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CLERK OF CIRCUIT COURT

CL 2005153821 OR 2832/1882  
LMC Date 07/07/2005 Time 14:01:51

**DECLARATION OF CONDITIONS, COVENANTS,  
EASEMENTS, AND RESTRICTIONS FOR  
SOUTHPORT BAY MASTER HOMEOWNERS' ASSOCIATION, INC.**

THIS DECLARATION is made this \_\_\_\_ day of May, 2005, by THE GREATER CONSTRUCTION CORP., a Florida corporation, whose address is 1105 Kensington Park Drive, Altamonte Springs, Florida, 32714; (hereinafter "Greater") and by ARNCO LAND COMPANY, LLC, a Florida limited liability company, whose mailing address is Post Office Box 450037, Kissimmee, Florida 34741 (hereinafter "Arnco"), which declare hereby that the "Property" described in Article II of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

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

1.1 "Assessment" means and refers to a share of the funds required for payment of the expenses of the Association, which funds shall be assessed against a Lot and its Owner from time to time.

1.2 "Association" means and refers to SOUTHPORT BAY MASTER HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not for profit, its successors and assigns.

1.3 "Board of Directors" means and refers to the board of directors of the Association.

1.4 "Common Area" means and refers to all joint infrastructure, linear park, lawn, landscaping and similar improvements, which areas shall include those in Tracts L1, L2, L3, L4, P1, P2, P3, R1 and W within the Southport Bay plat to the extent not owned or maintained by a Municipal Service Taxing Unit, Southport Bay Phase I Homeowners' Association or Southport Bay Phase 2 Homeowners' Association.

1.5 "Declaration" means and refers to this Declaration of Conditions, Covenants, Easements, and Restrictions for Southport Master Homeowners' Association, Inc. a Florida corporation not for profit, as recorded in the Public Records of Osceola County, Florida, and as the same may be amended and supplemented from time to time.

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1.6 "Declarant" means and refers to Greater and Arnco and their successors and assigns, by virtue of such written instruments assigning the rights and obligations of Declarant hereunder recorded in the Public Records of Osceola County, Florida. Upon recordation of any such assignment, the initial Declarant shall be released and absolved from any obligations on the part of the Declarant as may arise by or through this Declaration. A Lot purchaser, Lot Owner or Lot mortgagee shall not be deemed to be the Declarant by the mere act of purchase or mortgage of a Lot.

1.7 "Entitled To Vote" means and refers to that Lot Owner who shall cast a vote for a Lot at an Association meeting. If more than one person or legal entity shall own any Lot, the Owners thereof shall determine among themselves who shall be the Member Entitled To Vote. Said determination shall be manifested upon a voting certificate, signed by all Owners of said Lot and given to the Association Secretary for placement in the Association records. Notwithstanding anything contained herein to the contrary, all Lot Owners, whether Entitled To Vote or not, are assured of all other privileges, rights, and obligations of Association membership and shall be Members of the Association. In no event shall any mortgagee or other party holding any type of security interest in a Lot or the Residence constructed thereon be Entitled To Vote for purposes hereof, unless and until any of said parties obtain or receive fee simple title to such Lot.

1.8 "Institutional Lender" or "Institutional Mortgagee" means and refers to a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, pension trust or any other generally recognized institutional-type lender or its loan correspondent, the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Federal Housing Administration (FHA) or the Veteran's Administration (VA) and to any successor or assignee thereof.

1.9 "Lot" means and refers to any Lot on a Plat of the Property and any other property hereafter declared as a Lot by the Declarant and thereby made subject to this Declaration. Notwithstanding the foregoing, Lot shall also mean to include those fifty-two (52) proposed lots which are contained within Tract F of the Plat with respect to the property owned by Arnco, however should the actual number of lots contained within Tract F of the Plat exceed fifty-two (52) then those additional lots shall also be considered a Lot for purposes of this definition.

1.10 "Member" means and refers to all those Owners who are Members of the Association as provided in Article III hereof.

1.11 "Owner" means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.12 "Plat" means and refers to the plat of Southport Bay, as recorded in the Public Records of Osceola County, Florida.

1.13 "Property" or "Properties" means and refers to the property as described in Section 2.1 of this Declaration, as are now or hereafter made subject to this Declaration and to



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the jurisdiction of the Association, except such as are withdrawn from the provisions hereof in accordance with the procedures hereinafter set forth.

1.14 "Residence" means and refers to any residential building constructed on a Lot for which a certificate of occupancy has been duly issued.

ARTICLE II.  
PROPERTY SUBJECT TO THIS DECLARATION;  
ADDITIONS THERETO

2.1 Legal Description. The real property which, initially, is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Osceola County, Florida, and is more particularly described as follows:

Lots 1 through 65, and Tract F of SOUTHPORT BAY, according to the plat thereof, as recorded in Plat Book 17, Pages 25 and 26 of the Public Records of Osceola County, Florida,

all of which real property, and all additions thereto, is herein referred to collectively as the "Property."

ARTICLE III.  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1 Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Section 3.1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association. Membership in the Association shall be appurtenant to each Lot and may not be separated from ownership of said Lot. The record title holder to each Lot shall automatically become a Member of the Association and shall be assured of all rights and privileges thereof upon presentation of a photostatically or otherwise reproduced copy of said Owner's deed to the Association Secretary for placement in the records of the Association. To the extent that said deed shall pass title to a new Lot Owner from an existing Lot Owner, membership in the Association shall be transferred from the existing Lot Owner to the new Lot Owner. In no event shall any mortgagee or other party holding any type of security interest in a Lot or the Residence constructed thereon be a Member of the Association unless and until any of said parties obtain or receive fee simple title to such Lot or Proposed Lot.

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

Class A. Class A Membership shall be all Owners of Lots. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, but the vote for such Lot shall be exercised only by that

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one person who is Entitled To Vote. In no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to nine (9) votes for each Lot owned by the Class B Member. Notwithstanding the foregoing, Greater and Aruco acknowledge and agree that control and decision-making of the Association shall be shared on a 50/50 basis. The Class B membership shall cease and terminate (i) at such time as ninety percent (90%) of the maximum number of Residences allowed for the Property have been conveyed to Class A Members, or (ii) sooner if required by the provisions of Chapter 617, Florida Statutes, or at the election of the Declarant, whereupon the Class A Members shall be obligated to elect the Board of Directors and assume control of the Association. Upon termination of the Class B membership as provided for herein, the Class B membership shall convert to Class A membership with voting strength as set forth above for Class A membership.

3.3 General Matters. When reference is made herein, or in the Articles of Incorporation, Bylaws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members Entitled To Vote and not of the Members themselves.

#### ARTICLE IV. PROPERTY RIGHTS IN THE COMMON AREAS; OTHER EASEMENTS

4.1 Members Easements. Each Member, and each tenant, agent and invitee of such Member or tenant, shall have a nonexclusive permanent and perpetual easement over and upon the Common Area for the intended use and enjoyment thereof in common with all other such Members, their tenants, agents, and invitees, in such manner as may be regulated by the Association.

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

A. The right and duty of the Association to levy Assessments against each Lot for the purpose of maintaining the Common Area and facilities in compliance with the provisions of this Declaration and with the restrictions on the Plats of portions of the Property from time to time recorded;

B. The right of the Association to suspend the Member's and/or Owner's voting rights for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations;

C. The right of the Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Lots and Common Area and all facilities at any time situated thereon, including the right to fine Owners and Members as



hereinafter provided. Any rule and/or regulation so adopted shall apply until rescinded or modified as if originally set forth at length in this Declaration; and

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

4.2 Easements Appurtenant. The easements provided in Section 4.1 shall be appurtenant to and shall pass with the title to each Lot.

4.3 Maintenance. The Association shall at all times maintain in good repair and manage, operate, and insure, and shall replace as required, the Common Area, together with the paving, drainage structures, masonry walls, lighting fixtures and appurtenances, landscaping, sprinkler systems, entrance markers and features, signs, improvements and other structures that may (but will not necessarily) be installed by the Declarant or the Association situated on the Common Area, if any. In order to maintain, manage, and operate the Common Area, and such appurtenances as are described above, the Association shall have the right and authority to enter into such contracts or agreements (including without limitation agreements with the Declarant) as the Board of Directors of the Association deem appropriate. Maintenance of any lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. Without limiting the generality of the foregoing, the Association shall assume all of Declarant's responsibility to Osceola County of any kind with respect to the Common Area and shall indemnify and hold the Declarant harmless with respect thereto.

Each Owner shall be responsible for the maintenance, replacement, and repair of all walls, gates, paving, drainage facilities, structures and improvements located on his Lot, other than those specifically provided to be maintained by the Association.

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

4.4 Ownership. In accordance with the dedication set forth on the Plat, the Common Area is hereby dedicated non-exclusively to the joint and several use, in common, of the Owners of all Lots that may from time to time constitute part of the Property and such Owners' tenants, guests, and invitees. Declarant shall convey the Common Area to the Association, which shall accept such conveyance. Beginning on the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Area (whether or not then conveyed to the Association), such maintenance to be performed in a continuous and satisfactory manner. It is intended that all real estate taxes and assessments, if any, assessed against that portion of the Common Area owned or to be owned by the Association shall be proportionally assessed against and payable as part of the taxes of the Lots within the Property. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Area, the Association shall be responsible for the payment of the



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same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date this Declaration is recorded.

4.5 Declarant Offices. Notwithstanding anything herein to the contrary, but subject to approval by Osceola County, if required by its laws and ordinances, the Declarant shall have the specific right to maintain upon any portion of the Property sales, administrative, construction or other offices without charge, and appropriate easements of access and use are expressly reserved unto the Declarant and its successors, assigns, employees and contractors, for this purpose.

4.6 Sidewalks. Public sidewalk easements, if any, may be referred to on the Plat(s) or created by separate instrument.

ARTICLE V.  
ASSOCIATION-COVENANT  
FOR MAINTENANCE ASSESSMENTS

5.1 Creation of the Lien and Personal Obligations of the Assessments. Except as provided elsewhere herein, the Declarant, for all Lots within the Property, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association annual Assessments or charges for the maintenance, management, operation, and insurance of the Common Areas and other properties that may be otherwise used for the benefit of the Property as provided elsewhere herein, including such reasonable reserves as the Association may deem necessary, including capital improvement Assessments, as provided elsewhere herein and all other charges and Assessments hereinafter referred to, all such Assessments to be fixed, established and collected from time to time as herein provided. In addition, individual assessments may be levied against particular Owners and Lots for expenses incurred against particular Lots and/or Owners to the exclusion of others and other charges against specific Lots or Owners as contemplated in this Declaration. The annual, special, and other Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the Assessment fell due. Except as provided herein with respect to individual Assessments that may be imposed on one or more Lots and Owners to the exclusion of others, all Assessments imposed by the Association and/or the Master Association shall be imposed against all Lots subject to its jurisdiction equally. Reference herein to Assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

5.2 Purpose of Assessments. The regular Assessments levied by the Association shall be used exclusively for payments and purposes described herein and in paragraph 5.1 above and for operation, maintenance, repair, renovation, and construction upon the Common Areas, including the maintenance and repair of such other properties as may be used for the benefit of the Property, as specifically provided herein, capital improvements, reserves, operating costs of the Association and to promote the health, safety, welfare, and aesthetics of the Members of the



Association and their families residing with them, their guests and tenants, all as provided for herein. CL 2005153821 OR 2832/1888

5.3 Reserves for Replacement. The Association may establish and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area. The reserve fund may be maintained from annual Assessments. Notwithstanding the foregoing, if the Declarant elects to pay the amount of any deficits incurred by the Association for expenses in excess of the amounts collected as Assessments, in accordance with the provisions of Section 5.14 of this Declaration, then the Declarant shall not be required to contribute to a reserve fund.

5.4 Initiation Fee; Initial Assessment Payment. The Board of Directors may fix the initial annual Assessment and any maximum annual Assessments.

5.5 Capital Improvements. Funds necessary for the addition of capital improvements (as distinguished from repairs and maintenance) relating to the Common Area or other properties used for the benefit of the Property and which have not previously been collected as reserves or are otherwise available to the Association shall be levied by the Association as special Assessments only upon approval by a majority of the total cumulative vote of the Members voting in person or by proxy at a meeting duly called for such purpose.

5.6 Notice and Quorum for Any Action Authorized Under Sections 5.5 and 5.7. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.5 or 5.7 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total cumulative vote of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than ninety (90) days following the preceding meeting.

5.7 Date of Commencement of Annual Assessments; Due Dates. The annual Assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31 of such year. Each subsequent annual Assessment shall be imposed for the year beginning January 1 and ending December 31. The annual Assessments shall be payable in advance by one (1) annual payment, or by monthly, quarterly or biannual installments in the discretion of the Board of Directors of the Association. At the time of the closing of the sale of any Lot, the purchaser thereof shall pay to the Association an amount equal to the lesser of: (i) the full annual Assessment multiplied by a fraction, the numerator of which is the number of days remaining in the year of closing (including the date of closing) and the denominator of which is 365, or (ii) the portion of the full annual Assessment otherwise due and owing for the remainder of the year. The due date of any special Assessment shall be fixed in the Board of Directors resolution authorizing such assessment.

5.8 Certain Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessment against each



Lot subject to the Association's jurisdiction for each assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto thirty (30) days prior to payment of the first installment or full payment thereof, as required in the discretion of the Board of Directors of the Association, except as to emergency Assessments. Subject to other provisions hereof, the Association shall upon demand at any time furnish to any Owner liable for an Assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid. The Association may charge a reasonable fee for such certificate. The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Declarant) for management services or for other services beneficial to the Association or the proper operation and maintenance of the Property. The Association shall have all other powers provided elsewhere herein, in its Articles of Incorporation and its Bylaws.

5.9 Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association. If the Assessments (or installments), whether general or special, or individual, are not paid on the date(s) when due (being the date(s) specified herein), then such Assessments (or installments) shall become delinquent (and, at the option of the Declarant, all general Assessments attributable to the Lot for the existing fiscal year shall be accelerated and shall become immediately due and payable) and shall, together with late charges, interest, and the costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot that shall bind such property. Each Assessment against a Lot shall also be the personal obligation of the Owner at the time the Assessment fell due.

If any installment of an Assessment is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge not greater than ONE HUNDRED AND NO/100 DOLLARS (\$100.00) may be imposed and all such sums including administrative fees, costs and all charges shall bear interest from the dates when due until paid at the highest lawful rate, and the Association may bring an action at law against the Owner(s) personally obligated to pay the same or may record a claim of lien against the Lot on which the assessments and late charges are unpaid and may foreclose the lien against the Lot on which the assessments and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively. The Association shall also have the right to recover its attorneys' fees (including paralegal fees) and costs, including without limitation costs and expenses for consultation with an attorney because any such sums have not been paid, and costs and expenses charged by such attorney for services related in any way to the failure by an Owner to pay such sums (such as without limitation fees for telephone calls, preparation of correspondence, attendance at meetings, etc.), whether or not suit is filed. Further, in addition to the foregoing, in the event suit is filed, the Association shall have the right to recover all attorneys' fees, paralegals' fees, and costs incurred before trial, at trial, and upon all appellate levels.

The Association does not intend to collect or receive interest in excess of the maximum legal rate permitted under applicable usury laws. In the event the Association or any court



determines that any charge, fee or interest paid or agreed to be paid in connection with Article V hereto may, under applicable usury laws, cause the interest rate to exceed the maximum rate permitted by law, then such charges, fees or interest shall be reduced to the maximum rate permitted by law and any amounts actually paid in excess of such maximum rate permitted by law shall be repaid directly to the Owner. CL 2005153821 OR 2832/189

In addition to the rights of collection stated above, if any installment of an Assessment is not paid within fifteen (15) days after the due date, the Board of Directors of the Association may impose a fine on the Lot for which the Assessment was not paid (and the fine shall also be the personal obligation of the Owner). The fine shall be imposed by the Board of Directors at a duly called meeting in accordance with the Bylaws of the Association and notice of the fine shall be sent to the Owner by certified mail, return receipt requested, postage prepaid. The Owner may appeal the fine to the respective Board of Directors in accordance with reasonable procedures prescribed by such Board of Directors from time to time. The determination of the Board of Directors with respect to any such appeal shall be final.

If any such fine is not timely paid, then the fine, together with reasonable costs of collection thereof as provided herein, shall, at the option of the Association, become a continuing lien on the Lot which shall bind such Lot. Additionally, the fine shall also be the personal obligation of the Owner at the time the fine is assessed.

The Association may, at its option, bring an action at law against the Owner personally obligated to pay the fine or may record a claim of lien against the Lot for which the fine is unpaid, and may foreclose the lien against the Lot on which the fine is unpaid or may pursue one or more such remedies and any and all other available remedies at the same time or successively.

In addition to the rights of collection of Assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot as to which the Assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such Lot or the enjoyment of the Common Area until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid. No sale or other disposition of Lots shall be permitted until an estoppel letter is received from the Association acknowledging payment in full of all Assessments and other sums due; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 5.12 of this Article.

It shall be the legal right of the Association to enforce payment of the Assessments hereunder. Failure of the Association to send or deliver bills shall not, however, relieve Owners from their obligations hereunder.

**5.10 Subordination of the Lien.** The lien of the assessments provided for in this Article shall be subordinate to the lien of any first mortgage to any Institutional Lender and which is now or hereafter placed upon any property subject to Assessment; provided, however, that any such mortgagee when in possession or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any Assessment coming due after such foreclosure (or



conveyance in lieu of foreclosure). Any unpaid Assessment that cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an Assessment divided equally among, payable by and a lien against all Lots subject to Assessment by the Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Failure to pay assessments shall not constitute a default under any first mortgage to an Institutional Lender unless the First Mortgage so provides. CL 2005-153821 OR 2832/1891

5.11 Collection of Assessments. The Association shall collect the Assessments of the Association. Mortgagees are not required to collect assessments.

5.12 Effect on Declarant. Notwithstanding any provision that may be contained to the contrary in this Declaration or the Articles of Incorporation or Bylaws of the Association, for as long as Declarant or its successors or assignees, from time to time, are the Owners of any Lot on which a Residence has not yet been constructed, the Declarant shall be liable for the full Assessments against each Lot so owned; provided, however, the Declarant, in its sole discretion, may elect in any given assessment year, in lieu of payment of the full Assessments for each such Lot, to pay the amount of any deficits incurred by the Association for expenses incurred in excess of the amounts collected as Assessments. In such event, Declarant shall not be required to fund reserves. For purposes hereof, the existence, or nonexistence of a deficit for the Association shall be determined on cash basis accounting instead of accrual basis. When Declarant has sold and conveyed all Lots in the Property, Declarant shall not have further liability of any kind to the Association for the payment of Assessments or for funding any deficits of the Association.

## ARTICLE VI. ENFORCEMENT

6.1 Compliance by Owners. Every Owner shall comply with the terms, provisions, restrictions, and covenants set forth herein and any and all rules and regulations that from time to time may be adopted by the Board of Directors of the Association.

6.2 Enforcement. The Declarant, the Association, the Board of Directors, each Owner, or any other party as provided herein shall each have the right (but not the obligation) to enforce this Declaration and the covenants, restrictions and provisions hereof including without limitation bringing the actions and filing and foreclosing the liens described in Article V hereto. Enforcement of this Declaration and the covenants, restrictions, and provisions hereof may be accomplished by any proceeding at law or in equity, including without limitation, an action for damages and injunctive relief. The Association shall have the right to suspend the voting rights and use of the Common Area of any defaulting Owner. Failure to enforce any covenant, restriction or provision hereof shall not be deemed a waiver to do so thereafter. The defaulting and/or offending Owner shall be responsible for all costs incurred in enforcement of this Declaration, including but not limited to, attorney, paralegal and legal assistant fees, costs and expenses, related fees, costs and expense, court costs, and witness and expert fees and costs, whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.



ARTICLE VII.  
GENERAL PROVISIONS

CL 2005153821

OR 2832/1892

7.1 Duration; Amendment. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of fifty (50) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years; unless during the last year of its applicability during the initial term or any extension period no less than seventy-five percent (75%) of the total cumulative vote of the Members at a duly noticed meeting of the Association vote in person or by proxy to terminate this Declaration. Further, no such termination shall have the effect of terminating any easements herein provided or reserved. Except as otherwise provided herein, this Declaration may be amended by an instrument signed by the owner(s) of the majority of the total cumulative votes of the Membership, but not requiring a specified number of votes of Members Entitled to Vote in each class; and in any event, so long as Declarant is the Owner of one (1) or more Lots within the Property, this Declaration may be amended by only Declarant (without the consent of any other party) to clarify ambiguities and scrivener's errors or for reasons which benefit the Property as determined by Declarant, in its reasonable discretion. In addition to the foregoing, so long as Declarant owns any Lots within the Property, all amendments to this Declaration must be approved and joined in by Declarant. If not so joined by Declarant, the amendment shall be null and void. Any amendment to this Declaration must be recorded in the Public Records of Osceola County, Florida.

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

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

7.4 Effective Date. This Declaration shall become effective upon its recordation in the Public Records of Osceola County, Florida.

7.5 Conflict. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and Bylaws of the Association and the Articles shall take precedence over the Bylaws.

7.6 Standards for Consent, Approval, Completion, Other Action and Interpretation. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Declarant or the Association such consent, approval or action may be withheld in the sole and absolute discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Declarant or the Association shall be deemed completed or substantially completed when so determined, in the discretion of the Declarant or Association, as appropriate.



CL 2005153821 OR 2832/1893  
7.7 Easements. Should the intended creation of any easement provided for in this Declaration fail because at the time of creation there may have been no grantee having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement. The Owners hereby designate the Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

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

7.9 Dissolution of Association. In the event of a permanent dissolution of the Association, (i) all assets of the Association shall be conveyed to a non-profit organization with similar purposes, or (ii) all Association assets may be dedicated to Osceola County, Florida or any applicable municipal or other governmental authority. Said successor non-profit organization or governmental entity shall, pursuant to this Declaration, provide for the continued maintenance and upkeep of the Common Area and such other property as may be contemplated herein.



7.10 Litigation: Mediation/Arbitration of Disputes: <sup>FL 2005153821</sup> If a dispute arises out of or <sup>OR 2832/1894</sup> relates to the Declaration, or the breach thereof, and if said dispute cannot be settled through direct negotiation, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation administered by the American Arbitration Association under its then current Commercial Mediation Rules, before resorting to arbitration. The mediation shall occur within thirty (30) days following a written request for mediation by the Association and/or Declarant. Thereafter, any unresolved controversy or claim (as determined by any party hereto) arising out of or relating to the Declaration, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its then current Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In the event of any such arbitration brought under the terms of the Declaration, the prevailing party in such arbitration shall be entitled to an award of costs, expenses and reasonable attorneys' fees, including paralegal charges, in addition to any other award of damages made by such panel.

EXECUTED as of the date first above written.

Signed, sealed and delivered  
in the presence of:

Sandra K. Merchut  
Name: SANDRA K. MERCHUT

Roxane H Stratton  
Name: ROXANE H STRATTON

**THE GREATER CONSTRUCTION  
CORP.,** a Florida corporation

By: 

Robert A. Mandell  
Chief Executive Officer

**ARNCO LAND COMPANY, LLC,** a  
Florida limited liability company

Name: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_


George Arnold  
President

STATE OF FLORIDA  
COUNTY OF SEMIWOLE

The foregoing instrument was acknowledged before me this 23 day of May, 2005, by Robert A. Mandell, as Chief Executive Officer of The Greater Construction, Corp., a Florida corporation, on behalf of the corporation. He is personally known to me and did not take an oath.



Sandra K. Merchut  
My Commission DD348026  
Expires October 10, 2008

  
Notary Public  
Printed Name: \_\_\_\_\_  
Commission No: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_