portion thereof to a use other than single-family residential and amends this Declaration or creates a sub-declaration, in order to insure representation on the Board for various groups having dissimilar interests, Declarant reserves the right to establish voting groups for election of Directors to the Board. In such event, each voting group shall be entitled to elect one (1) or more Director(s) to the Board. Each voting group may have different voting rights as determined by Declarant.

In the event Declarant establishes other uses of or for the Property as aforesaid, Declarant reserves the right to change the method pursuant to which Assessments are shared among the Lots and other portions of the Property. The expenses may be divided among each type of property use (e.g., single-family residential, multi-family residential and commercial) based upon, but not necessarily proportional to, the percentage of each type of property use, the level of services received by each type of property use and other relevant factors as determined by Declarant. Additionally, expenses which specifically relate to a specific property use will only be assessed against that type of property. The percentages for each type of property will be based upon the total acreage of the Property.

The portion of the anticipated Operating Expenses which are assessed against the single-family residential property shall be divided equally among the contributing Lots or units by dividing such portion of the Operating Expenses which are being assessed to the single-family residential property by the total number of contributing Lots or units.

The portion of the anticipated Operating Expenses which are assessed against the

multi-family residential property shall be divided equally among the contributing multi-family units by dividing such portion of the Operating Expenses which are being assessed to the multi-family residential property by the total number of contributing units.

The portion of the anticipated Operating Expenses which are assessed against the commercial property shall be divided among the owners of the commercial property based upon a fractional formula, the numerator of which is the total square feet of buildings and paved areas of each commercial parcel and the denominator of which is the total square feet of all buildings and paved areas.

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IN WITNESS WHEREOF, this Declaration has been signed by Declarant and joined in by the Association on the respective dates set forth below.

**DECLARANT :**

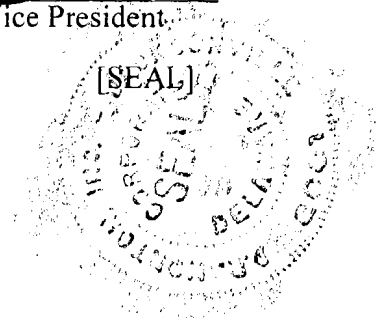
D.R. Horton, Inc.-Jacksonville, a Delaware corporation

WITNESSES AS TO DECLARANT:

Sarah C. J. Galen  
Print Name Sarah C. J. Galen

BY: [Signature]  
Philip A. Fremento, Vice President

Lynnette C. Knox  
Print Name Lynnette C. Knox



STATE OF FLORIDA            )  
  ) SS  
COUNTY OF                            )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of May, 2006. by Philip A. Fremento, the Vice President of D.R. HORTON, INC.-JACKSONVILLE, a Delaware corporation, on behalf of the corporation, who is personally known to me, who affixed thereto the seal of the corporation.

[Signature]

**AMBER MARIA LEHMAN**  
Public, <sup>S</sup> of Florida  
My ~~com.~~ exp. Mar. 6, 2007  
Comm. No. DD 189811

Notary Public  
My Commission Expires: March 6, 2007

**ASSOCIATION:**

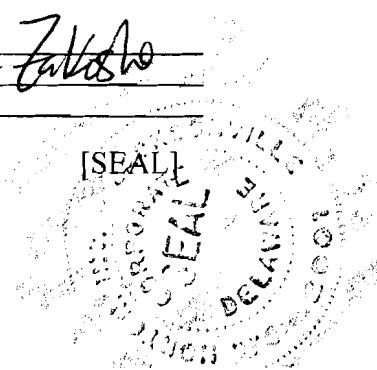
PORT ORANGE PLANTATION HOMEOWNERS ASSOCIATION, INC, a Florida corporation not for profit

WITNESSES AS TO ASSOCIATION:

*Shelby Restall*  
Print Name Shelby Restall

*Sarah C. J. Galen*  
Print Name Sarah C. J. Galen

By: *[Signature]*  
Name: John E. Zakoske  
Title: President



STATE OF FLORIDA        )  
  ) SS  
COUNTY OF                )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the Count!, aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by John Zakoske, as President of PORT ORANGE PLANTATION HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, on behalf of said corporation. He/She is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 30 day of May, 2006.

*Amy Guilbeault*  
Notary Public, State of Florida at Large

My Commission Expires:

*Amy Guilbeault*  
Typed, Printed or Stamped Name of Notary Public—

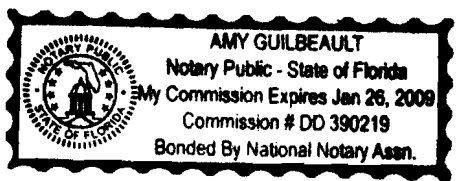


EXHIBIT A

Legal Description of Property

Lots 1 through 88, inclusive, of PORT ORANGE PLANTATION PHASE I, according to the plat thereof, as recorded in Plat Book 51, Page **52** of the Public Records of Volusia County, Florida.

TOGETHER WITH

Tracts A, B, C, D and E of PORT ORANGE PLANTATION PHASE I, according to the plat thereof, as recorded in Plat Book **51**, Page **52** of the Public Records of Volusia County, Florida.



EXHIBIT B

Articles of Incorporation of  
Port Orange Plantation Homeowners Association, Inc.

Instrument# 2006-155938 # 66

Book : 5855

Page : 3893

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on May 23, 2006, for PORT ORANGE PLANTATION HOMEOWNERS ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H06000141495. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N04000004826.

Authentication Code: 706A00037531-053006-N04000004826-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Thirtieth day of May, 2006



*Sue M. Cobb*  
Sue M. Cobb  
Secretary of State

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
PORT ORANGE PLANTATION HOMEOWNERS ASSOCIATION, INC.  
(A Florida Corporation Not-For-Profit)**

We, the undersigned, being the President and Secretary of Port Orange Plantation Homeowners Association, Inc., a Florida corporation not for profit ("Association"), in accordance with its Articles of Incorporation and Bylaws do hereby certify:

1. The Association was originally incorporated on May 13, 2004, under Document Number N04000004826, pursuant to Chapter 617 of the laws of the State of Florida.
2. The original Articles of Incorporation of the Association ("Original Articles") are hereby duly amended and restated in their entirety in accordance with the provisions of Section 617.1007(1), Florida Statutes, and Article XI of the Original Articles by the Board of Directors of the Association.
3. These Amended and Restated Articles of Incorporation were duly adopted by the Board, in accordance with the provisions of the Original Articles, by Unanimous Written Consent of the Board dated May 9, 2006 and no Members are entitled to vote thereon.
5. These Amended and Restated Articles of Incorporation have been duly executed by the President and Secretary of the Association on the dates hereinafter set forth on the execution page.
6. As so adopted, these Amended and Restated Articles of Incorporation replace the Original Articles in their entirety and are substituted therefor.

**ARTICLE I  
DEFINITIONS**

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings:

1. "Articles" means these Articles of Incorporation and any amendments hereto.
2. "Assessments" means the assessments for which all Owners are obligated to the Association and includes "Individual Lot Assessments" and "Special Assessments" (as such terms are defined in the Declaration) and any and all other assessments which are levied by the Association in accordance with the Port Orange Plantation Documents.

3. "Association" means Port Orange Plantation Homeowners Association, Inc., a Florida corporation not for profit. The "Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.

4. "Association Property" means the property more particularly described in Article II of the Declaration.

5. "Board" means the Board of Directors of the Association.

6. "Bylaws" means the Bylaws of the Association and any amendments thereto.

7. "County" means Volusia County, Florida.

8. "Declarant" means D.R. Horton, Inc.-Jacksonville, a Delaware corporation, and any successors or assigns thereof to which D.R. Horton, Inc.-Jacksonville specifically assigns all or part of the rights of Declarant under the Declaration by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the "Property" (as defined in the Declaration). In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant.

9. "Declaration" means the Amended and Restated Declaration and General Protective Covenants for Port Orange Plantation, which has been recorded amongst the Public Records of the County, and any amendments thereto.

10. "Director" means a member of the Board.

11. "Home" means a residential dwelling unit constructed within Port Orange Plantation, which is designed and intended for use and occupancy as a single-family residence (which includes single family homes).

12. "Lot" means and refers to any parcel of land within Port Orange Plantation as shown on the Plat or any Additional Plat upon which a Home is permitted to be constructed, together with the improvements thereon and any portion of the land within Port Orange Plantation that is declared to be a Lot by a Supplemental Declaration and is not subsequently withdrawn from the provisions of the Declaration by a Supplemental Declaration.

13. "Member" means a member of the Association.

14. "Operating Expenses" means the expenses for which Owners are liable to the Association as described in the Port Orange Plantation Documents and includes, but are not limited to: (a) the costs and expenses incurred by the Association in owning, administering, operating, maintaining, financing, repairing, replacing, improving (but not reconstructing), managing and leasing the Association Property or any portion thereof and improvements thereon, all other property owned by the Association (including, without limitation, the Surface Water or Stormwater Management System), and (b) all costs and expenses incurred by the Association in carrying out its powers and duties under any of the Port Orange Plantation Documents.

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15. "Owner" means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any Lot within Port Orange Plantation, and includes Declarant for so long as Declarant owns fee simple title to a Lot, but excluding therefrom those having such interest as security for the performance of an obligation.

16. "Plat" means the plat of Port Orange Plantation Phase I recorded in the Public Records of the County. in the event an Additional Plat is recorded among the Public Records of the County, then the term "Plat" as used herein shall also mean the Additional Plat(s).

17. "Port Orange Plantation" means the planned development located in Volusia County, Florida, which encompasses the Property and is initially intended to comprise eighty-eight (88) Homes and the Association Property.

18. "Port Orange Plantation Documents" means, in the aggregate, the Declaration, these Articles, the Bylaws, the Plat, the "Additional Plat(s)" (as such term is defined in the Declaration), if any, and all of the instruments and docuiments referred to or incorporated therein including, but not limited to, any "Amendment(s)" and "Supplemental Declaration(s)" (as such terrnsare defined in the Declaration).

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

Unless otherwise defined herein, the terms defined in the Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appears in these Articles.

ARTICLE II  
NAME

The name of this corporation shall be PORT ORANGE PLANTATION HOMEOWNERS ASSOCIATION, INC., a Florida corporation not-for-profit, whose principal address and mailing address is 2180 West SR 434, Suite 5000, Longwood, Florida 32779-50444.

ARTICLE III  
PURPOSES

The purpose for which the Association is organized is to take title to, administer, operate, maintain, finance, repair, replace, manage and lease the Association Property in accordance with the terms of, and purposes set forth in, the Port Orange Plantation Documents and to carry out the covenants and enforce the provisions of the Port Orange Plantation Documents.

ARTICLE IV  
POWERS

The Association shall have the following powers and shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Association shall have all of the powers granted to the Association in the Port Orange Plantation Documents. All of the provisions of the Declaration and Bylaws which grant powers to the Association are incorporated into these Articles.

C. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the Port Orange Plantation Documents.

2. To make, establish, amend, abolish (in whole or in part) and enforce reasonable rules and regulations governing the use of the Association Property.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its Members to pay Operating Expenses and other costs defined in the Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association. The foregoing shall include the power to levy and collect adequate Assessments for the costs of maintenance, repair and operation of the Surface Water or Stormwater Management System, including but not limited to, cost associated with maintenance, repair and operation of retention areas, drainage structures and drainage easements.

4. To own, administer, operate, maintain, finance, repair, replace, manage, lease and convey the Association Property in accordance with the Port Orange Plantation Documents.

5. To enforce by legal means the obligations of the Members and the provisions of the Port Orange Plantation Documents.

6. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the administration, operation, maintenance, financing, repairing, replacing, management and leasing of the Association Property and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, agreements with respect to professional management of the Association Property and to delegate to such professional manager certain powers and duties of the Association.

7. To enter into the Declaration and any amendments thereto and instruments referred to therein.

8. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain Port Orange Plantation in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls, rules and regulations, and enforcement which will enhance the quality of life at Port Orange Plantation.

9. To exercise and enforce architectural control, maintenance and use restrictions in accordance with the Declaration.

10. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the engagement of legal counsel by the Association for the purpose of suing, or making, preparing or investigating 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 Port Orange Plantation Documents;
- (c) the enforcement of any applicable use and occupancy restrictions contained in the Port Orange Plantation Documents;
- (d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Association Property or to Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members); or
- (e) filing a compulsory counterclaim.

11. To operate, maintain and manage the Surface Water or Stormwater Management System in a manner consistent with the St. Johns River Water Management District ("District") Permit No. # 4-127-92263-1 ("Permit"), as such Permit may be amended, modified or reissued from time to time, and applicable District rules, and to assist in the enforcement of the restrictions and covenants contained therein.

12. To borrow money and to obtain such financing as is necessary to maintain, repair and replace the Association Property in accordance with the Declaration and, as security for any such loan, to collaterally assign the Association's right to collect and enforce Assessments levied for the purpose of repaying any such loan.

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ARTICLE V  
MEMBERS AND VOTING

The qualification of Members of the Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

A. Until such time as the first deed of conveyance of a Lot from Declarant to an Owner is recorded amongst the Public Records of the County ("First Conveyance"), the membership of the Association shall be comprised solely of the Declarant. Until the First Conveyance, Declarant shall be entitled to cast the one (1) and only vote on all matters requiring a vote of the membership.

B. Upon the First Conveyance, Declarant shall be a Member as to each of the remaining Lots until each such Lot is conveyed to another Owner, and thereupon and thereafter each and every Owner, including Declarant as to Lots owned by Declarant, shall be a Member and exercise all of the rights and privileges of a Member.

C. Membership in the Association for Owners other than Declarant shall be established by the acquisition of ownership of fee simple title to a Lot as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Where title to a Lot is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, bequest, judicial decree or otherwise, the person, persons or entity thereby acquiring such Lot shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association.

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

1. "Class A Members" shall be all Members, with the exception of Declarant while Declarant is a Class B Member, each of whom shall be entitled to one (1) vote for each Lot owned.

2. "Class B Members" shall be Declarant, who shall be entitled to three times the total number of votes of the Class A Members plus one. Class B membership shall cease and be converted to Class A membership upon the earlier to occur of the following events ("Turnover Date"):

(i) Three (3) months after the conveyance of ninety percent (90%) of the "Total Developed Lots" (as defined in Article X.C hereof) by Declarant, as evidenced by the recording of instruments of conveyance of such Lots amongst the Public Records of the County; or



(ii) At such time as Declarant shall designate in writing to the Association.

On the Turnover Date, Class A Members, including Declarant, shall assume control of the Association and elect not less than a majority of the Board.

E. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Lots, and nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in the Port Orange Plantation Documents.

F. No Member may assign, hypothecate or transfer in any manner his or her membership in the Association except as an appurtenance to his or her Lot.

G. Any Member who conveys or loses title to a Lot by sale, gift, inheritance, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of a Member resulting from ownership of such Lot.

H. There shall be only one (1) vote for each Lot, except for the Class B Members as set forth herein. If there is more than one Member with respect to a Lot as a result of the fee interest in such Lot being held by more than one person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Lot owned by more than one natural person or by a corporation or other legal entity shall be cast by the person named in a certificate signed by all of the Owners of the Lot, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity ("Voting Member"), and filed with the Secretary of the Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not filed with the Secretary of the Association, the Owners of such Lot shall lose their right to vote until such a certificate is filed with the Secretary of the Association, but the Lot shall be considered for purposes of establishing a quorum.

Notwithstanding the foregoing provisions, whenever any Lot is owned by a husband and wife they may, but shall not be required to, designate a Voting Member. In the event a certificate designating a Voting Member is not filed by the husband and wife, the following provisions shall govern their right to vote:

1. When both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Lot owned by them. In the event they are unable to concur in their decision upon any topic requiring a vote, they shall lose their right to vote on that topic at that meeting, but shall count for purposes of establishing a quorum.

2. When only one (1) spouse is present at a meeting, the person present may cast the Lot vote without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior written notice to the contrary to the

Association by the other spouse. the vote of said Lot shall not be considered, but shall count for purposes of establishing a quorum.

When neither spouse is present, the person designated in a "Proxy" (as defined in the Bylaws)<sup>3</sup> signed by either spouse may cast the Lot vote, when voting by Proxy is allowed, absent any prior written notice to the contrary to the Association by the other spouse or the designation of a different Proxy by the other spouse. In the event of prior written notice to the contrary to the Association or the designation of a different Proxy by the other spouse, the vote of said Lot shall not be considered, but shall count for purposes of establishing a quorum.

I. Unless some greater number is provided for in the Port Orange Plantation Documents, a quorum shall consist of persons entitled to cast at least thirty percent (30%) of the total number of votes of the Members.

ARTICLE VI  
TERM

The term for which this Association is to exist shall be perpetual. In the event of dissolution of the Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Association (other than the Surface Water or Stormwater Management System, which shall be conveyed to an appropriate agency of local government having jurisdiction thereof, unless such agency does not accept same) shall be conveyed to a similar homeowners association or a public agency having a similar purpose. or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and its properties in the place and stead of the dissolved Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties.

In no event shall the Association be dissolved, and any attempt to do so shall be ineffective, unless and until maintenance responsibility for the Surface Water or Stormwater Management System and discharge facilities located within the Property is assumed by an entity acceptable to the District, Florida Department of Environmental Regulation, or other governmental authority having jurisdiction, pursuant to the requirements of Rule 40C-42.027, Florida Administrative Code, or other administrative regulation of similar import. Further, such dissolution shall require the prior approval of the Army Corps of Engineers.

In the event and upon dissolution of the Association, if the Veterans Administration ("VA") is guaranteeing or the U.S. Department of Housing an Urban Development ("HUD") is insuring the mortgage on any Lot, then unless otherwise agreed to in writing by HUD or VA, any remaining real property of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that acceptance of such dedication is refused, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes. Such requirement shall not apply if VA is not guaranteeing and HUD is not insuring any mortgage; provided if either agency has granted project approval for Port Orange Plantation, then HUD and/or VA shall be notified of such dissolution..

ARTICLE VII  
INCORPORATOR

The name and address of the Incorporator of these Articles are:

Jan J. Doan  
9456 Philips Highway, Suite 1  
Jacksonville, Florida 32056

ARTICLE VIII  
OFFICERS

The affairs of the Association shall be managed by the President of the Association, assisted by the Vice President(s), Secretary and Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board. Except for officers elected prior to the Turnover Date, officers must be Members. or the parents, children or spouses of Members.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two or more offices, the duties of which are not incompatible; provided, however, the office of President and a Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE IX  
FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	John Zakoske
Vice President	Mark C. Dearing
Secretary/Treasurer	Jan J. Doan

ARTICLE X  
BOARD OF DIRECTORS

A. The number of Directors on the first Board of Directors of the Association ("First Board") and the "Initial Elected Board" (as hereinafter defined) shall be three (3). The number of Directors elected by the Members subsequent to the "Declarant's Resignation Event" (as hereinafter defined) shall be not less than three (3) nor more than seven (7), as the Board shall from time to time determine prior to each meeting at which Directors are to be elected. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses or officers or directors of Members. Each Director shall have only one (1) vote.

B. The names and addresses of the persons who are to serve as Directors on the First Board are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
John Zakoske	9456 Philips Highway Suite 1 Jacksonville, Florida 32256
Mark C. Dearing	9456 Philips Highway Suite 1 Jacksonville, Florida 32256
Jan Doan	9456 Philips Highway Suite 1 Jacksonville, Florida 32256

Declarant reserves the right to replace and/or designate and elect successor Directors to serve on the First Board for so long as the First Board is to serve. as hereinafter provided.

C. Declarant initially intends that Port Orange Plantation will contain an aggregate of eighty-eight (88) Lots with a Home constructed on each Lot ("Developed Lots"). For purposes of this paragraph, "Total Developed Lots" shall mean the eighty-eight (88) Developed Lots which Declarant presently intends to develop in Port Orange Plantation. Notwithstanding the foregoing, Declarant has reserved the right in the Declaration to modify its plan of development for Port Orange Plantation (including, without limitation, the right to modify the product types to be constructed) and to add land to and withdraw land from Port Orange Plantation and, therefore, the total number of Lots and Homes within Port Orange Plantation, and thus the term "Total Developed Lots," may refer to a number greater or lesser than eighty-eight (88). Notwithstanding the foregoing, Declarant does not intend for the Total Developed Lots within Port Orange Plantation to exceed four hundred twenty-five (425).

D. Upon the Turnover Date, the Members other than Declarant ("Purchaser Members") shall be entitled to elect not less than a majority of the Board. The election of not less than a majority of the Board by the Purchaser Members shall occur at a special meeting of the membership to be called by the Board for such purpose ("Initial Election Meeting"). The First Board shall serve until the Initial Election Meeting.

E. The Initial Election Meeting shall be called by the Association, through the Board, within sixty (60) days after the Purchaser Members are entitled to elect a majority of Directors as provided in Paragraph D hereof. A notice of meeting shall be forwarded to all Members in accordance with the Bylaws; provided, however, that the Members shall be given at least fourteen (14) days prior notice of such meeting. The notice shall also specify the number of Directors which shall be elected by the Purchaser Members and the remaining number of Directors designated by Declarant.

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F. At the Initial Election Meeting, Purchaser Members, who shall include all Members other than Declarant, the number of which may change from time to time, shall elect two (2) of the Directors, and Declarant, until the Declarant's Resignation Event, shall be entitled to designate one (1) Director (same constituting the "Initial Elected Board"). Declarant reserves and shall have the right, until the Declarant's Resignation Event, to name the successor, if any, to any Director it has so designated.

G. The Board shall continue to be so designated and elected, as described in Paragraph E above, at each subsequent "Annual Members' Meeting" (as defined in the Bylaws), until the Annual Members' Meeting following the Declarant's Resignation Event or until a Purchaser Member-elected Director is removed in the manner hereinafter provided.

A Director (other than a Declarant-appointed Director) may be removed from office upon the affirmative vote or the agreement in writing of a majority of the voting interests of Purchaser Members for any reason deemed to be in the best interests of the Purchaser Members. A meeting of the Purchaser Members to so remove a Director (other than a Declarant-appointed Director) shall be held upon the written request of ten percent (10%) of the Purchaser Members. Any such recall shall be effected and a recall election shall be held, if applicable, as provided in the HOA Act.

H. Upon the earlier to occur of the following events ("Declarant's Resignation Event"), Declarant shall cause all of its designated Directors to resign:

1. When Declarant no longer holds at least five percent (5%) of the Total Developed Lots for sale in the ordinary course of business and all Lots sold by Declarant have been conveyed as evidenced by the recording of instruments of conveyance of such Lots amongst the Public Records of the County; or

2. When Declarant causes the voluntary resignation of all of the Directors designated by Declarant and does not designate replacement Directors.

Upon Declarant's Resignation Event, the Directors elected by Purchaser Members shall elect a successor Director to fill the vacancy caused by the resignation or removal of Declarant's designated Director. This successor Director shall serve until the next Annual Members' Meeting and until his or her successor is elected and qualified. In the event Declarant's Resignation Event occurs prior to the Initial Election Meeting, the Initial Election Meeting shall be called in the manner set forth in Paragraph G of this Article X, and all of the Directors shall be elected by the Purchaser Members at such meeting.

I. At each Annual Members' Meeting held subsequent to Declarant's Resignation Event, all of the Directors shall be elected by the Members. At the first Annual Members Meeting held after the Initial Election Meeting, a "staggered" term of office of the Board shall be created as follows:

1. a number equal to fifty percent (50%) of the total number of Directors rounded up to the nearest whole number is the number of Directors whose term of office shall be established at two (2) years and the Directors serving for a two (2) year term will be the Directors receiving the most votes at the meeting; and

2. the remaining Directors' terms of office shall be established at one (1) year.

At each Annual Members' Meeting thereafter, as many Directors of the Association shall be elected as there are Directors whose regular term of office expires at such time, and the term of office of the Directors so elected shall be for two (2) years, expiring when their successors are duly elected and qualified.

J. The resignation of a Director who has been designated by Declarant or the resignation of an officer of the Association who has been elected by the First Board shall be deemed to remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Association or Purchaser Members had, now have or will have or which any personal representative, successor, heir or assign of the Association or Purchaser Members hereafter can, shall or may have against said officer or Director for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's willful misconduct or gross negligence.

ARTICLE XI  
INDEMNIFICATION

Each and every Director and officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and postjudgment proceedings, reasonably incurred by or imposed upon him in connection with any negotiation, proceeding, arbitration, litigation or settlement in which he becomes involved by reason of his or her being or having been a Director or officer of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of a settlement in connection with any of the foregoing, the indemnification provisions provided in this Article XI shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Association, and in the event a Director or officer admits that he is or is adjudged guilty of willful misconduct or gross negligence in the performance of his or her duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Association may be entitled under statute or common law.

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ARTICLE XII  
BYLAWS

The Bylaws shall be adopted by the First Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

ARTICLE XIII  
AMENDMENTS

A. Prior to the First Conveyance, these Articles may be amended only by an instrument in writing signed by the Declarant and filed in the Office of the Secretary of State of the State of Florida.

B. After the First Conveyance, and prior to the Turnover Date, these Articles may be amended solely by a majority vote of the Board, without the prior written consent of the Members, at a duly called meeting of the Board.

C. After the Turnover Date, these Articles may be amended in the following manner:

1. (a) The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Members, which may be at either the Annual Members' Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member within the time and in the manner provided in the Bylaws for the giving of notice of meetings.

(c) At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving the affirmative vote of a majority of the total voting interests present at such meeting.

2. An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Members and all members of the Board setting forth their intention that an amendment to the Articles be adopted.

D. These Articles may not be amended without the written consent of a majority of the members of the Board.

E. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of any "Institutional Mortgagee" (as such term is defined in the Declaration) without the prior written consent of such Institutional Mortgagee.

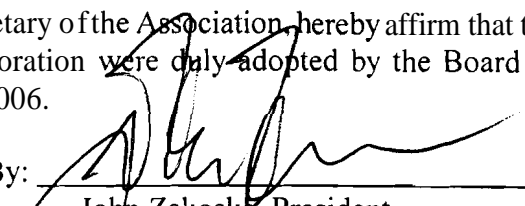
F. Notwithstanding the foregoing provisions of this Article XIII to the contrary, no amendment to these Articles shall be adopted which shall abridge, prejudice, amend or alter the rights of Declarant without the prior written consent of Declarant, including, but not limited to, Declarant's right to designate and select members of the First Board or otherwise designate and select Directors as provided in Article X above. nor shall any other amendment be adopted or become effective without the prior written consent of Declarant for so long as Declarant holds either a leasehold interest in or title to at least one (1) Lot.

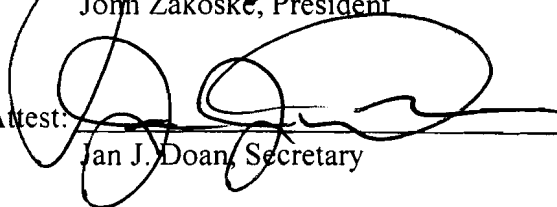
G. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

ARTICLE XIV  
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Association is 2180 West SR 434, Suite 5000, Longwood, Florida 32779-50444, and the initial registered agent of the Association at that address shall be Sentry Management Inc., Attn: James W. Hart, Jr.

The undersigned, being the President and Secretary of the Association, hereby affirm that the foregoing Amended and Restated Articles of Incorporation were duly adopted by the Board of Directors of the Association on the 9th day of May, 2006.

By:   
John Zakoske, President

Attest:   
Jan J. Doan, Secretary

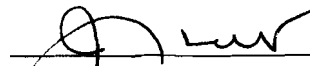
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The undersigned hereby accepts the designation of Registered Agent as set forth in Article XIV of these Amended and Restated Articles of Incorporation, and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

  
\_\_\_\_\_  
James W. Hart, Jr  
Sentry Management Inc., Registered Agent  
Dated: 5-16-06

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**EXHIBIT C**

**Bylaws of Port Orange Plantation Homeowners Association, Inc.**

**AMENDED AND RESTATED  
BYLAWS  
OF  
PORT ORANGE PLANTATION HOMEOWNERS ASSOCIATION, INC.**

Section 1. Identification of Association

These are the Amended and Restated Bylaws of Port Orange Plantation Homeowners Association. Inc. ("Association") as duly adopted by its Board of Directors ("Board") on May 9, 2006. which fully replace all prior Bylaws of the Association. The Association is a corporation not for profit. organized pursuant to Chapters 617 and 720, Florida Statutes.

1.1. The office of the Association shall be for the present at 2180 West SR 434, Suite 5000, Longwood. Florida 32779-50444 and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The seal of the Association shall bear the name of the Association, the word "Florida" and the words "Corporation Not For Profit."

Section 2. Explanation of Terminology

The terms defined in the Amended and Restated Articles of Incorporation of the Association ("Articles") as well as in the Amended and Restated Declaration and General Protective Covenants for Port Orange Plantation ("Declaration") are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws.

Section 3. Membership; Members' Meetings; Voting and Proxies

3.1. The qualification of Members, the manner of their admission to membership in the Association, the manner of termination of such membership and the voting by Members shall be as set forth in the Articles.

3.2. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County as the Board may determine and on such day and at such time as designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles) and transact any other business authorized to be transacted at such Annual Members' Meeting.

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3.3. Special meetings (meetings other than the Annual Members' Meeting) of the Members shall be held at the office of the Association or at such other place within the County whenever called by the President or Vice President or by a majority of the Board. A special meeting must be called by such President or Vice President upon receipt of a written request from Members having the right to vote at least one-third (1/3) of the total number of votes entitled to be cast by Members at any such special meeting.

3.4. Except as otherwise provided in the Articles, a written notice of each Members' meeting, whether an Annual Members' Meeting or a special meeting (collectively "Meeting"), shall be given to each Member entitled to vote thereat at his last known address as it appears on the books of the Association and shall be mailed or hand delivered to the said address or electronically transmitted to the location furnished by the Member for that purpose not less than fourteen (14) days nor more than forty--five (45) days prior to the date of the Meeting. Proof of such mailing, delivery or electronic transmission shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the time and place of the Meeting and the purposes for which the Meeting is called. The notices of all Annual Members' Meetings shall, in addition, specify the number of Directors of the Association to be designated by Declarant and the number of Directors to be elected by the Members, if applicable. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice.

3.5. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these Bylaws. Unless some greater number is required under the Port Orange Plantation Documents and except as to the election of Directors, which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

3.6. (a) A quorum of the Members shall consist of Members entitled to cast thirty percent (30%) of the total number of votes of the Members. A quorum of any class of Members shall consist of Class Members of such class entitled to cast thirty percent (30%) of the total number of votes of the class. Limited "Proxies" and general "Proxies" (as hereinafter defined in Paragraph 3.10) may be used to establish a quorum.

(b) When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written Proxy shall be required to decide the question. However, if the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the Port Orange Plantation Documents or by law, then such express provision shall govern and control the required vote on the decision of such question.

3.7. At any Annual Members' Meeting when elections of Directors are to occur, written ballots are to be supplied to Members for such purposes. Members may not vote for Directors by Proxy, but may vote by absentee ballot. Furthermore, at any Annual Members' Meeting at which Directors are to be elected, the "Chairman" (as hereinafter defined in Paragraph 7.2) shall appoint an "Election Committee" consisting of three (3) Members to supervise the election, count and verify ballots, disqualify votes if such disqualification is justified under the circumstances and certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all three (3) members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution.

3.8. If a quorum is not in attendance at a Meeting, the Members who are present, either in person or by Proxy, may adjourn the Meeting from time to time until a quorum is present with no further notice of such adjourned Meeting being required unless otherwise determined by the Board.

3.9. Minutes of all Meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

3.10. Voting rights of Members shall be as stated in the Articles with respect to the election of all Boards other than the First Board. Such votes may be cast in person or by absentee ballot. Proxies may be used to vote on other agenda items at meetings at which Directors are to be elected, and may also be used to establish a quorum. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted in the place and stead of the person or authorized representative of an entity entitled to vote. Proxies shall be in writing signed by the person or authorized representative of an entity giving the same and shall be valid only for the particular Meeting designated therein and, if so stated in the Proxy, any adjournments thereof, provided, however, any proxy automatically expires ninety (90) days after the date of the meeting for which it was originally given. A Proxy must be filed with the Secretary of the Association before the appointed time of the Meeting in order to be valid. Any Proxy may be revoked prior to the time a vote is cast in accordance with such Proxy.

3.11. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of twenty percent (20%) of the votes represented at such Meeting and entitled to be cast on such matter, if such request is made prior to the vote in question.

#### Section 4. Board; Directors' Meetings

4.1. The business and administration of the Association shall be by its Board.

4.2. The election and, if applicable, designation of Directors shall be conducted in accordance with the Articles. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses of Members.

4.3. (a) Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a Director of the Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until the next Annual Members' Meeting and thereafter until his or her successor is duly elected and qualified or until he or she resigns or is removed in the manner elsewhere provided.

4.4. The organizational meeting of a newly elected Board shall be held within ten (10) days of its election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. Provided the organizational meeting is held directly following the Annual Members' Meeting, no further notice of the organizational meeting shall be necessary: if not, however, notice of the organizational meeting shall be given in accordance with the HOA Act.

4.5. Regular meetings of the Board may be held at such times and places at the office of the Association or at such other place in the County as shall be determined from time to time by a majority of the Directors. Special meetings of the Board may be called at the discretion of the President or the Vice President. Special meetings must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Any such special meeting may be held at the office of the Association or at such other place in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all of the Directors shall agree upon.

4.6. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally, by mail, telephone or electronically transmitted if correctly directed to an electronic mail address at which the Director has consented to receive notice at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director.

4.7. Notice of all Board meetings shall be given to the members in accordance with the HOA Act.

4.8. A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by law, by the Articles or elsewhere herein. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting

that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

4.9. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Directors shall designate any one of their number to preside.

4.10. Directors' fees, if any, shall be determined by the Members.

4.11. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times.

4.12. The Board shall have the power to appoint an "Executive Committee(s)" of the Board consisting of not less than three (3) Directors. An Executive Committee(s) shall have and exercise such powers of the Board as may be delegated to such Executive Committee(s) by the Board.

4.13. Meetings of the Board shall be open to all Members. The Board may also hold closed meetings to the extent permitted by applicable law, including, by way of example but not by way of limitation, when the discussion at a meeting is governed by attorney-client privilege. Members shall have the right to participate in meetings with reference to all designated agenda items in accordance with the HOA Act and any rules and regulations promulgated by the Association. In the event a Member conducts himself or herself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he or she is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

4.14. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors, provided, however, whenever assessments are to be considered, they may be considered only at a meeting of the Directors properly noticed in accordance with the HOA Act.

## Section 5. Powers and Duties of the Board

5.1. All of the powers and duties of the Association shall be exercised by the Board. Such powers and duties of the Board shall include, but not be limited to, all powers and duties set forth in the Port Orange Plantation Documents, as well as all of the powers and duties of a director of a corporation not for profit not inconsistent therewith.

5.2. The Association may employ a manager to perform any of the duties, powers or functions of the Association. Notwithstanding the foregoing, the Association may not delegate to the manager the power to conclusively determine whether the Association should make expenditures for capital additions or improvements chargeable against the Association funds. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Association.

#### Section 6. Late Fees

An Owner who fails to timely pay any Assessment shall be charged a late charge of Twenty-Five Dollars (\$25) by the Association for such late Assessment. Owners shall be responsible to pay all legal fees (including, but not limited to, attorney and paralegal fees and court costs) incurred in connection with the collection of late Assessments whether or not an action at law to collect said Assessments and foreclose the Association's lien has been commenced. The Board has authorized the following initial schedule of fees for such circumstances:

- (a) One Hundred Fifty Dollars (\$150) for a Claim of Lien plus recording costs and sending of Notice of Intention to Foreclose;
- (b) One Hundred Fifty Dollars (\$150) for a Satisfaction of Lien plus recording costs: and
- (c) Any further action would require an hourly computation of attorney and/or paralegal time spent pursuing collection of such unpaid Assessments.

#### Section 7. Officers of the Association

7.1. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. One person may hold any two offices simultaneously, except when the functions of such offices are incompatible, but no person shall hold the office of President and any of the following offices simultaneously: Vice President, Secretary or Assistant Secretary.

7.2. The President shall be the chief executive officer of the Association. He or She shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he or she may, in his or her discretion, determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President ("Chairman") shall preside at all meetings of the Board and the



Members: provided, however, that the President may appoint a substitute.

7.3. In the absence or disability of the President, a Vice President shall exercise the powers and perform the duties of the President. If there is more than one (1) Vice President, the Board shall designate which Vice President is to perform which duties. The Vice President(s) shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board. In the event there shall be more than one Vice President elected by the Board, then they shall be designated "First," "Second," *etc.*, and shall exercise the powers and perform the duties of the presidency in such order.

7.4. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

7.5. The Treasurer shall have custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with good accounting practices and he or she shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

7.6. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of Port Orange Plantation.

## Section 8. Resignations

Any Director or officer may resign his or her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Lots owned by any Director or officer (other than appointees of Declarant) shall constitute a written resignation of such Director or officer.

## Section 9. Accounting Records; Fiscal Management

9.1. The Association shall prepare financial reports and maintain accounting records in accordance with the HOA Act. The accounting records of the Association shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; (ii) an account for each Lot within Port Orange Plantation which shall designate the name and address of the Owner thereof, the amount of Individual Lot Assessments and all other Assessments, if any, charged to the Lot, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due; (iii) any tax returns, financial statements and financial reports of the Association; and (iv) any other records that identify, measure, record or communicate financial information.

9.2. The Board shall adopt a Budget (as defined and provided for in the Declaration) of the anticipated Operating Expenses for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget Meeting") called for that purpose to be held during the month of November of the year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget for the Operating Expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member, upon request, and each Owner shall be given notice of the Individual Lot Assessment applicable to his or her Lot(s). The copy of the Budget, if requested, shall be deemed furnished and the notice of the Individual Lot Assessment shall be deemed given upon its delivery or upon its being mailed to the Owner shown on the records of the Association at his or her last known address as shown on the records of the Association.

9.3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a *pro rata* basis any expenses which are prepaid in any one calendar year for Operating Expenses which cover more than such calendar year; (iv) Assessments shall be made quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating Expenses and for all unpaid Operating Expenses previously incurred; and (v) items of Operating Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating Expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the cash basis method of accounting.

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9.4. Individual Lot Assessments shall be payable as provided in the Declaration.

9.5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating Expenses not budgeted or which shall exceed budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Operating Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Individual Lot Assessment.

9.6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

9.7. A report of the accounts of the Association shall be made annually by an accountant and a copy of the report shall be furnished to each Member who requests same in writing no later than the first day of April of the year following the year for which the report is made. The report shall be deemed to be furnished to the Member upon its delivery or mailing to the Member at his or her last known address shown on the records of the Association.

#### Section 10. Rules and Regulations

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or rescind, in whole or in part, then existing rules and regulations for the operation of Port Orange Plantation; provided, however, that such rules and regulations are not inconsistent with the terms or provisions of the Port Orange Plantation Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members at the last known address for such Members as shown on the records of the Association at the time of such delivery or mailing and shall not take effect until forty-eight (48) hours after such delivery or mailing, or, in the event both forms of notification are used, whichever is later. Notwithstanding the foregoing, when rules and regulations are to regulate the use of a specific portion of the Association Property, same shall be conspicuously posted at such facility and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view toward protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

#### Section 11. Parliamentary Rules

The then latest edition of Robert's Rules of Order shall govern the conduct of all meetings of the Members and the Board; provided, however, if such rules of order are in conflict with any of the Port Orange Plantation Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

Section 12. Roster of Owners

Each Owner shall file with the Association a copy of the deed or other document showing his ownership interest in Port Orange Plantation. The Association shall maintain such information. The Association shall also maintain the electronic mailing addresses and numbers designated by Owners for receiving notices sent by electronic transmission of those Owners consenting to receive notice by electronic transmission. The electronic mailing address and numbers provided by Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

Section 13. Amendment of the Bylaws

13.1. These Bylaws may be amended as hereinafter set forth in this Section 13.

13.2. After the Turnover Date, any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by either:

(i) a majority vote of the Members at any Annual Members' Meeting or any special meeting of the Members called for that purpose or by majority action of the Members who have acted by written response in lieu of a Meeting as permitted by these Bylaws; or

(ii) by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by written instrument signed by all of the Directors as is permitted by these Bylaws, provided that the Directors shall not have any authority to adopt, amend or repeal any Bylaw if such new Bylaw or such amendment or the repeal of a Bylaw would be inconsistent with any Bylaw previously adopted by the Members.

13.3. Notwithstanding any of the foregoing provisions of this Section 13 to the contrary, until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board as described in the Articles, which First Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members.

13.4. Notwithstanding the foregoing provisions of this Section 13, there shall be no amendment to these Bylaws which shall abridge, prejudice, amend or alter the rights of: (i) Declarant, without the prior written consent thereto by Declarant; or (ii) any Institutional Mortgagee without the prior written consent of such Institutional Mortgagee; nor shall any other amendment to these Bylaws be adopted or become effective without the prior written consent of Declarant for so long as Declarant holds either a leasehold interest in or title to at least one (1) Lot.

13.5. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Association shall be recorded amongst the Public Records of the County.

Section 14. Mediation

Pursuant to the HOA Act, mandatory mediation before the Department of Business and Professional Regulation ("Department") shall be required prior to institution of court litigation for disputes involving certain actions or inactions, as described therein.

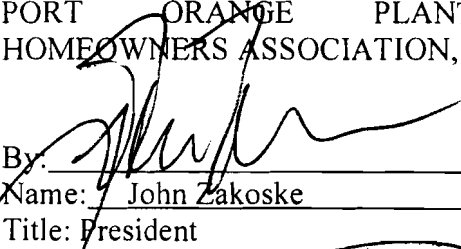
Section 15. Recall of Board Members and Election Disputes

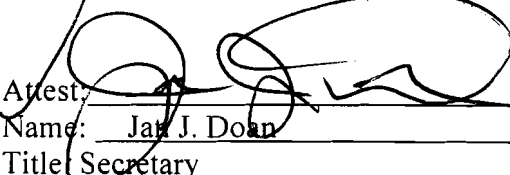
Pursuant to the HOA Act, mandatory binding arbitration before the Department shall be required for election disputes and disputes involving the recall of any member of the Board. Any member of the Board may be recalled and removed from office as provided for and described in the HOA Act.

Section 16. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the event of any conflict between the Articles and the Declaration, the Declaration shall control.

PORT ORANGE PLANTATION  
HOMEOWNERS ASSOCIATION, INC.

By:   
Name: John Zakoske  
Title: President

Attest:   
Name: Jan J. Doan  
Title: Secretary

[CORPORATE SEAL]

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EXHIBIT D

St. John's River Water Management District Permit



# St. Johns River Water Management District

Kirby B. Green III, Executive Director • David W. Fisk, Assistant Executive Director

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4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • (386) 329-4500  
On the Internet at [www.sjrwmd.com](http://www.sjrwmd.com).

July 13, 2004

DR Horton Inc  
9456 Philips Hwy Ste 1  
Jacksonville, FL 32256

**SUBJECT:** Permit Number 4-127-92263-1  
Port Orange Plantation

Dear Sir/Madam:

Enclosed is your permit as authorized by the Governing Board of the St. Johns River Water Management District on July 13, 2004.

This permit is a legal document and should be kept with your other important documents. The attached **MSSW/Stormwater As-Built Certification Form** should be filled in and returned to the Palatka office within thirty days after the work is completed. By so doing, you will enable us to schedule a prompt inspection of the **permitted activity**.

In addition to the **MSSW/Stormwater As-Built Certification Form**, your permit also contains conditions which require submittal of additional information. All information submitted as compliance to permit conditions must be submitted to the Palatka office address.

Permit issuance does not relieve you from the responsibility of obtaining permits from any federal, state and/or local agencies asserting concurrent jurisdiction for this work.

In the event you sell your property, the permit can be transferred to the new owner, if we are notified by you within thirty days of the sale. Please assist us in this matter so as to maintain a valid permit for the new property owner.

Thank you for your cooperation and if this office can be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

Gloria Lewis, Director  
Permit Data Services Division

Enclosures; Permit with EN Form(s), if applicable

cc: District Permit File

Consultant: Harpster Engineering & Surveying Inc  
436 North Grandview Ave  
Daytona Beach, FL 32118

GOVERNING BOARD

- |                                      |  |                                      |   |
|--------------------------------------|--|--------------------------------------|---|
| Omelias O Long, CHAIRMAN<br>APOPKA   | David G. Graham, VICE CHAIRMAN<br>JACKSONVILLE | R. Clay Albright, SECRETARY<br>OCALA | Duane Ottenstrofer, TREASURER<br>JACKSONVILLE |
| W Michael Branch<br>FERNANDINA BEACH | John G. Sowinski<br>ORLANDO                    | William Ken<br>MELBOURNE BEACH       | Ann T. Moore<br>BUNNELL                       |
|                                      |  |                                      | Susan N Hughes<br>JACKSONVILLE                |

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**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**

Post Office Box 1429  
Palatka, Florida 32178-1429

**PERMIT NO.** 4-127-92263-1

**DATE ISSUED:** July 13, 2004

**PROJECT NAME:** Port Orange Plantation

**A PERMIT AUTHORIZING:**

Construction of a surface water management system for a 67.28-acre, 88-lot single-family subdivision known as Port Orange Plantation.

**LOCATION:**

**Section(s):** 13                      **Township(s):** 16S                      **Range(s):** 32E

Volusia County

**ISSUED TO:**

DR Horton Inc  
9456 Phillips Hwy Ste 1  
Jacksonville, FL 32256

Permittee agrees to hold and save the St. Johns River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all plans and specifications attached thereto, is by reference made a part hereof.

This permit does not convey to permittee any property rights nor any rights or privileges other than those specified therein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. All structures and works installed by permittee hereunder shall remain the property of the permittee.

This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes:

**PERMIT IS CONDITIONED UPON:**

See conditions on attached "Exhibit A", dated July 13, 2004

**AUTHORIZED BY:** St. Johns River Water Management District

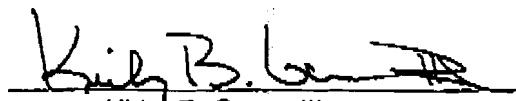
Department of Water Resources

Governing Board

By:

  
Jeff Elledge  
(Director)

By:

  
Kirby B. Green III  
(Assistant Secretary)

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"EXHIBIT A"  
CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 4-127-92263-1  
**DR HORTON INC**  
DATED JULY 13,2004

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1. All activities shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted **activity** and the conditions for undertaking that activity shall constitute a violation of this permit.
2. **This** permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications, shall be kept at the work site of the permitted **activity**. **The** complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which do not cause violations of state water quality standards.
4. Prior to and **during** construction, the **permittee shall implement** and maintain all erosion and sediment control measures (best management practices) required to retain sediment on-site and to prevent violations of state water quality standards. All practices must be in accordance with the guidelines and specifications in chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water **Management** (Florida **Department of Environmental Regulation 1988**), which are incorporated by reference, unless a project specific erosion and sediment control plan is approved as **part of the** permit, in which case the practices must be in accordance with the plan. If site specific **conditions** require additional measures during any phase of construction or operation & prevent erosion or **control** sediment, beyond those specified in the erosion and **sediment** control plan, the permittee shall implement additional best management practices as necessary, in accordance with the specifications in chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988). The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
5. Stabilization measures shall be initiated for erosion and sediment control on disturbed areas as soon as practicable in portions of the site where construction **activities** have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased.
6. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the **District** a Construction Commencement Notice Form No. 40C-4.900(3) **indicating** the actual start date and the expected completion date.
7. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an Annual Status Report Form No. 40C-4.900(4). These forms shall be submitted during June of each year.
8. For those systems which will be operated or maintained by an entity which will require an easement or deed **restriction** in order to provide that entity with the authority necessary to operate or maintain the system, such easement or deed **restriction**, together with any other final operation or maintenance documents as are required by subsections 7.1.1 through 7.1.4 of the Applicant's Handbook: Management and Storage of Surface Waters, must be submitted to the District for approval. Documents meeting the requirements set forth in these subsections of the Applicant's Handbook will be approved. Deed restrictions, easements and other operation and maintenance documents which require **recording** **either** with the Secretary of State or the Clerk of the Circuit Court **must be so recorded** prior

to lot or unit sales within the project served by the system, or upon completion of construction of the system, whichever occurs first. For those systems which are proposed to be maintained by county or municipal entities, final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local governmental entity. Failure to submit the appropriate final documents referenced in this paragraph will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system.

9. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area sewed by the portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of that phase or portion of the system to local government or other responsible entity.
10. Within 30 days after completion of construction of the permitted system, or independent portion of the system, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing As Built Certification Form 40C-1.181(13) or 40C-1.181(14) supplied with this permit. When the completed system differs substantially from the permitted plans, any substantial deviations shall be noted and explained and two copies of as-built drawings submitted to the District. Submittal of the completed form shall serve to notify the District that the system is ready for inspection. The statement of completion and certification shall be based on on-site observation of construction (conducted by the registered professional engineer, or other appropriate individual as authorized by law, or under his or her direct supervision) or review of as-built drawings for the purpose of determining if the work was completed in compliance with approved plans and specifications. As-built drawings shall be the permitted drawings revised to reflect any changes made during construction. Both the original and any revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor. The following information, at a minimum, shall be verified on the as-built drawings;
  1. Dimensions and elevations of all discharge structures including all weirs, slots, gates, pumps, pipes, and oil and grease skimmers;
  2. Locations, dimensions, and elevations of all filter, exfiltration, or underdrain systems including cleanouts, pipes, connections to control structures, and points of discharge to the receiving waters;
  3. Dimensions, elevations, contours, or cross-sections of all treatment storage areas sufficient to determine state-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems, when appropriate;
  4. Dimensions, elevations, contours, final grades, or cross-sections of the system to determine flow directions and conveyance of runoff to the treatment system;
  5. Dimensions, elevations, contours, final grades, or cross-sections of all conveyance systems utilized to convey off-site runoff around the system;
  6. Existing water elevation(s) and the date determined: and Elevation and location of benchmark(s) for the survey.

11. The operation phase of this permit shall not become effective until the permittee has complied with the requirements of general condition 9 above, the District determines the system to be in compliance with the permitted plans, and the entity approved by the District in accordance with subsections 7.1.1 through 7.1.4 of the Applicant's Handbook: Management and Storage of Surface Waters, accepts responsibility for operation and maintenance of the system. The permit may not be transferred to such an approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall request transfer of the permit to the responsible approved operation and maintenance entity, if different from the permittee. Until the permit is transferred pursuant to section 7.1 of the Applicant's Handbook: Management and Storage of Surface Waters, the permittee shall be liable for compliance with the terms of the permit.
12. Should any other regulatory agency require changes to the permitted system, the permittee shall provide written notification to the District of the changes prior implementation so that a determination can be made whether a permit modification is required.
13. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property, which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and chapter 40C-4 or chapter 40C-40, F.A.C.
14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the activities authorized by the permit or any use of the permitted system.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this permit or a formal determination under section 373.421(2), F.S., provides otherwise.
16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of section 40C-1.612, F.A.C. The permittee transferring the permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to such sale, conveyance or other transfer.
17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.
18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the District.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.
20. This permit for construction will expire five years from the date of issuance.
21. At a minimum, all retention and detention storage areas must be excavated to rough grade prior to building construction or placement of impervious surface within the area to be served by those facilities. To prevent reduction in storage volume and percolation rates, all accumulated sediment must be removed from the storage area prior to final grading and

stabilization.

22. All wetland areas or water bodies that are outside the specific limits of construction **authorized** by this permit must be protected from erosion, siltation, scouring or excess turbidity, and dewatering.
23. Prior to construction, the permittee must clearly designate the limits of construction on-site. The **permittee** must advise the contractor that any work outside the limits of **construction**, including clearing, may be a violation of this **permit**.
24. This permit requires the recording of a conservation easement.

#### Description of Conservation Easement Area

The permittee shall provide to the District for review and written approval a copy of: (a) the preliminary plat showing the area to be encumbered by the conservation easement, or (b) a surveyor's sketch and legal description of the area to be placed under the conservation easement, per the approved **mitigation** plan, at least 45 days prior to (1) dredging, filling, or clearing any wetland or surface water for which mitigation **is** required, (2) clearing any upland within a Riparian Habitat Protection Zone for which mitigation is required, (3) the sale of any **lot** or parcel, (4) the recording of the subdivision plat, or (5) use of **the** infrastructure for its intended use, whichever occurs first.

If the impacts to an upland within a Riparian Habitat Protection Zone or to a wetland or surface water for which mitigation is **required** will occur in discrete phases, the areas to be preserved to offset such impacts may be placed under **conservation** easement **in** phases such that impacts are offset during each phase. Such phasing of preservation shall **only** occur if it has been proposed in the mitigation plan and approved by the permit, or if it is approved in writing by the District. A surveyor's sketch and legal description of the area to be placed under conservation easement during each phase must be submitted in accordance with the previous paragraph.

#### Recording of Conservation Easement

Prior to (1) dredging, filling, or clearing any wetland or surface water for which mitigation is required, (2) clearing any upland within a Riparian Habitat Protection Zone for which mitigation is required, (3) the sale of any lot or parcel, (4) the recording of the subdivision plat, or (5) use of **the infrastructure** for its intended use, whichever occurs first, the **permittee** shall record a conservation easement which **shall** include restrictions on the real property pursuant to section 704.06, Florida Statutes, and be consistent with section **12.3.8**, Applicant's Handbook, Management and Storage of Surface Waters (April 10, 2002). The conservation easement shall **be** in the **form** approved in **writing** by the **District** and, if no plat has been submitted, the easement shall include the approved **legal** description and surveyor's sketch. If the District does not approve the preliminary plat or surveyor's sketch and legal description within 45 days of receipt, then the **permittee** may record the conservation easement with the legal description and surveyor's sketch or plat reference **previously** submitted.

Pursuant to section 704.06, Florida Statutes, the conservation easement shall prohibit all construction, **including** clearing, dredging, or filling, except that which is specifically authorized by this permit, within the mitigation areas delineated on the final plans and/or mitigation proposal approved by the District. The easement must contain the provisions set forth in paragraphs 1(a)-(h) of section 704.06, Florida Statutes, as well as provisions indicating that the easement **may** be enforced by the District, and may not be amended without written **District** approval.

## Additional Documents Required

The permittee shall ensure that the conservation easement identifies, and is executed **by**, the correct grantor, who must hold sufficient record title to the land encumbered by the easement. If the easement's grantor is a partnership, the partnership shall provide to the District a partnership affidavit stating that the person executing the conservation easement has the legal authority to convey an interest in the partnership land. If there exist any mortgages on the land, the permittee shall also have each mortgagee execute a consent and joinder of mortgagee subordinating the mortgage to the conservation easement. The consent and joinder of the mortgagee shall be recorded **simultaneously** with the conservation easement in the public records of the county where the land is located.

Within 30 days of recording, the permittee shall provide the District with: (a) the original recorded easement (including exhibits) showing the date it was recorded and the official records book and page number, **(b)** a copy of the **recorded** plat (if applicable). (c) a surveyor's sketch of the easement area plotted on the appropriate **USGS** topographic map, and (d) the original recorded consent and **joinder(s)** of mortgagee (if applicable).

## Demarcation of Conservation Easement Area

Prior to lot or parcel sales, all changes in direction of the easement area boundaries must be permanently **monumented** above ground on the project site.

25. The proposed **surface** water management system must be constructed and **operated** in accordance with the plans received **by** the District **on** May 14, 2004.
26. The operation and maintenance entity shall inspect the stormwater or surface water management system once within **two** years after the completion of construction and every two years thereafter to determine if the system is functioning as designed and permitted. The operation and maintenance entity must maintain a record **of** each required inspection, including the date **of** the inspection, the name, address, and telephone number of the inspector, and whether the system was functioning as designed and permitted, and make such record available for inspection upon request by the District during normal business hours.

If at any time the system is **not** functioning as designed and permitted, then within 14 days the entity shall submit an Exceptions Report to the Altamonte Spring **Service** Center, on form number 40C-42.900(6), Exceptions Report for **Stormwater** Management Systems Out of Compliance.
27. Prior to initiating any construction within the wetlands, the District must **receive** a letter of verification from the **Farmton** North Mitigation Bank stating that a transaction regarding the transfer of 19.0 mitigation credits has been completed. In the event that the permittee does not successfully complete the transaction to obtain 19.0 mitigation credits from the Mitigation Bank, the permittee must obtain a permit modification to provide alternative mitigation for the wetland impacts.
28. **Mitigation** for project impacts includes preservation of remaining wetlands (10.3 acres) and uplands (2.8 acres) as shown on sheet 3/35 (Wetland Impact Plan") that Harpster Engineering & Surveying, Inc., submitted on May 14, 2004.

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Diane M. Katussek  
Volusia County, Clerk of Court