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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CORAL CAY RESORT

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THIS DECLARATION IS BEING RE-RECORDED FOR THE PURPOSE  
OF INCLUDING CERTAIN EXHIBITS THERETO OMITTED AT THE  
TIME OF THE ORIGINAL RECORDING.

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF CORAL CAY RESORT**

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COPY

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF CORAL CAY RESORT**

**THIS DECLARATION** is made and entered into this \_\_\_\_ day of December, 2005, by CORAL CAY RESORT, LLC, a Florida limited liability company (the "Declarant").

**RECITALS:**

A. Declarant is the owner of certain real property located in Osceola County, Florida, described on Exhibit A attached hereto and made a part hereof (the "Property").

B. Declarant intends to develop the Property into a gated community to be known as Coral Cay Resort.

C. The Property shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration.

**NOW, THEREFORE,** Declarant hereby declares that all of the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I. - DEFINITIONS**

1.1 "Articles" shall mean the articles of incorporation of the Association which have been filed in the office of the Secretary of the State of Florida, as same may be amended from time to time, a copy of which is attached hereto as Exhibit B.

1.2 "Association" shall mean Coral Cay Resort Homeowners Association, Inc., its successors and assigns.

1.3 "Board" shall mean the board of directors of the Association.

1.4 "Bylaws" shall mean the bylaws of the Association, as same may be amended from time to time, a copy of which is attached hereto as Exhibit C.

1.5 "City" shall mean and be defined as the City of Kissimmee, Florida, a political subdivision of the State of Florida, specifically including each and all of its departments and agencies.

1.6 "Commencement Assessments" shall mean assessments or charges of Five Hundred Dollars (\$500.00) each levied against each and every Lot/Residence to fund Common Expenses in accordance with this Declaration which shall be paid directly to the Association at the time of closing by the Person first purchasing a Lot/Residence from Declarant or its successor.



1.7 "Common Area" shall mean all real property including the improvements thereon owned by the Association for the common use and enjoyment of the Owners.

Declarant may convey Common Area to the Association at any time in fee simple, free of any mortgages or other liens, except ad valorem taxes for the year of conveyance. The Association shall accept title to any real property or personal property offered to the Association by Declarant.

1.8 "Common Assessments" shall mean assessments or charges levied against all Lots to fund Common Expenses in accordance with this Declaration.

1.9 "Common Expenses" shall mean the actual and estimated expenses incurred by the Association for the operation, maintenance and repair of the Common Area (and all improvements thereon), the Surface Water Management System, and the Common Maintenance Area, or for the general benefit of all Owners, including, if so determined by the Board, any reasonable reserves, all as may be found to be necessary or appropriate by the Board pursuant to the Governing Documents.

1.10 "Common Maintenance Area" shall mean all real property from time to time designated by Declarant or the Board as a maintenance responsibility of the Association for the common use and enjoyment of the Owners, together with all improvements, fixtures, and tangible personal property now or hereafter situated thereon.

1.11 "Conservation Area" or "Conservation Easement Areas" shall mean all conservation areas designated by Declarant or its successors and assigns upon the Plats (as hereinafter defined), or in any easements, dedications, or restrictions made or imposed pursuant to conservation ordinances, laws, rules, or regulations of governmental authorities.

1.12 "County" shall mean and be defined as Osceola County, Florida, a political subdivision of the State of Florida, specifically including each and all of its departments and agencies.

1.13 "Declarant" shall mean Coral Cay Resort, LLC, a Florida limited liability company, and its successors and assigns. Declarant may assign all or a portion of its rights hereunder. In the event of a partial assignment, the assignee shall be deemed Declarant and may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

1.14 "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions of Coral Cay Resort.

1.15 "Governing Documents" shall mean and collectively refer to this Declaration, the Articles and the Bylaws.

1.16 "Institutional Lender" shall mean a bank, savings and loan association, insurance company, Federal National Mortgage Association, or other lender generally recognized as an institution type lender, which holds a mortgage on one or more of the Lots.

1.17 "Lakefront Lot" shall mean any Lot containing, within the Lot lines, a portion of a lake or pond, or any lot having frontage on or near a lake or pond, or any lot having common boundaries with a lake or pond.

1.18 "Lot" shall mean any plot of land intended for use as a site for a Residence and which is shown as a lot upon any recorded Plat of the Property.

1.19 "Member" shall mean every person or entity who is an Owner and in being such the Owners comprise the membership of the Association.

1.20 "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.21 "Permanent Residency" shall mean the occupation or use of a Residence as living quarters by an Owner, Owner's guest or Transient, or the invitee, lessee or tenant of an Owner, for a total of sixty (60) cumulative days or more during any calendar year.

1.22 "Person" shall mean an individual, corporation, governmental agency, estate, trust, partnership, association, sole proprietorship, joint venture, two or more persons having a joint or common interest, or any other legal entity.

1.23 "Plat" or "Plats" shall mean the plat or plats subdividing the Property, as recorded from time to time in the Public Records of the County.

1.24 "Property" shall mean the real property described on Exhibit A attached hereto and, when added in accordance with the terms and conditions hereof, shall also include such real property as is in the future subjected to this Declaration.

1.25 "Rental Unit" shall mean and refer to a Residence which is being leased or rented for a term of thirty-one (31) consecutive days or more.

1.26 "Residence" shall mean any residential dwelling unit constructed or to be constructed on or within any Lot, together with any appurtenant improvements, which is intended for use and occupancy as a Rental Unit or Short Term Rental Unit and is susceptible to ownership in fee simple.

1.27 "Short Term Rental" shall mean and refer to Transient Occupancy of a Residence for a term of thirty (30) consecutive days or less.

1.28 "Short Term Rental Unit" shall mean and refer to a Residence which is being leased or rented to Transients for a term of thirty (30) days or less and/or which may be regularly rented to Transients or held out or advertised to the public as a place regularly rented to Transients.

1.29 "SFWMD" shall mean the South Florida Water Management District.

1.30 "Special Assessments" shall mean assessments or charges levied against all Lots to fund or cover unbudgeted expenses or expenses in excess of those budgeted in accordance with this Declaration.

1.31 "Specific Assessments" shall mean assessments or charges levied against a particular Owner's Lot or Residence to recover any indebtedness of that Owner to the Association arising under any provision of the Governing Documents in accordance with this Declaration.

1.32 "Streets" shall mean the rights-of-way of and for all streets, roads, drives, courts, ways and cul de sacs within the Property as the same are described in and depicted on the Plats, together with all paving, curbing, gutters, sidewalks and other improvements, facilities, and appurtenances from time to time located therein, including street lights and utility lines, conveyed by Declarant to the Association as Common Area pursuant to the provisions of this Declaration; but, specifically excluding, however, such utility lines, facilities and appurtenances as are located within such rights-of-way as may be owned by private or public utility companies or governmental agencies from time to time providing utility services to the Property.

1.33 "Surface Water Management System" shall mean the surface water management and drainage system for the Property which is designed, constructed, implemented, and operated to collect, store, retain, detain, inhibit, absorb, treat, convey, drain, use, reuse, and otherwise manage and control surface stormwater drainage on and discharges from the Property in order to prevent or reduce flooding, overdrainage, water pollution, or other environmental degradation or otherwise affect the quality, and/or rate of flow of surface stormwater drainage on and discharges from the Property in accordance with, and pursuant to the permit or permits issued by SFWMD (the "Permit") and as reflected on the construction plans approved by the City, and includes all land, easements, improvements, facilities, and appurtenances which together constitute and comprise those portions of the surface water management and drainage system for the Property. A copy of the Permit is attached hereto as Exhibit D. The Surface Water Management System shall include all land located in the environmental and conservation easement areas, drainage easement areas and other water management areas in the Property.

1.34 "Transient" shall mean and refer to a guest in Transient Occupancy.

1.35 "Transient Occupancy" shall mean and refer to occupancy of a Residence when it is the intention of the parties that the occupancy or use will be temporary.

1.36 "Water Areas" shall mean any lakes, ponds, stormwater retention and detention areas, and other water areas within the Property.

## **ARTICLE II. - PROPERTY RIGHTS**

2.1 Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every Lot, subject to the following provisions:

- 2.1.1 The right of the Association to suspend the voting rights and right to use Common Area Facilities, if any, by an Owner 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 its published rules and regulations.
- 2.1.2 The right of the Association to mortgage or convey the Common Area to any homeowner association, public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such mortgage or conveyance shall be effective unless such mortgage, dedication, or transfer is approved by the affirmative vote (in person or by proxy) or written consent or any combination thereof, of Owners holding not less than two-thirds (2/3) of the total votes of each class of the Association and an instrument agreeing to such mortgage, dedication, or transfer is recorded in the public records of the County. If any Owner's ingress or egress to his Residence is through the Common Area, any conveyance or encumbrance of such section of the Common Area is subject to that Owner's easement.
- 2.1.3 The right of the Association to operate and/or maintain or allow a third party to operate and/or maintain, for the benefit of the Owners, their invitees and lessees, one or more commercial retail establishments within the Common Area for various purposes including, but not limited to, food service, resort services, sale of alcoholic beverages, gift shop or convenience store.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Governing Documents, his right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on his Lot whether on a permanent or transient basis.

2.3 Utility Easements. There are hereby created, declared, granted to and reserved for the benefit of Declarant, the City, the Association, all Owners, all Lots and all public or private providers of utility services to the Property and their respective successors and assigns a non-exclusive perpetual easement for utility purposes over, under, upon and within the rights-of-way of and for all Common Area and all utility easements and utility easement areas shown on the Plats or otherwise reserved, declared, or created pursuant to this Declaration for the purposes of constructing, installing, inspecting, operating, maintaining, repairing, and replacing, from time to time, any and all utility lines, mains, systems, equipment, and facilities from time to time located therein or thereon. The utilities contemplated to be served by such utility easements shall include, without limitation, those providing electric power, natural gas, telephone, potable water and cable television and other telecommunication services. Declarant also hereby reserves for itself and for the Association, and their respective successors, assigns, agents, and contractors, as the case may be, a non-exclusive perpetual easement for utility purposes to install, operate, maintain, repair and replace electricity, gas, water, cable television and telephone lines and facilities over or under any Lot or Residence; provided, however, that any such electricity, gas, water, cable television and/or telephone lines must be installed inside of a conduit.

2.4 Drainage Easements. There is hereby created, declared, granted to and reserved for the benefit of Declarant, the Association, all Owners, and all Lots a non-exclusive perpetual easement for storm water collection, retention, detention, treatment, and drainage over, under, upon and within the rights-of-way of and for all Streets and all drainage easements and drainage easement areas, if any, shown on the Plats or otherwise created, declared, granted or reserved by Declarant pursuant to this Declaration, together with an easement and license to enter upon such Streets and such drainage easements and drainage easement areas for the purposes of constructing, installing, inspecting, operating, maintaining, repairing, and replacing any and all storm water drainage and surface water management systems, improvements, and facilities from time to time located therein or thereon in accordance with and as required by the Permit. Additionally, Declarant, for the benefit of itself, the Association, all Owners and all Lots, hereby reserves drainage easements over any and all other portions of the Property, including the Common Area, as may be reasonably required from time to time, in order to provide storm water drainage to all or any portions of the Property; provided, however, that any such additional drainage easements shall not unreasonably interfere with the use and enjoyment by any Owners of the particular Lots or the Common Area affected thereby or any improvements from time to time placed, located, constructed, erected, or installed thereon. The drainage easements hereinabove created, declared, granted, and reserved contemplate the construction of all storm water drainage improvements and facilities shown on the plans for the Surface Water Management System as approved by the City and SFWMD pursuant to the latter's Permit, as supplemented, modified and amended from time to time and any replacement or supplemental permits, including, without limitation, construction permits, issued by SFWMD, and such additional or supplemental facilities as may reasonably be required to provide adequate storm water drainage and surface water management to all portions of the Property. No alterations of the Surface Water Management System and its facilities and appurtenances shall be permitted without the prior written consent and approval of SFWMD, the City and Declarant.

2.5 Emergency Drainage Easement. There is hereby created, declared and granted to and for the benefit of the City and SFWMD, a non-exclusive perpetual easement over, under, upon and within the rights-of-way of and for all Streets and all drainage easements and drainage easement areas comprising and appurtenant to the Surface Water Management System for the purpose of undertaking emergency maintenance and repairs to the Surface Water Management System in the event that inadequate maintenance or repair of the Surface Water Management System by the Association shall create a hazard to the public health, safety or general welfare. It is expressly provided, however, that the creation, declaration, grant and reservation of such Emergency Drainage Easement shall not be deemed to impose upon the City and/or SFWMD any obligation, burden, responsibility or liability to enter upon the Property or any portion thereof to take any action to maintain or to repair the Surface Water Management System or any portion or portions thereof for any reason or reasons whatsoever.

2.6 Construction and Sales Easement. There is hereby created, declared, granted and reserved for the benefit of Declarant and/or its affiliate(s) together with the right to grant, assign and transfer the same to their respective sales agents and/or sales representatives as well as to builders or building contractors approved by Declarant for the construction of residences within the Property, an easement for construction activities upon Lots and an easement for sales, marketing and promotional activities including the installation and maintenance of signs on Lots

and for the construction and maintenance on Lots from time to time of a sales and administrative center in which and from which Declarant and/or its affiliate(s) and their respective authorized sales agents and sales representatives and approved builders and building contractors may engage in marketing, sales and promotional activities and related or supportive administrative activities of a commercial nature.

2.7 Public Easements. Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Property for the purpose of providing public services to the Owners.

2.8 Association's Access Easement. The Association's duly authorized representatives or agents shall, at all reasonable times, have and possess an access easement and a reasonable right of entry and inspection upon the Property, and upon, over and under each Lot and Residence, for the purpose of fully and truthfully discharging the duties of the Association, including, but not limited to, performing maintenance, repair or installation of any sort. Non-exclusive easements are hereby granted in favor of the Association throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot. Furthermore, a non-exclusive easement is hereby created over all utility easements and drainage easements located on any Lot, whether now existing or hereafter created including, but not limited to, all utility easements and drainage easements contained on the Plat, which easement is in favor of the Association, including its agents and designees, in perpetuity, to utilize for all proper purposes of the Association, as determined by the Board.

2.9 Lot Line Encroachment. Certain Residences and other improvements constructed on Lots by Declarant may be situate so that a portion thereof, including, but not limited to, an exterior wall of such Residence, roof overhangs, air conditioning units, or concrete pads may be located upon, immediately adjacent to, overhang, or encroach upon, the boundary line between the Lot upon which said Residence is located and either an adjoining Lot or a portion of the Common Area. In all such cases, said adjoining Lot or portion of the Common Area shall be subject to an easement and appurtenant rights, including the right of ingress and egress, in favor of the encroaching Lot and its respective Owner, which easement and appurtenant rights shall be for the purpose of (i) permitting the existence of the encroachment, and (ii) allowing ingress and egress for the performance of proper and normal maintenance to the encroaching improvement, including meter reading. All such improvements which have been constructed by Declarant and approved by applicable building authorities are deemed to have been reasonably constructed, notwithstanding any such encroachment. In no instance shall the exercise of any such easement and appurtenant rights created pursuant to this section unreasonable interfere with the use of the Lot subject to same.

2.10 Access. Declarant reserves unto itself, including its designees from time to time, and hereby grants to the Association and all Owners, including their respective tenants, guests and invitees, perpetual, non-exclusive easements of ingress and egress over and across those portions of the Common Area lying adjacent to and between the boundary line(s) of their Lot(s) to and from dedicated rights of way.

2.11 Future Easements. There is hereby reserved to Declarant and its successors and assigns, together with the right to grant and transfer the same, the right, power and privilege to, at any time hereafter, grant to itself, the Association, the City or any other parties such other further and additional easements as may be reasonably necessary or desirable, in the sole opinion and within the sole and absolute discretion of Declarant, for the future orderly development of the Property in accordance with the objects and purposes set forth in this Declaration. It is expressly provided, however, that no such further or additional easements shall be granted or created over and upon the Lots pursuant to the provisions of this Section if any such easement shall unreasonably interfere with the presently contemplated or future use and development of a particular Lot as a single family residential home site. The easements contemplated by this Section may include, without limitation, such easements as may be required for utility, drainage, road right-of-way or other purposes reasonably related to the orderly development of the Property in accordance with the objects and purposes specified in this Declaration, such further or additional easements may be hereafter created, granted, or reserved by Declarant without the necessity for the consent or joinder of the owner of the particular portion of the Property over which any such further or additional easement is granted or required.

2.12 Survival. Any and all easements, licenses, or other rights granted or reserved pursuant to this Article shall survive any termination of this Declaration.

### **ARTICLE III - MEMBERSHIP AND VOTING RIGHTS**

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

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

3.2.1 Class A Membership. "Class A Members" or "Class A Membership" shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be executed by a majority of all such Members as they determine, but in no event shall more than one (1) vote be cast with respect to such a Lot.

3.2.2 Class B Membership. "Class B Member" or "Class B Membership" shall be the Declarant. The Class B Member shall be entitled to eight (8) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership three months after the date when ninety percent (90%) of all the Residences that may be ultimately constructed on the Property have been conveyed to Owners or ten (10) years has passed since the recording of this Declaration, whichever occurs first. Alternatively, Declarant may elect to convert its Class B Membership to Class A Membership upon thirty (30) days written notice to the Board (whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association).

Upon the earlier occurrence of any of the events described in this Section 3.2.2, the Class B Member shall be deemed a Class A Member entitled to one (1) vote for each Lot in which it holds the interest required for Membership under Article III, Section 3.2.1 hereof.

- 3.2.3 Notwithstanding any of the foregoing, Declarant shall be entitled to appoint at least one member of the Board for so long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of all the Residences that may ultimately be constructed on the Property.

**ARTICLE IV. - PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS  
TO THE PROPERTY**

4.1 Property Subject to Declaration. The Property is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration.

4.2 Additions to the Property. Declarant and the Association reserve the right to add, or cause to be added, other real property not now included within the Property to the Property in the manner set forth below and such additional real property shall be subject to the provisions of this Declaration.

4.3 Annexation Without Association Approval. Declarant may from time to time within ten (10) years of the date of this Declaration bring, in whole or in part, additional real property under the provisions of this Declaration by recorded supplemental declarations which shall not require the consent of the existing Owners or the Association, or any mortgagee, or the Department of Housing and Urban Development or the Veterans Administration. To the extent that additional real property shall be made a part of the Property, reference herein to the Property should be deemed to be reference to all of such additional property where such references are intended to include property other than that legally described above. Nothing herein shall prevent Declarant from rezoning and changing the development plans, with respect to such future portions, or adding additional or other property to the Property.

The additional lands annexed in accordance with the provisions hereof shall become subject to the provisions of this Declaration upon recording, in the Public Records of the County, an amendment or supplement hereto properly executed by Declarant, and without the consent of the Members of the Association. Until such amendment or supplement is recorded, no provision of this Declaration shall be effective as to all or any portion of the additional real property, nor shall this Declaration constitute a cloud or encumbrance on the title of said additional real property.

4.4 Additions or Modifications. Such amendments or supplements to this Declaration may contain such complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the additional real property, which is the subject of such amendments or supplements to this Declaration, as determined by Declarant. Further, such amendments or supplements to this Declaration may contain provisions relating to such additional real property, or any portions thereof, dealing with, among other things, assessments and the basis thereof, rules and regulations, architectural controls, and other provisions



pertaining to all or part of such additional real property to the exclusion of other portions of the Property.

4.5 Other Annexation of Property. Land, other than sections of any additional real property annexed to the Property in accordance with Section 4.3 of this Article, may be annexed to the Property upon the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the total votes of the Association. Such annexation shall become effective upon recording of an amendment or supplement to this Declaration in the Public Records of the County. Thereafter, such real property described therein shall be committed to the covenants contained in this Declaration and shall be considered "Property" as fully as though originally designated herein as Property.

4.6 Platting. As long as there is a Class B Membership, Declarant shall be entitled at any time and from time to time, to plat and/or replat all or any part of the Property and to file subdivision restrictions and amendments thereto with respect to any undeveloped portion or portions of the Property without the consent or approval of any Owner.

4.7 Amendment. As long as there is a Class B Membership, the provisions of this Article cannot be amended without the written consent of Declarant, and any amendment of this Article without the written consent of Declarant shall be deemed null and void.

4.8 Merger. Nothing in this Declaration is intended to limit or restrict in any way the Association's rights or ability to merge or consolidate with any other association as the Board may feel is in the best interests of the Association and its Members. A merger or consolidation of the Association must be approved by the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the total votes of the Association. Upon a merger or consolidation of the Association with another association, all Common Area, rights, and obligations shall, by operation of law, be transferred to the surviving or consolidated association or, alternatively, the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants established by this Declaration within the Property together with the covenants and restrictions established by any supplement upon any other properties as one scheme.

4.9 Withdrawal of Property. Declarant shall have the right to withdraw portions of the Property from the terms and conditions of this Declaration, if consented to by the owner of the Property, without the joinder, ratification, or approval of the Association, any Owner or any lienholder (the "Withdrawn Property"). In order to withdraw the Withdrawn Property from the terms and conditions of this Declaration, Declarant shall record in the Public Records of the County an instrument signed by the owner of the Property which shall make reference to this Declaration, state that the purpose of this instrument is to withdraw the Withdrawn Property from the terms and conditions of this Declaration, and contain a legal description of the Withdrawn Property. Upon the withdrawal of the Withdrawal Property from the terms and conditions of this Declaration, the Withdrawn Property shall no longer be subject to the terms of this Declaration. Declarant shall have the right to later convey previously Withdrawn Property to the Association as Common Area.

4.10 Special Taxing Districts. In the event that a special taxing district or community development district (hereinafter "Taxing District") is established to provide any services currently rendered by or which are the responsibility of the Association, these covenants and conditions shall no longer be of any force and effect as to any such services provided by the Taxing District, provided however the covenants and conditions set forth herein shall continue to bind and run with the land as to all of the Property for services not provided the Taxing District. The Association shall have the right to convey or transfer all or portions of the Common Area to the Taxing District so long as the Members shall have the right to use and enjoy the Common Area. If the Taxing District is terminated for any reason, these covenants and conditions shall thereupon apply in full force and effect as if the Taxing District had never been created.

#### **ARTICLE V. - FUNCTIONS OF THE ASSOCIATION**

5.1 Through Board Action. The affairs and decisions of the Association shall be conducted and made by the Board. The Members shall only have such power or rights of approval or consent as is expressly specified herein, or in the Articles or Bylaws. In the absence of a specific requirement of approval by Members, the Board may act on its own through its proper officers.

5.2 Required Services. In addition to those other responsibilities specified in the Governing Documents, the Association or its management company, if applicable, shall be required to provide the following services as and when deemed necessary or appropriate by the Board and shall have easement rights necessary to perform same:

- 5.2.1 All maintenance of the Common Area and repair and replacement of all improvements thereon (including, but not limited to, entrance gates, streets, sidewalks and drainage facilities) as and when deemed appropriate by the Board.
- 5.2.2 Painting and non-structural, cosmetic maintenance of the exterior surfaces of walls of any improvement on any Lot; and painting of any framing located on each Residence on any Lot; and painting and structural maintenance, repair, or replacement of roofs, as the Board deems proper, in its sole discretion, provided, however, that such painting and structural maintenance, repair, or replacement shall be for ordinary wear and tear from time to time and not for damages caused by fire, hazards, or any other perils or any casualty loss. The Association shall not maintain air-conditioning units, doors, door frames, window frames, glass surfaces or locks.
- 5.2.3 Payment of ad valorem taxes and personal property taxes, if applicable, with respect to the Common Area.
- 5.2.4 Operation of the Common Area in accordance with the rules and other standards adopted by the Board from time to time.
- 5.2.5 Taking any and all actions necessary to enforce all covenants, restrictions, and easements affecting the Property and performing any of the functions or services delegated to the Association in the Governing Documents.

- 5.2.6 Conducting business of the Association, including arranging for administrative services such as legal, accounting, financial, and communication services such as informing Owners of activities, meetings, and other important events.
- 5.2.7 Purchasing insurance as may be required hereby or by the Bylaws and any other insurance to the extent deemed necessary or desirable by the Board.
- 5.2.8 Acceptance of any instrument of conveyance with respect to the Common Area delivered to the Association.
- 5.2.9 The maintenance, operation, and repair of the Surface Water Management System. Maintenance of the Surface Water 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 SFWMD or the City. Any repair or reconstruction of the Surface Water Management System shall be as permitted or, if modified, as approved by SFWMD or the City, if applicable.
- 5.2.10 Monitoring and maintenance of the irrigation area, if any, described in the Permit shall be the responsibility of the Association. The Association must successfully complete the mitigation and satisfy Permit conditions.
- 5.3 Authorized Services. The Association shall be authorized, but not required, to provide the following functions and services and shall have easement rights necessary to perform same:
- 5.3.1 Maintenance and repair of security entrance gates to the Property as well as any other items relating thereto including, but not limited to, admittance or security devices, mechanisms and utilities, automated systems, gatehouses and communication systems.
- 5.3.2 Maintenance of lawn and landscaping which may include, but shall not be limited to, mowing, edging, weeding, trimming, pruning trees, fertilizing, lawn pest control, irrigation timers, valves, and sprinklers on Lots.
- 5.3.3 Cleanup, landscaping, maintenance, dredging, water treatment or other care of lakes, ponds, canals, roads, or other property (public or private), adjacent to or near the Property, or other property designated Common Maintenance Area by Declarant or the Association to the extent such care would be beneficial to the Property and to the extent that the Association has been granted the right to so care for the affected property by the owner thereof or other Person authorized to grant such right, including, but not limited to, any appropriate governmental authority.
- 5.3.4 Operation and/or maintenance of, or allowance of a third party to operate and/or maintain, for the benefit of the Owners, their invitees and lessees, one or more

commercial retail establishments within the Common Area for various purposes including, but not limited to, food service, resort services, sale of alcoholic beverages, gift shop or convenience store.

5.3.5 Such other services as are authorized in the Governing Documents.

5.4 Regulating Use of Common Area by Third Parties.

- (a) In order to promote the health, safety and welfare of the Owners and occupants of the Property and provide for the maintenance and preservation of the Common Areas and Property, the Declarant and the Association shall be entitled (but not obligated) to establish and enforce conditions governing the use of the Common Areas by third parties, including (without limitation) parties providing utility or other services to the Property. Accordingly, all third parties utilizing the Common Area shall be required to comply with such conditions as may be determined by the Association and/or the Declarant, as applicable, to be reasonable and necessary to maintain, preserve and protect the Common Areas and the Property, and to preserve and protect the safety of persons and property from time to time located upon or within the Property. Conditions may be imposed, in particular, on any person or entity utilizing the Common Areas for the installation, maintenance, repair or replacement from time to time of utilities or another improvements or facilities (a "Service Provider") pursuant to any easement, permit, license, right of use or similar right or privilege granted by either the Declarant or the Association (whether or not pursuant to this Declaration, a plat of the Property or any other agreement or instrument) in order to accomplish the foregoing purposes and in order to avoid, if possible, the installation of improvements which interfere with the use of the Common Areas and/or detract from the appearance of the Common Areas and the Property. Such conditions may include, without limitation, the right of the Association or Declarant to:
  - (b) Require that the Service Provider submit a written request for authorization to utilize the Common Areas, in form and content (and accompanied by such additional documents and information) as are reasonably required by the Association or the Declarant to adequately review and process same;
  - (c) Require the Service Provider to pay a processing fee in an amount reasonably determined by the Association or the Declarant to compensate it for the cost of processing, reviewing and approving such request;
  - (d) Require that improvements be installed below ground to the maximum extent practicable;
  - (e) Approve the location of any improvements;
  - (f) Approve the size and composition of any above-ground improvements;

- (g) Approve the plans and specifications for all improvements;
- (h) Supervise construction, installation, repair and other activities;
- (i) Establish appropriate times for such activities to be conducted;
- (j) Require screening or landscaping around above-ground improvements;
- (k) Minimize interference with other uses of the Common Areas and Property;
- (l) Impose safety, security and traffic control requirements;
- (m) Establish and enforce reasonable rules and regulations;
- (n) Require the Service Provider to reimburse the Association or the Declarant for any actual, out-of-pocket expenses incurred or payable by the Association or the Declarant to others in order to perform any activities contemplated in this Section, including, without limitation, costs, or fees of consultants, contractors and others who may be engaged to perform such activities or to monitor or enforce the provisions of this Section with respect to such Service Provider; and
- (o) Take such actions as are reasonable or appropriate in furtherance of the foregoing.

Nothing contained herein, however, shall be construed to impose upon the Declarant or the Association an affirmative obligation to establish such conditions, nor any particular condition listed above, nor shall either the Declarant or the Association be liable to each other or any Owner, Member or other person for failure to establish or enforce any such conditions.

#### **ARTICLE VI. - COMMUNITY WALLS**

6.1 Community Walls. Declarant or the Association may construct walls or fences (the "Community Wall(s)") in the Common Area, easement, or elsewhere on the Property as a visual barrier, decorative architectural, or safety feature, or for any other reason at the sole discretion of Declarant or the Association, or as a requirement of any municipality or governing authority for the benefit of the Association.

6.2 Maintenance of Community Walls. Community Wall maintenance and repair shall be performed by the Association, as determined by the Board of Directors. Should the Board determine that maintenance and/or repair is necessary as a result of negligence or abuse by an Owner, charges for maintenance and/or repair will be assessed to such Owner.

6.3 Easement for Community Walls. An easement is hereby created in favor of Declarant and the Association for the construction, management, inspection, painting, maintenance, and repair of Community Walls located within the Property. The easement shall extend five (5) feet into each affected Lot from the Community Wall. Entry upon a Lot by Declarant, the Association, or their agents, as provided herein, shall not be deemed a trespass.

## **ARTICLE VII. - COVENANT FOR ASSESSMENTS**

7.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned, hereby covenants and each Owner, by acceptance of a deed to his Lot, is deemed to covenant and agree to pay to the Association: Commencement Assessments, Common Assessments, Special Assessments, Specific Assessments, and assessments for the costs of maintenance and operation of the Surface Water Management System

All assessments, together with late fees, interest, costs, and reasonable, attorneys' fees for collection thereof shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each assessment, together with interest, costs, and reasonable attorneys' fees for collection thereof, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment became due until paid.

7.2 Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Property and for the improvement and maintenance of the Common Area, Common Maintenance Area, Surface Water Management System, easement area benefiting the Property, right-of-way area adjacent to the Property which the Association chooses to maintain, or for any other purpose set forth in this Declaration that the Board deems appropriate.

7.3 Common Assessments. The Association shall be and is hereby authorized, empowered and directed to establish, levy, make, impose, enforce and collect during each calendar year a Common Assessment in order to provide funds required for the payment of Common Expenses to be incurred by the Association during such calendar year in the performance of its duties and obligations pursuant to this Declaration. Such Common Assessments shall be established, made, levied, imposed, enforced, collected and otherwise governed by the provisions contained in this Declaration.

7.4 Maximum Annual Common Assessment. Until January 1 of the year immediately following the conveyance of the first Lot/Residence to any Owner, the maximum annual Common Assessment shall be paid in monthly installments of One Hundred Dollars (\$100.00) per Lot/Residence. The foregoing annual assessment is in addition to any and all assessments and other financial obligations which an Owner may have to the Association.

7.4.1 From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Common Assessment may be increased each year by fifteen percent (15%) above the maximum annual Common Assessment for the previous year unilaterally by the Board without the affirmative vote of or confirmation by the Members.

7.4.2 From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, any increase in the maximum annual Common Assessment more than fifteen percent (15%) of the prior year's maximum annual Common Assessment, requires the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds

(2/3) of the votes of the Association present at a meeting duly called for that purpose.

7.4.3 The Board may fix the Common Assessment at an amount not in excess of the maximum.

7.5 Commencement Assessment. A commencement assessment of Five Hundred Dollars (\$500.00) per Lot/Residence, shall be paid directly to the Association at the time of closing by the Person first purchasing a Lot/Residence from Declarant or its successor. The Association may use the Commencement Assessment for any purpose and services set forth in this Declaration.

7.6 Special Assessments. In addition to other authorized assessments, the Association may levy assessments or charges from time to time to cover unbudgeted expenses or expenses in excess of those budgeted ("Special Assessment"), provided that any such Special Assessment shall require the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the votes of the Association present at a meeting duly called for that purpose.

7.7 Specific Assessments. The Association may levy assessments or charges against a specific Owner's Lot to recover any indebtedness of that Owner to the Association arising under any provision of the Governing Documents, including any indemnity, or by contract, express or implied, or because of any act or omission of the Owner or any occupant of such Owner's Lot, or arising by reason of Owner's failure to properly maintain his Lot and Residence as herein provided.

7.8 Uniform Rate of Assessment. All Common Assessments and Special Assessments must be fixed at a uniform rate for all Lots.

7.9 Reserves. The Association shall maintain such reserves as it deems reasonable or necessary for (i) working capital, (ii) contingencies, (iii) replacements, and (iv) the performance of such other coordinating or discretionary functions not contrary to the terms of this Declaration which the Board may from time to time approve, which may be collected as part of the Common Assessment as provided above. The Declarant's obligation to fund the Declarant's "Deficiency Obligation", as defined herein, shall not include a responsibility to fund any reserve component of the budget. The amount and manner of collection of reserves shall be as determined by the Board, in its sole discretion. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including any Owner's nonpayment of Common Assessments, the Board may, at any time, levy a Special Assessment by establishing a budget for such Special Assessment and then, after approved by the Board, levy such Special Assessment, which may be payable in a lump sum or in installments as the Board may determine. In the event there is a balance of reserves at the end of any fiscal year, and the Board so determines, any excess reserves may be taken into account in establishing the next year's budget and may be applied to defray general expenses incurred thereunder.

7.10 Date of Commencement of Common Assessments: Due Dates. The Common Assessments shall commence as to all Lots on the date (which shall be the first day of the month) fixed by the Board to be the date of commencement. Each subsequent Common Assessment shall be imposed for the year beginning January 1 and ending December 31. The Common Assessment shall be payable in advance in monthly installments, or in annual, semi-annual, or quarter-annual installments if so determined by the Board. The first Common Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the assessment shall be sent to every Owner subject thereto. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

7.11 Declarant's Obligation for Assessments. Notwithstanding anything herein to the contrary, as long as the Class B Membership exists, Declarant may elect not to pay any assessments on unoccupied Lots owned by Declarant. Should Declarant elect not to pay the assessments, Declarant shall pay all costs incurred by the Association in accomplishment of the purposes set forth in Section 7.2 of this Article, in excess of the total amount collected by the Association through all assessments, but Declarant shall not be responsible for funding any reserves of the Association. This obligation of Declarant shall hereinafter be referred to as Declarant's "Deficiency Obligation". The Declarant's Deficiency Obligation to fund the deficit shall not include an obligation to fund any reserve component of the budget. Irrespective of any election on the part of Declarant, any Residence located on any Lot owned by Declarant which is occupied as a residence shall be subject to one hundred percent (100%) of any and all applicable assessments. Declarant may at any time revoke this election and place himself in the position of being obligated to pay the full impact of all assessments for each Lot owned by Declarant at the time said revocation is presented to the Association.

7.12 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall bear a late fee of Twenty-Five Dollars (\$25) and interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law for money damages against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot, and said Owner shall also pay to the Association all reasonable attorneys' fees and costs the Association incurs in relation to such action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

7.13 Assumption of Delinquent Assessments by Successors. The personal component of the obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them. Irrespective of the assumption of the personal component of the obligation by any successor in title, the lien for delinquent assessments shall continue to be a lien upon the Lot until such time as it is fully paid.

7.14 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an Institutional Lender. Any unpaid assessment which cannot be collected as a lien against any Lot by any 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. Notwithstanding any contrary provision hereof, no Institutional Lender acquiring title to a Lot through foreclosure or conveyance in lieu of foreclosure, and no purchaser at a foreclosure sale, and no persons claiming by, through or under such Institutional Lender or purchaser, shall be personally obligated to pay assessments that accrue prior to the Institutional Lender's or the foreclosure purchaser's acquiring title.

Failure to pay assessments shall not constitute a default in any mortgage unless provided in such mortgage. Nothing contained in this Declaration shall be construed to impose a duty on any mortgagee to collect assessments.

**7.15 Exempt Property.** The following Property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- 7.15.1 All Property dedicated or deeded to and accepted by the Association, a Taxing District, or a public authority, devoted to public use.
- 7.15.2 All Common Area.
- 7.15.3 Any Property not designated as Lots.

#### **ARTICLE VIII - ARCHITECTURAL CONTROL**

Except for those improvements constructed by Declarant, no building, fence, wall, statute, yard ornament, mailbox, newspaper box, dock, or other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to, change, alternation or repair (other than repairing or restoring the exterior of any building located upon the Property to its original appearance and color) therein be made until the plans and specification showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing by the Board or by an architectural committee appointed by the Board.

The Board may promulgate design and development guidelines, application and review procedures, and building criteria (the "Guidelines"). The Guidelines shall be promulgated on behalf of the Association and shall be binding upon all Owners, builders, developers and contractors. The Board shall have sole and full authority to prepare and to amend, from time to time, the Guidelines.

#### **ARTICLE IX. - USE RESTRICTIONS**

The Property shall be subject to the following restrictions, reservations, and conditions, which shall be binding upon Declarant and each Owner who shall acquire hereafter a Lot or any portion of the Property, and shall be binding upon their respective heirs, personal representatives, successors and assigns. In addition, all references in this Article IX to the Owner shall be

deemed to include the invitees, guests, lessees, tenants and renters of the Owner unless the context clearly indicates otherwise.

9.1 Prohibition of Permanent Residency. Permanent Residency, defined as the occupation or use of a Residence as living quarters by an Owner, Owner's guest or Transient, or the invitee, lessee or tenant of an Owner, for a total of sixty (60) cumulative days or more during any calendar year, shall be strictly prohibited within the Property. Any violation of this prohibition shall be subject to the enforcement provisions set forth in the Governing Documents and, more specifically, those provisions of Section 12.2 herein.

9.2 Residential Lots. Except as specifically provided for in this Declaration, especially Section 9.36, no use shall be made of Lots other than for residential purposes. The term "residential" is intended to prohibit any commercial use, including professional office use of any portion of any Lot or Residence except as specifically set forth herein, but shall not prohibit use for rental purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than Residences designed for residential use. The foregoing shall not prohibit the Declarant and/or a Declarant or Board approved management company from using Residences as models or offices, provided such use as models or offices is in furtherance of the construction, sale, lease or rental of Lots and Residences on the Property.

9.3 Mining or Drilling. There shall be no mining, quarrying, or drilling for minerals, oil, gas, or otherwise undertaken within any portion of the Property. Excepted from the foregoing shall be activities of Declarant or the Association, or any assignee of Declarant or the Association, in dredging the Water Areas, creating land areas from Water Areas, or creating, excavating, or maintaining drainage or other facilities or easements of the installation of wells or pumps in compliance with applicable governmental requirements, or for irrigation systems for any portions of the Property.

9.4 Antennas, Aerials, Satellite Dishes and Flagpoles. Outside antennas, antenna poles, antenna masts, satellite television reception devices larger than eighteen inches (18") in diameter, electronic devices, antenna towers or citizen band (CB) or amateur band (ham) antennas shall not be permitted except as approved in writing by the Board. Satellite television reception devices no larger than eighteen inches (18") in diameter are permitted only after Owner has obtained prior written approval from the Board, and, if approved, such devices must be affixed to the rear portion of a Residence. Owners shall use their best efforts to locate the satellite television reception devices so they are not visible from the street fronting the Residence. Any Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display in a respectful manner portable, removable official flags, not larger than 4<sup>1</sup>/<sub>2</sub> feet by 6 feet, which represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. A permanent flagpole for display of the American Flag or any other flag shall be permitted only if displayed in a respectful way and only if first approved in writing by the Board as to its size, placement, and safety.

9.5 Outside Lighting. Except as may be installed initially by Declarant, no spotlights, flood lights, or similar high intensity lighting shall be placed or utilized upon any Lot which in any

way will allow light to be reflected on any other Residence or the improvements thereon or upon the Common Area or any part thereof, without the written authorization of the Board.

9.6 Trees. Trees shall not be cut or removed without approval by the Board.

9.7 Walls and Fences. Except for walls or fences constructed by Declarant or the Association, no walls, fences, or similar structures, dog runs or animal pens of any kind shall be placed or erected on any portion of any Lot.

9.8 Subdivision or Partition. No portion of the Property shall be subdivided without the prior written consent of the City and the Board.

9.9 Casualty Destruction to Improvements. In the event an improvement, such as a Residence, is damaged or destroyed, partially or totally, by casualty, hazard, or other loss, then, within a reasonable period of time after such incident, as determined by the Board, the Owner thereof shall commence to rebuild or repair the damaged improvement and diligently continue such rebuilding or repairing activities to completion. A destroyed improvement shall only be replaced with an improvement of a similar size, type, construction, and elevation as that destroyed unless the prior written consent of the Board is obtained. In the event that the Owner fails to commence rebuilding, reconstructing or repairing the improvement within the time specified by the Board and in accordance with this Section 9.9, and should such failure continue for a period of ten (10) days after notice of such delinquency has been provided to the non-performing party, the Association shall have the right (but not the obligation), as well as an easement in and to the Residence/Lot of said Owner, to conduct the required repair or reconstruction on behalf of the Owner, and the Association shall hold the non-performing Owner liable for such cost of repair or reconstruction. Should the Owner, upon notice, fail to immediately repay the Association for the costs it incurred in repairing or reconstructing the improvement, the Association may levy a Specific Assessment against the non-performing Owner and his Residence/Lot, and the Association may enforce payment of this Special Assessment in accordance with the provisions of this Declaration including, but not limited to, Article VII hereof.

9.10 Insurance Rates. Nothing shall be done or kept on the Common Area or the Property which shall increase the insurance rates of the Association without the prior written consent of the Board.

9.11 Surface Water Management System.

9.11.1 The Association shall own, operate, maintain, and manage the Surface Water Management System in a manner consistent with SFWMD Permit requirements and applicable District rules, and shall assist SFWMD in the enforcement of the restrictions and covenants contained therein. Maintenance of the Surface Water Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, treatments, conveyance or other surface water or stormwater management capabilities as permitted by SFWMD. The Association shall be responsible for such maintenance operation of the entire

Surface Water Management System within the Property including but not limited to, all lakes, canals, swale areas, retention area, culverts, pipes, and related appurtenances of the Surface Water Management System shall be as permitted, or if modified, as approved by SFWMD.

- 9.11.2 No structure of any kind shall be constructed or erected within, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of any drainage areas or the Surface Water Management System, nor shall any grading, alteration, or other modifications to these areas be made without the prior written permission of the Board and SFWMD.
- 9.11.3 No Owner shall remove native vegetation that becomes established within the Surface Water Management System without prior written approval from SFWMD and the Board. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Owners should address any questions regarding authorized activities within the Surface Water Management System to SFWMD Permitting Department.
- 9.11.4 No Owner shall in any way deny or prevent ingress and egress by Declarant, the Association, the City, or SFWMD to any drainage areas or the Surface Water Management System for maintenance or landscape purposes. The Right of ingress and egress, and easements therefore are hereby specifically reserved and created in favor of Declarant, the Association, SFWMD, the City, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.
- 9.11.5 No Lot shall be increased in size by filling in any drainage areas or other portion of the Surface Water Management System. No Owner shall fill, dike, rip-rap, block, divert, or change the established drainage areas or the Surface Water Management System without the prior written consent of the Board and SFWMD.
- 9.11.6 No wall, fence, paving, planting, or other improvement shall be placed by an Owner within a drainage area, drainage easement, or the Surface Water Management System.
- 9.11.7 In addition to the Association, the SFWMD and the City 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 Management System.
- 9.11.8 Owners may not construct or maintain any building, Residence, or structure, or perform any activity in the wetlands and landscape buffer/easement area, if any, and upland conservation areas, if any, described in the approved permit and Plats, unless prior approval is received from SFWMD, the Board, and the City pursuant to Chapter 40, Florida Administrative Code.

- 9.11.9 The covenants and restrictions regarding the Surface Water Management System are in no way intended to obligate the Association to perform any repairs, maintenance, corrections or modifications to those areas that the City, SFWMD, a master association, or Taxing District will maintain as part of their governmental obligation, agreement with Declarant, or as provided in any permits or ordinances.
- 9.11.10 Declarant shall convey title to the Surface Water Management System to the Association. After said conveyance, the Association shall, subject to the terms and provisions of this Declaration, have sole and exclusive jurisdiction over and responsibility for the administration, monitoring, management, regulation, care, maintenance, repairs, restoration, replacement, improvement, preservation and protection of the Surface Water Management System. Accordingly, each Owner, by acceptance of a deed to his Lot, shall be deemed to have agreed that neither Declarant, the City, nor any other governmental agency shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the Surface Water Management System and each Owner shall be deemed to have agreed to look solely and exclusively to the Association with respect to any such liability or responsibility.
- 9.11.11 Copies of the Permit and any future Permit actions of SFWMD shall be maintained by the officers of the Association for the benefit of the Association. The Permit shall be owned by the Association and the Association has the obligation to assure that all terms and conditions thereof are enforced.

EACH OWNER IS HEREBY NOTIFIED THAT THEIR LOTS MAY CONTAIN OR BE ADJACENT TO WETLAND PRESERVATION OR MITIGATION AREAS AND UPLAND BUFFERS WHICH ARE PROTECTED UNDER CONSERVATION EASEMENTS. THE WETLANDS AND UPLAND BUFFERS MAY NOT BE ALTERED FROM THEIR NATURAL PERMITTED CONDITION WITH THE EXCEPTION OF EXOTIC OR NUISANCE VEGETATION REMOVAL OR RESTORATION IN ACCORDANCE WITH THE RESTORATION PLAN INCLUDED IN THE CONSERVATION EASEMENT. OWNERS ARE RESPONSIBLE FOR THE PERPETUAL MAINTENANCE OF ANY SIGNAGE REQUIRED BY PERMIT.

9.12 Lake Level Fluctuations. Neither Declarant nor the Association makes any representation concerning the current or future water levels in any of the bodies of water in the Common Area or Surface Water Management System, nor shall Declarant or the Association bear any responsibility in attempting to adjust or modify the water levels since such levels are subject to seasonal groundwater and rainfall fluctuations that are beyond the control of Declarant and the Association.

Each Owner, by the acceptance of a deed to his Lot shall be deemed to have agreed that neither Declarant, the Association, the City, nor any other governmental agency shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the lake level fluctuations.

9.13 Embankment Area Maintenance. Notwithstanding any other provision in this Declaration, unless otherwise decided by the Association, each Owner of a Lakefront Lot is responsible for maintaining the area between the water's edge and their nearest lot boundary line (the "Embankment Area").

The Owner shall at all times keep and maintain the Embankment Area in a safe, clean, wholesome, and attractive condition and shall not allow the Embankment Area to deteriorate, fall into disrepair or become unsafe or unsightly. In particular, no weeds, underbrush or other unsightly growth and no trash, rubbish, debris, or unsightly objects of any kind shall be permitted or allowed to accumulate in the Embankment Area. All maintenance shall be in compliance with the Permit and all other applicable laws and regulations.

9.14 Lakes, Ponds, Retention, and Other Water Areas. The Board may establish rules and regulations relevant to access and use of Water Areas which may include, without limitation, regulation or prohibition of sailing, boating or other watercrafts (including jet skis or other vehicles containing gas, diesel, or other form of combustion engines), swimming, fishing, or other water sports or activities. To the extent the rules and regulations of the Board allow access to or use of Water Areas such use shall be at the risk of the Person undertaking such activity, and there shall be no obligation by Declarant or the Association to provide supervisory personnel or lifeguards. Docks and other structures or improvements within Water Areas shall not be permitted.

9.15 Cable Television. Declarant may coordinate and establish an agreement with one or more cable television service companies for the provision of cable television to the Association and all Lots. If such agreement is established, the fees for the cable television service payable to the service provider will be a Common Expense payable by the Association and will be included within the annual budget for which the assessments are levied each year. No Member or Owner may avoid or escape liability for any portion of the assessments for election by any Member or Owner not to utilize the cable television service.

9.16 Pets, Livestock, and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept within the Property, other than household pets provided they are not kept, bred, or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any other Owner. No pet shall be allowed outside a Lot except on a leash. No pets shall be permitted to place or have excretions on any portion of the Property unless the owner of the pet physically removes any such excretions from that portion of the Property. For purposes hereof, "household pets" shall mean dogs, cats, domestic birds, and fish. Commercial activities involving pets shall not be allowed. Owners are hereby notified that they shall not be permitted to keep more than two (2) dogs at or within each Residence, and each dog shall weigh no more than thirty (30) pounds, nor shall an Owner keep more than two (2) cats at or within each Residence. Owners shall not be permitted to keep any reptiles at or within any Residence. The Board or Declarant, as it deems advisable, may establish further limits on the number and kind of pets that may be kept or permitted to be kept on any Lot.

9.17 Signs. No signs, freestanding or otherwise installed, may be erected or displayed to the public view on any Lot, except that a interior window sign which is no larger than eighteen (18) inches by twenty-four (24) inches may be used as a conventional real estate sign for the lease, sale or resale of a Lot. Notwithstanding the foregoing, Declarant specifically reserves the right for itself, its successors, nominees and assigns, and the Association to place and maintain signs in connection with construction, marketing, sales, and rental of Residences and Lots, and identifying or informational signs, anywhere on the Property.

9.18 Garbage Containers, Oil and Gas Tanks, Outdoor Equipment. All garbage and trash containers must be kept within the Residence or out of plain view from the street at all times, except on those days designated as scheduled garbage collection days for the Property by the agency responsible for collecting garbage and trash.

No oil tanks or bottled gas tanks shall be allowed on any Lot without the express written consent of the Board. Adequate landscaping shall be installed and maintained by the Owner to conceal oil tanks or bottled gas tanks if approved by the Board. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or other waste. There shall be no burning of trash or other waste material. Trash or other waste shall be kept only in closed containers and all equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

9.19 Vehicles and Recreational Equipment. No truck or commercial vehicle, limousine, mobile home, house trailer, utility trailer, camper, boat, boat trailer or other recreational vehicle or equipment, horse trailer, bus, passenger vehicle without current registration, van (other than a passenger van), or the like shall be permitted to be parked or stored on any position of the Property. For the purposes of this rule the following definitions shall apply:

9.19.1 "Truck" means a vehicle with any sort of weight capacity, which has a compartment or bed for carrying cargo, as opposed to passengers. Regardless if such vehicle has a cover or "topper" for the cargo-carrying area, it shall be deemed to be a Truck; however, "pick-up trucks" or "sport utility vehicles" with a cargo capacity of one ton or less that are not Commercial Vehicles (as hereinafter defined) are permitted to park on the driveway of a Residence.

9.19.2 "Commercial Vehicle" means any vehicle, which from viewing the exterior of the vehicle or any portion thereof, shows any commercial markings, signs, logos, displays, tool racks, saddle racks, or other elements of a commercial nature or otherwise indicates a commercial use.

This prohibition of parking shall not apply to temporary parking of Trucks and Commercial Vehicles used for pickup, delivery and repair and maintenance of a Lot, or to any vehicles of Declarant.

Any such vehicle or recreational equipment parked in violation of these or other regulations contained herein or in the rules and regulations adopted by the Association may be towed by the Association at the sole expense of the owner of such vehicle or recreational equipment if it remains in violation for a period of twenty-four (24) consecutive hours or for forty-eight (48)

non-consecutive hours in any seven (7) day period. The Association shall not be liable to the owner of such vehicle or recreational equipment for trespass, conversion, damages, or otherwise, nor guilty of any criminal act by reason of such towing, and neither as removal nor failure of the owner of such vehicle or recreational equipment to receive any notice of said violation shall be grounds for relief of any kind. No on-street parking will be permitted unless for special events approved in writing by Declarant or the Association.

9.20 Parking. Owners may keep only two (2) vehicles on a Lot. Both vehicles must be parked in the driveway of Owner's Residence. All parking within the Property shall be in accordance with the rules and regulations adopted from time to time by the Association. Guest parking spaces will be located within the Common Area, and Owners may not park in the guest parking spaces long term.

9.21 Patios and Patio Enclosures. Owners may not alter the design or appearance of a patio without the prior written approval of the Board. Patios shall not be used for storage. All furniture on patios shall be of a type designed for outdoor use.

9.22 Garage Sales or Yard Sales. No "Garage Sale" or "Yard Sales" or similar sales, by whatever name given or ascribed to the same, shall be conducted or permitted on or within the Lots without prior written approval by the Board.

9.23 Repairs. No maintenance or repairs shall be performed on any vehicles upon any portion of the Property for longer than a three (3) hour period except in an emergency situation. In addition, no inoperable motor vehicle or trailer of any kind may be disassembled, serviced or repaired on the Property.

9.24 Prohibited Structures. No garage, tool shed, guest quarters, carport, storage buildings or other similar structure shall be placed or erected on any Lot.

9.25 Nuisances. No obnoxious, unpleasant, unsightly, or offensive activity shall be carried on, nor may anything be done which can be reasonably construed to constitute a nuisance, public or private in nature. Any questions with regard to the interpretation of this section shall be decided by the Board, whose decision shall be final.

9.26 Window Treatment. No reflective foil, sheets, newspapers, or other similar material shall be permitted on any window or glass door. Drapes, blinds, verticals, and other window coverings visible from outside a Residence shall have a white, beige, or similar light coloring.

9.27 Games and Play Structures. No basketball courts or basketball standards or backboards (whether permanent or moveable) shall be installed, placed, or affixed to any structure on any portion of the Property. All bicycles, toys, outdoor recreational equipment and barbeque grills must be taken inside the Residence at night.

9.28 Common Area. Other than improvements and landscaping constructed or installed by Declarant, no improvements or landscaping shall be constructed or installed upon any portion of



the Common Area nor shall any alterations or additions be made to said improvements or landscaping without the approval of the Board. The following shall apply to the Common Area:

- 9.28.1 No activities constituting a nuisance shall be conducted upon the Common Area.
- 9.28.2 No rubbish, trash, garbage or other discarded items shall be placed or allowed to remain upon the Common Area.
- 9.28.3 The Association may from time to time adopt reasonable rules and regulations concerning use of the Common Area which shall be binding upon all Members.
- 9.28.4 Nothing shall be stored, constructed within or removed from the Common Area other than by Declarant of the Association, except with the prior written approval of the Board.

9.29 Other Restrictions Established by the Board. The Board shall have the authority from time to time to include other restrictions as it shall deem appropriate. Said restrictions shall be governed in accordance with the residential planning criteria promulgated by the Board. However, once the Board promulgates certain restrictions, same shall become as binding and shall be given the same force and effect as the restrictions set forth herein until the Board modifies, changes or promulgates new restrictions or the Board modifies or changes restrictions set forth by the Board.

9.30 No Implied Waiver. The failure of the Association or Declarant to object to an Owner's or other party's failure to comply with this Declaration or any other Governing Documents shall in no event be deemed a waiver by Declarant or the Association, or any other Person having an interest therein, of that Owner's or other party's requirement and obligation to abide by this Declaration.

9.31 Imposition of Fines for Violations. It is acknowledged and agreed among all Owners that a violation of any of the provisions of this Declaration by an Owner or resident may impose irreparable harm to the other Owners or residents. All Owners agree that a fine may be imposed by the Association for each day a violation continues after notification by the Association. All fines collected shall be used for the benefit of the Association. Any fine levied shall be paid within fifteen (15) days after mailing of notice of that fine. If not paid within the fifteen (15) days the amount of such shall accrue interest at a rate of ten percent (10%) per annum, and shall be treated as a Specific Assessment.

9.32 Compliance with Documents. Each Owner and his family members, guests, invitees, lessees and their family members, guests, and invitees; and his or its tenants, licensees, guests, invitees and sub-tenants shall be bound and abide by this Declaration. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within the Property. Such Owner shall be liable to the Association for the cost of any maintenance, repair or replacement of any real or personal property rendered necessary by his act, neglect, carelessness, or by that of any other of the foregoing parties which shall be immediately paid for by the Owner as a Specific

Assessment. Failure of an Owner to notify any Person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right to enforcement of these provisions against the Owner or such other Person.

9.33 Property Maintenance. Each Lot and all improvements and landscaping thereon shall at all times be kept and maintained in a safe, clean, wholesome and attractive condition and shall not be allowed to deteriorate, fall into disrepair or become unsafe or unsightly. In particular, no weeds, underbrush or other unsightly growth and no trash, rubbish, refuse, debris or unsightly objects of any kind shall be permitted or allowed to accumulate on a Lot. In the event an Owner of any Lot shall fail to maintain the premises and improvement situated thereon in such a manner, the Owner shall be notified and given seven (7) days within which to correct or abate the situation. If the Owner fails to do so, the Association shall have the right (although it shall not be required to do so) to enter upon the Lot for the purpose of repairing, maintaining, and restoring the Lot and the exterior of the building and other improvements located thereupon at the sole cost of the Owner of the Lot. The cost of such repair, maintenance and restoration, together with reasonable attorneys' fees and costs for collection thereof incurred through all appellate levels, shall thereupon constitute a lien upon the Lot, which lien shall become effective upon the filing of a written claim of lien. The form, substance, and enforcement of the lien shall be in accordance with the construction lien law of the State of Florida, and the Owner of the Lot shall, by virtue of having acquired the Lot subject to these restrictions, be deemed to have authorized and contracted for such repair, maintenance and restoration. The lien herein provided will be subordinate to a first mortgage lien.

9.34 Party Walls. Each wall, including common walls and common fences, which is built as a part of the original construction of a Residence and placed on the dividing line between the Lots/Residences shall constitute a party wall, and, except as provided herein, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

- 9.34.1 The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners thereof.
- 9.34.2 If a party wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by an act of an adjoining Owner or the agent, invitee, tenant, lessee or family of such Owner, it shall be the obligation of both adjoining Owners to rebuild or repair same at their joint and equal expense.
- 9.34.3 If a party wall is destroyed or damaged through an act of an Owner or the agent, invitee, tenant, lessee or family of an Owner, it shall be the obligation of such Owner to rebuild or repair same at the sole cost of such Owner.
- 9.34.4 If an Owner is obligated to pay for the repair or reconstruction of a party wall under the provisions of this Section 9.34, and such Owner fails to pay any sum due to the other Owner under the terms of this Declaration, and should such failure continue for a period of thirty (30) days after notice of such delinquency has been provided to the non-performing party, then the party to whom money is

due may lien the non-performing party's property for the amount owed. The party claiming a lien may perfect such lien by recording it in the real property records of Osceola County and may foreclose such lien by obtaining a judgment for the amount of such lien together with costs and reasonable attorney's fees and interest accruing at the highest rate allowed by law.

9.35 Rights of Declarant. Notwithstanding anything in this Declaration to the contrary, Declarant shall have the right to use the Property for ingress and egress thereover including the use of construction machinery and trucks thereon and no Person shall in any way impede or interfere with Declarant, its employees or agents, in the exercise of this right herein reserved, or interfere with the completion of the contemplated improvements or sale of Lots and Residences thereon. Declarant may make such use of Property free from the interference of Owners or contract purchasers as may be reasonably necessary to facilitate the completion and sale of Lots and improvements thereon, including but not limited to, the maintenance of a sales office and model area, the showing of Property, the display of signs, and the right to construct or place sales and construction offices of a temporary nature on the Property.

9.36 Sales, Marketing and Promotional Activities. Notwithstanding anything to the contrary set forth in this Article or elsewhere in this Declaration, Declarant and its affiliate(s) may use any portion of the Property, including Lots (other than Lots owned by others), for sales, marketing and promotional activities and related or supportive, administrative activities pertaining to and/or in connection with the sale and/or resale of Lots and Residences constructed/located thereon, if any, including without limitation, the construction, maintenance and operation of a sales and administrative center and one or more model homes on Lots. The location of such sales and administrative center within the Property may be changed from time to time by Declarant and/or its affiliates in its or their sole and absolute discretion. It is expressly provided, however, that the location and operation of such sales and administrative center on Lots shall be subject to such approvals of the City as may be required for the same. Declarant shall be entitled to the above rights until it has conveyed its interest in all of the Lots.

9.37 Association Waiver. In the event that a violation of any of these restrictions shall occur, which violation shall not be of such nature to defeat the intent and purpose of these covenants, the Board shall have the right and authority to waive such violation.

#### **ARTICLE X. - PROHIBITION OF PERMANENT RESIDENCY**

10.1 Permanent Residency Prohibited. NOTICE IS HEREBY GIVEN THAT PERMANENT RESIDENCY, DEFINED AS THE OCCUPATION OR USE OF A RESIDENCE AS LIVING QUARTERS BY AN OWNER, OWNER'S GUEST OR TRANSIENT, OR THE INVITEE, LESSEE OR TENANT OF AN OWNER, FOR A TOTAL OF SIXTY (60) CUMULATIVE DAYS OR MORE DURING ANY CALENDAR YEAR, SHALL BE STRICTLY PROHIBITED WITHIN THE PROPERTY. ANY VIOLATION OF THIS PROHIBITION SHALL BE SUBJECT TO THE ENFORCEMENT PROVISIONS SET FORTH IN THE GOVERNING DOCUMENTS AND, MORE SPECIFICALLY, THOSE PROVISIONS OF SECTION 12.2 HEREIN.

10.2 Prohibition of Permanent Residency: Conspicuous Notice in Sales Contracts. Every contract for the sale of a Lot subject to this Declaration on which a Residence has been constructed (or will be constructed pursuant to such contract) shall include in conspicuous print the notice set forth below or a notice substantially similar thereto:

PROHIBITION OF PERMANENT RESIDENCY. NOTICE IS HEREBY GIVEN THAT PERMANENT RESIDENCY, DEFINED AS THE OCCUPATION OR USE OF A RESIDENCE AS LIVING QUARTERS BY AN OWNER, OWNER'S GUEST OR TRANSIENT, OR THE INVITEE, LESSEE OR TENANT OF AN OWNER, FOR A TOTAL OF SIXTY (60) CUMULATIVE DAYS OR MORE DURING ANY CALENDAR YEAR, SHALL BE STRICTLY PROHIBITED WITHIN CORAL CAY RESORT. FOR FURTHER INFORMATION, REFER TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CORAL CAY RESORT.

#### ARTICLE XI. - SHORT TERM RENTALS

11.1 Short Term Rentals Permitted. NOTICE IS HEREBY GIVEN TO ALL OWNERS THAT ALL LOTS SUBJECT TO THIS DECLARATION ON WHICH A RESIDENCE HAS BEEN CONSTRUCTED MAY BE RENTED OR LEASED FOR TRANSIENT OCCUPANCY AND MAY BE REGULARLY RENTED TO TRANSIENTS OR HELD OUT OR ADVERTISED TO THE PUBLIC AS A PLACE REGULARLY RENTED TO TRANSIENTS.

11.2 Short Term Rentals: Conspicuous Notice in Sales Contracts. Every contract for the sale of a Lot subject to this Declaration on which a Residence has been constructed (or will be constructed pursuant to such contract) shall include in conspicuous print the notice set forth below or a notice substantially similar thereto:

SHORT TERM RENTALS. NOTICE IS HEREBY GIVEN THAT THE LOT OR RESIDENCE WHICH IS THE SUBJECT OF THIS CONTRACT AND OTHER LOTS OR RESIDENCES WITHIN CORAL CAY RESORT MAY BE RENTED OR LEASED AS "SHORT TERM RENTALS". FOR FURTHER INFORMATION, REFER TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CORAL CAY RESORT.

#### ARTICLE XII. - ENFORCEMENT OF NON-MONETARY DEFAULTS

12.1 Non-monetary Defaults. In the event of a violation by any Member or Owner (other than the nonpayment of any assessments or other monies) of any of the provisions of the Governing Documents or restrictions set forth by the Association, the Association shall notify the Member or Owner of the violation by written notice. If the violation is not cured as soon as practicable, and in any event, no later than seven (7) days after the receipt of a written notice, or if the Member or Owner fails to commence, within said seven (7) day period, and, using his best efforts, diligently proceed to completely cure the violation, the Association may at its option:

- 12.1.1 Specific Performance. Commence an action to enforce the performance on the part of the Member or Owner, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and /or
- 12.1.2 Damages. Commence an action to recover damages; and/or
- 12.1.3 Corrective Action. Take any and all action reasonably necessary to correct such violation, which action may include, but is not limited to, removing any building or improvement for which architectural approval has not been obtained, or perform any maintenance required to be performed by this Declaration, including the right to enter upon a Lot to make such corrections or modifications as are necessary, or remove anything in violation of the provisions of the Governing Documents or any restrictions set forth by the Board.

12.2 Violation of Residential Use Restrictions or Prohibition of Permanent Residency. Notwithstanding the foregoing Section 12.1, if any Owner shall violate any of the provisions of Sections 9.1, 9.2 or 10.1 herein, and such violation continues after written notice from Declarant or Association to quit such unpermitted use, the violation will result in damages to Declarant in an amount which is impossible to determine or prove with any certainty so that each person violating said restriction agrees by the acceptance of a deed, lease or right of occupancy in the Residence that the Declarant or the Association shall be entitled to recover from any such violator liquidated damages in an amount equal to \$500.00 per day from and after the tenth (10<sup>th</sup>) day after written notice of such violation and demand to quit is delivered to the violator or posted on the Lot on which such violation has occurred.

12.3 Expenses. All expenses incurred by the Association in connection with the correction of any violation, or the commencement of any action against any Owner, including administrative fees and costs and reasonable attorneys' fees and disbursements through the appellate levels, shall be a Specific Assessment assessed against the applicable Owner, and shall be due upon written demand by the Association.

12.4 Late Fees. Any amount due to Declarant or the Association which is not paid within fifteen (15) days after the due date shall bear a late fee of Twenty-Five Dollars (\$25) and interest at the rate of ten (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot.

12.5 No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the Governing Documents shall not constitute a waiver of the right of the Association to enforce such right, provisions, covenant, or condition in the future.

12.6 Rights Cumulative. All rights, remedies, and privileges granted to the Association pursuant to any terms, provisions, covenants, or conditions of the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing such additional remedies, rights or privileges as may be granted or as it might have by law.

12.7 Enforcement By or Against the Persons. In addition to the foregoing, this Declaration may be enforced by Declarant, the Association, or any Owner by any procedure at law or in equity against any Person violating or attempting to violate any provision herein, to restrain any violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration shall be borne by the Person against whom enforcement is sought, provided such proceeding results in a finding that such Person was in violation of this Declaration. The prevailing party in any such action shall be entitled to recover its reasonable attorney fees and disbursements through the appellate level.

12.8 Certificate as to Default. Upon request by any Owner or mortgagee holding a mortgage encumbering any Lot, the Association shall execute and deliver a written certificate as to whether such Owner is in default with respect to compliance with the terms and provisions of this Declaration.

### **ARTICLE XIII. - INSURANCE AND CASUALTY LOSSES**

13.1 Insurance. The Board shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Area as well as the roofs of the Residences. If blanket all-risk coverage is not reasonably available then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. In addition to the foregoing, the Association shall be obligated to obtain directors' and officers' liability insurance for the directors and officers of the Association.

Insurance obtained on the Property shall at a minimum comply with the applicable provisions of this Section 13.1, including the provisions of this Article applicable to policy terms, loss adjustment and all other subjects to which this Article applies with regard to insurance on the Common Area. All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The Board shall also obtain a public liability policy covering the Common Area and the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability shall have at least a One Million Dollar (\$1,000,000.00) limit for bodily injury, personal injury, and property damage from a single occurrence, and, if reasonably available, a Five Million Dollar (\$5,000,000) umbrella liability policy.

Premiums for all insurance obtained by the Association shall be Common Expenses of the Association and shall be included in the Annual Assessment. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in Subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in Florida which holds a Best's ranking of A and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.
- (b) All policies on the Common Area shall be for the benefit of the Association, its Members, and mortgagees providing construction financing on the Common Area, if any.
- (c) Exclusive authority to adjust losses under policies obtained by the Association on the Property shall be vested in the Board; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (d) In no event shall the insurance coverage obtained and maintained by the Association's Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.
- (e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the vicinity of the Property.
- (f) The Association's Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board, its manager, Declarant, the Owners, and their respective tenants, servants, agents, and guests;
  - (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
  - (iii) a statement that no policy may be cancelled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;
  - (iv) a statement that no policy may be cancelled, invalidated, suspended, or subject to non-renewal on account of the conduct of

any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

- (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (vi) that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available, flood insurance, if required, and any and all other insurance required by laws or as determined to be reasonably necessary and/or desirable by the Board. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than three (3) months' assessments on all Residences, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

13.2 Individual Insurance. By virtue of taking title to any portion of the Property, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on such Owner's property and structures constructed thereon meeting the same requirements as set forth in Section 13.1 of this Article for insurance on the Common Area. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his property, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any and all costs of repair or reconstruction which are not covered by insurance proceeds. In the event an improvement is totally and completely destroyed by casualty, hazard, or other loss, then, within a reasonable period of time after such incident, as determined by the Board, the Owner thereof shall commence to rebuild or reconstruct the damaged improvement and diligently continue such rebuilding or reconstructing activities to completion. A destroyed improvement shall only be replaced with an improvement of a similar size, type, construction, and elevation as that destroyed unless the prior written consent of the Board is obtained. In the event that the Owner fails to commence rebuilding, reconstructing or repairing the improvement within the time specified by the Board and in accordance with this Section 13.2, and should such failure continue for a period of ten (10) days after notice of such delinquency has been provided to the non-performing Owner, the Association shall have the right (but not the obligation), as well as an easement in and to the Residence/Lot of said Owner, to conduct the required repair or



reconstruction on behalf of the Owner, and the Association shall hold the non-performing Owner liable for such cost of rebuilding or reconstruction. Should the Owner, upon notice, fail to immediately repay the Association for the costs it incurred in repairing or reconstructing the improvement, the Association may levy a Specific Assessment against the non-performing Owner and his Residence/Lot, and the Association may enforce payment of this Special Assessment in accordance with the provisions of this Declaration including, but not limited to, Article VII hereof.

**13.3 Damage and Destruction.**

13.3.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this Section, means repairing or restoring the Property to substantially the same condition which existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

13.3.2 Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least two-third (2/3) of the members of the Board shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area shall be repaired or reconstructed; provided, however this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

13.3.3 In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Property shall be restored to its natural state and maintained by the Association in a neat and attractive condition consistent with the standards of the Property.

13.4 Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the

Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of the Property and may be enforced by such mortgagee.

13.5 Repair and Reconstruction. If the damage or destruction to the Common Area is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall levy a special assessment against the Owners of the Lots/Residences on the same basis as provided for annual assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair reconstruction.

#### **ARTICLE XIV. - CONDEMNATION**

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation; provided, however, that any such conveyance in lieu of and under threat of condemnation must be approved by (i) Board acting on the authorization of at least two-thirds (2/3) of the Board and (ii) the Declarant so long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration) by any authority having the power of condemnation or eminent domain, each Member shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property which may become subject to this Declaration, and at least two-thirds (2/3) of the members of the Board shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article XIII hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### **ARTICLE XV. - INDEMNIFICATION**

15.1 Indemnification of Officers, Directors, or Agents. The Association shall indemnify any Person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association. The termination of any action, suit or

proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

To the extent that a director, officer, employee or agent of the Association is entitled to indemnification by the Association in accordance with this Article, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of Members, or otherwise. As to action taken in an official capacity while holding office, the indemnification provided by this Article shall continue as to a Person who has ceased to be a member of the Board, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a Person.

The Association shall have the power to purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

#### **ARTICLE XVI. - AMENDMENTS**

16.1 Amendment by the Association. This Declaration may be amended, changed, or added to, at any time and from time to time, upon the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-third (2/3) of the total votes of the Association. Any amendment of this Declaration shall be recorded in the Public Records of the County.

16.2 Amendment to Comply with Governmental Authority. Declarant specifically reserves the right to amend this Declaration, without the consent or joinder of any party, in order to comply with the requirements of the Department of Housing and Urban Development, Veteran's Administration, SFWMD, Federal National Mortgage Association, the City, or any other governmental agency.

ANY AMENDMENT TO THIS DECLARATION WHICH ALTERS THE SURFACE WATER MANAGEMENT SYSTEM, BEYOND MAINTAINENCE IN ITS ORIGINAL CONDITION, INCLUDING THE WATER MANAGEMENT PORTIONS OF THE COMMON AREA AND ENVIRONMENTAL CONSERVATION AREAS, MUST HAVE THE PRIOR APPROVAL OF SFWMD.

16.3 Amendment to Make Non-Material Changes, Correct Scrivener's Errors and Clarify Ambiguities. Declarant specifically reserves the right to amend this Declaration, without the consent or joinder of any party, to correct scrivener's errors, to clarify ambiguities determined to exist herein and to make other non-material amendments which Declarant believes are in the best interest of the Owners. No amendment shall impair or prejudice rights or priorities of any Institutional Lender without their written consent.

16.4 Limitation on Amendments. Notwithstanding anything to the contrary set forth in this Declaration, the rights of Declarant and the Association to change, amend or modify the terms and provisions of and the covenants, conditions, restrictions, easements and reservations set forth in this Declaration shall at all times be subject to the following limitations and restrictions, to wit:

- 16.4.1 To the extent that particular rights or interests are expressly conferred upon or granted to the City pursuant to this Declaration, the particular terms and provisions of this Declaration pursuant to which any such rights and interests are conferred upon and granted to the City shall not be changed, amended or modified without the prior written consent and joinder of the City.
- 16.4.2 This Declaration may not be changed, amended or modified in such manner as to terminate or eliminate any easements granted or reserved herein to Declarant, the Association, the City, SEWMD or any utility company, respectively, without the prior written approval of Declarant, the Association, the City, SEWMD or utility company, as the case may be, and any attempt to do so shall be void and of no force and effect.
- 16.4.3 No amendment to this Declaration shall be approved which conflicts with any land use approval or permits granted by the City of Kissimmee, or which conflicts with the Code of Ordinances or Uniform Land Development Regulations of the City of Kissimmee, Florida.

#### **ARTICLE XVII. - GENERAL PROVISIONS**

17.1 Assignment of Rights and Duties to the Association. Declarant may at any time assign and delegate to the Association all or a portion of Declarant's rights, title, interests, duties or obligations created by this Declaration. It is understood that the Association has been formed as a homeowners' association in order to effectuate the intent of Declarant for the proper development, operation and management of the Property. Wherever herein the Declarant or the Association or both are given the right, duty, or obligation to approve, enforce, waive, collect, sue, demand, give notice, or take any other action or grant any relief or perform any task, such action may be taken by Declarant or the Association until such time as Declarant or any successor declarant is divested of all of its interest in the Property or Declarant has assigned its rights, duties and obligations hereunder to the Association. Thereafter, all rights, duties and obligations of Declarant shall be administered solely by the Association in accordance with the procedures set forth herein and in the Governing Documents.

17.2 Covenants to Run with the Title to the Land. This Declaration, as amended and supplemented from time to time as herein provided, shall be deemed to run with the title to the Property and shall remain in full force and effect until terminated in accordance with provisions set forth herein.

17.3 Enforcement. Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association, or by any Owner to enforce any covenants or restrictions herein shall in no event be deemed a waiver of the right to do so thereafter.

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

17.5 Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. Thereafter these covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless termination of the provisions of this Declaration is approved by the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (~~2/3~~) of the total votes of the Association. Any termination of this Declaration shall be recorded in the Public Records of the County. Unless this Declaration is terminated as provided above, the Association shall re-record this Declaration or other notice of its terms at intervals necessary under Florida law to preserve its effect.

17.6 Communication. All communication from Owners to Declarant, its successors or assigns, the Board, or any officer of the Association shall be in writing.

17.7 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 mailed, postpaid, to the last known address of the Person who appears as Member or Owner on the records of the Association at the time of such mailing.

17.8 Conflict. This Declaration shall take precedence over conflicting provisions in the Articles and Bylaws and Articles shall take precedence over the Bylaws.

17.9 Usage. Whenever used herein the singular number shall include the plural and plural the singular, and the use of any gender shall include all genders.

17.10 Governing Law. The construction, validity, and enforcement of this Declaration shall be determined according to the laws of the State of Florida. Any action or suit brought in connection with this Declaration shall be in the County.

17.11 HUD/VA Approval. As long as there is a Class B Membership, and so long as the Department of Housing and Urban Development or the Veteran's Administration is holding, insuring, or guaranteeing any loan secured by Property subject to this Declaration, the following actions will require the approval of the Department of Housing, and Urban Development or the

Veterans Administration: annexation of additional properties, dedication of Common Area, and material amendments of this Declaration. Notwithstanding the foregoing, if an amendment is submitted to the Department of Housing and Urban Development ("HUD") for approval and HUD determines review and approval of the amendment is unnecessary, then Declarant and/or the Association shall not be required to obtain HUD approval of such amendment.

17.12 Security. Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make them safer than they otherwise might be. Neither Declarant nor the Association shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of any effectiveness of security measures undertaken.

*[ REMAINDER OF PAGE INTENTIONALLY LEFT BLANK ]*

COPY

IN WITNESS WHEREOF, the undersigned, being Declarant, has hereunto set its hand and seal the day and year first above written.

Signed Sealed and delivered in our presence:

**"DECLARANT"**

**CORAL CAY RESORT, LLC,**  
a Florida limited liability company

Marilyn Andruska  
Witness

Print Name: Marilyn Andruska

By: Igor Teplidsky

Name: Chief Executive Officer  
Title: Signature

Karen Speltz  
Witness

Print Name: Karen Speltz

STATE OF FLORIDA  
COUNTY OF Orange

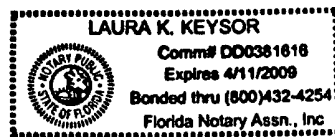
The foregoing instrument was acknowledged before me this 23 day of May 2005, by Igor Teplidsky as CEO of CORAL CAY RESORT, LLC, a Florida limited liability company, on behalf of said corporation. He/She is personally known to me or produced his/her \_\_\_\_\_ as identification.

Laura K. Keysor

**NOTARY PUBLIC**

My Commission Expires \_\_\_\_\_

Commission # \_\_\_\_\_



**SCHEDULE OF EXHIBITS**

- EXHIBIT A    Legal Description of Property
- EXHIBIT B    Articles of Incorporation for Coral Cay Resort  
Homeowners Association, Inc.
- EXHIBIT C    Bylaws of Coral Cay Resort Homeowners Association,  
Inc.
- EXHIBIT D    South Florida Water Management District Permit

COPY



**EXHIBIT A**

**LEGAL DESCRIPTION**

COPIES

Legal Description:

Coral Cay Resort, as recorded in Plat Book 19, Pages 123 – 125, Osceola County, Florida

COPY

**EXHIBIT B**

ARTICLES OF INCORPORATION

COPY



May 18, 2006

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

CORAL CAY RESORT HOMEOWNERS' ASSOCIATION, INC.  
1155 S SEMORAN BLVD #1120  
WINTER PARK, FL 32792

The Articles of Incorporation for CORAL CAY RESORT HOMEOWNERS' ASSOCIATION, INC. were filed on May 17, 2006, and assigned document number N06000005385. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H06000137053.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date year. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4 or by going to their website at [www.irs.ustreas.gov](http://www.irs.ustreas.gov).

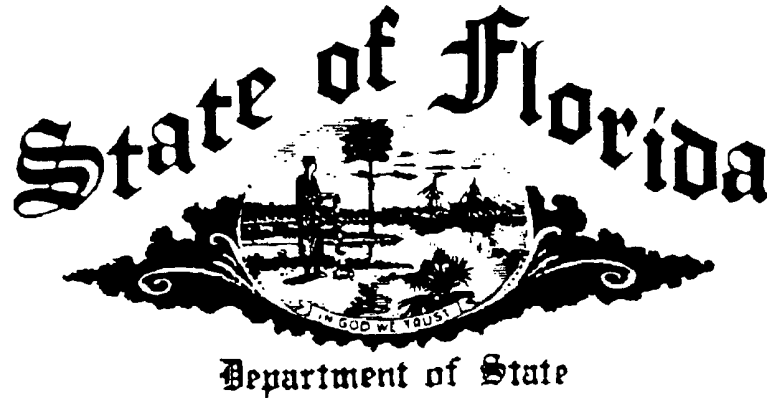
Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

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

Tim Burch  
Document Specialist  
New Filings Section  
Division of Corporations

Letter Number: 906A00035120

P.O. BOX 6327 - Tallahassee, Florida 32314



I certify the attached is a true and correct copy of the Articles of Incorporation of CORAL CAY RESORT HOMEOWNERS' ASSOCIATION, INC., a Florida corporation, filed on May 17, 2006, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H06000137053. 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 N06000005385.

Authentication Code: 906A00035120-051806-N06000005385-1/1

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



Sue M. Cobb  
Sue M. Cobb  
Secretary of State

HO0000157053

9

ARTICLES OF INCORPORATION  
OF

CORAL CAY RESORT HOMEOWNERS' ASSOCIATION, INC.  
A not-for-profit corporation

2008 MAY 17 PM 3:03  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILED

The undersigned incorporators, desiring to form a not-for-profit corporation under the provisions of Chapter 617 of the laws of the State of Florida, do hereby adopt the Articles of Incorporation:

ARTICLE I  
Name and Principal Address

The name of this corporation shall be **CORAL CAY RESORT HOMEOWNERS' ASSOCIATION, INC.** (sometimes hereinafter referred to as "Association" and "Corporation"), and its principal address shall be 1155 S. Semoran Blvd., #1120, Winter Park, FL 32792. The Corporation may maintain offices and transact business in such other places within or without the State of Florida as may be from time to time designated by the Board of Directors.

ARTICLE II  
Term and Commencement

This Corporation shall have perpetual existence unless dissolved according to law. Corporate existence shall commence with the filing of these Articles with the Secretary of State.

ARTICLE III  
Purposes

The purposes for which this Corporation is organized are:

1. To promote health, safety, and social welfare of the Owners of Property within that area referred to as **CORAL CAY RESORT SUBDIVISION** in the Declaration of Covenants, Conditions and Restrictions of **CORAL CAY RESORT SUBDIVISION** to be recorded in the Public Records of Osceola County, Florida (the "Declaration").
2. To own and maintain, repair and replace the general and Common Areas in and benefiting **CORAL CAY RESORT SUBDIVISION** for which the obligation to maintain and repair has been delegated and accepted.
3. To control the specifications, architecture, design, appearance, conditions of structures constructed, placed or permitted to remain in **CORAL CAY RESORT SUBDIVISION**, as well as the alteration, improvement, addition and change thereto.
4. To make and establish reasonable rules and regulations governing the use of the Lots and Common Areas in accordance with the terms as may be defined in the

Coral Cay HOA Art of Inc.

HO0000137053

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Declaration. The Surface Water management Permit issued by South Florida Water Management District and all of its conditions shall be attached as an exhibit to the rules and regulations of the Association.

5. To levy and collect assessments against members of the Corporation to defray the common expenses of the maintenance and operation of the Common Areas as may be provided in the Declaration and in the Bylaws of this Corporation which may be hereafter adopted, including the right to levy and collect assessments for the purposes of acquiring, operating, leasing, managing, and otherwise trading and dealing with such property, whether real or personal, which may be necessary or convenient in the operation and maintenance of the Common Areas and in accomplishing the purposes set forth in the Declaration.
6. To enforce the provisions of the Declaration and these Articles, the Bylaws of the Corporation, which may be hereafter adopted, and the rules and regulations governing the use of the Common Areas as the same may be hereafter established.
7. To now or hereafter acquire and enter into leases and agreements of every nature, whereby the Corporation acquires leaseholds, memberships and other possessory or use interests in land or facilities, including recreational facilities, whether or not contiguous to lands in this Subdivision, to provide enjoyment, recreation, or other use to benefit to the owners of the property within this Subdivision, all as may be deemed by the Board of Directors to be in the best interests of the Corporation.
8. To exercise, undertake and accomplish all of the rights, duties, and obligations, which may be granted to or imposed upon the Corporation pursuant to the Declaration.
9. To operate, maintain, and manage the surface water or storm water management system in a manner consistent with the South Florida Water Management District Permit No. \_\_\_\_\_ requirements and applicable District rules, and to assist in the enforcement of the restrictions and covenants contained therein.
10. To levy and collect adequate assessments against members of the Association for the costs of operation, maintenance and repair of the surface water or storm-water management systems, including but not limited to, work within retention areas, drainage structures and drainage easements.
11. To acquire (by gift, purchase or otherwise) own, hold, improve, building upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.
12. To borrow money, and with the assent of the representatives of two-thirds (2/3rds) of each class of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
13. To dedicate, sell or transfer all of or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, sale or transfer shall be

Coral Gables HOA Act of Inc.

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effective unless an instrument has been signed by the representatives of two-thirds (2/3rds) of each class of Members, agreeing to such dedication, sale or transfer. However, there shall be no requirement of participation by or agreement of the Members in the event the dedication, sale or transfer is incidental to a re-platting of any portion of the Common Property.

14. To participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Area.
15. To sue and be sued in a court of law.
16. To have and exercise any and all powers, rights, and privileges which a corporation as organized under the Non-Profit Corporation Laws of the State of Florida by law may now or hereafter have or exercise.
17. To provide or provide for private security, storm water retention/detention, the responsibility for which has been or may be accepted by the Association, and the capital improvements and equipment related thereto, in CORAL CAY RESORT SUBDIVISION.
18. To provide, purchase, acquire, replace, improve, maintain, and repair such real property, buildings, structures, street lights, and other structures, landscaping, paving and equipment, both real and personal, related to the health, safety, and social welfare of the members of the Association, as the Board of Directors in its discretion determines necessary, appropriate, and convenient, including the authority to convey Association property to any appropriate governmental entity for the purpose of establishing municipal service taxing districts.
19. To operate without profit for the sole exclusive benefit of its members.
20. To perform all of the functions contemplated by the Association, and undertaken by the Board of Directors of the Association, in the Declarations of Covenants, Conditions, and Restrictions of CORAL CAY RESORT SUBDIVISION, hereinabove described, as same may be amended from time to time.
21. To engage the services of attorneys, accountants, management and other professionals as required ensuring proper operation of the community known as CORAL CAY RESORT SUBDIVISION.
22. None of the purposes shall be for pecuniary profit, including the performance of any of the purposes.
23. To have and exercise all powers conferred on a corporation organized under the Florida Not For Profit Corporation Act as currently in effect and as it may be amended, including without limitation all powers necessary or convenient to effect any or all purposes for which the corporation is organized.



#### ARTICLES IV

##### Members

The qualifications for members and the manner of their admission and expulsion shall be as regulated by the bylaws.

#### ARTICLE V

##### Bylaws

The power to adopt, alter, amend or repeal bylaws shall be vested in the Board of Directors and which bylaws may be altered or rescinded by the Board of Directors as said Bylaws may provide.

#### ARTICLE VI

##### Indemnification

In addition to any rights and duties under applicable law, the Corporation shall indemnify and hold harmless all its directors, officers, employees and agents, and former directors, officers, employees and agents from and against all liabilities and obligations, including attorney fees, incurred in connection with any actions taken or failed to be taken by said directors, officers, employees and agents in their capacity as such except for willful misconduct or gross negligence.

#### ARTICLE VII

##### Amendment

This Corporation reserves the right to amend or repeal any provisions contained in these articles of incorporation, or any amendment hereto, and any right conferred upon the members in subject to this reservation.

#### ARTICLE VIII

##### Headings and Captions

The headings or captions of these various articles of incorporation are inserted for convenience and none of them shall have any force or effect, and the interpretation of the various articles shall not be influenced by any of said headings or captions.

**ARTICLE IX**  
**Board of Directors**

The affairs of the Corporation shall be managed by the Board of Directors. The number of members of the first Board of Directors of the Corporation shall be three (3). The number of members of succeeding boards of directors shall be three (3) except as changed from time to time by the Bylaws of the Corporation. The members of the Board of Directors shall be elected as provided by the Bylaws of the Corporation, which provide for election of directors at the annual meeting to be held in accordance with the Bylaws. The first annual meeting shall be held at a time called by the Board. The Board of Directors shall be members of the Corporation or shall be authorized representatives, officers or employees or a corporate member of this Corporation.

Any vacancies in the Board of Directors occurring before the first election will be filled by the remaining directors.

The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

Director: Steven O'Dowd  
Director: Steve Hiss  
Director: Denis Perez

**ARTICLE X**  
**Registered Office and Registered Agent**

The initial registered office of this Corporation shall be located at 241 S. Westmonte Drive, #1010, Altamonte Springs, FL 32714 and the initial registered agent of the Corporation shall be Reinhard G. Stephan, Esq. The Corporation may change its registered agent or the location of its registered agent, or both, from time to time without amendment of these Articles. The registered agent for the Corporation shall maintain copies of all permits issued by the South Florida Water Management District for the benefit of the Corporation, so long as such copies are provided to the registered agent by the Corporation.

## ARTICLES XI

### Officers

The Board of Directors shall elect a President, Vice-President, and Secretary/Treasurer. The President, Vice-President and Secretary/Treasurer shall be elected from among the membership of the Board of Directors. The same person may hold two (2) offices, the duties of which are not incompatible; provided, however, that the office of the President and Vice-President shall not be held by the same person, nor shall the office of President and Secretary/Treasurer be held by the same person.

The affairs of the Corporation shall be administered by the officers designated in the Bylaws of this Corporation. Said officers will be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and with the approval of the Board of Directors, may employ a managing agent and/or such other managerial and supervisory personnel or entities to administer or assist in the administration of the operation and management of the Common Areas of the Corporation, and any such person or entity may be so employed without regard to whether such person or entity is a member of the Corporation or a Director of the Corporation. No officer shall act or perform any act which is not prescribed by these Articles and the Bylaws, as amended from time to time, and not in keeping with the policies promulgated by the Board of Directors, the officers or professional managers.

The names and addresses of the officers who will serve until their successors are designated as follows:

Office	Name	Address
President:	Steven M. O'Dowd	1155 S. Semoran Blvd., #1120 Winter Park, FL 32792
Vice President/Treasurer:	Steve Hiss	1155 S. Semoran Blvd., #1120 Winter Park, FL 32792
Secretary:	Denis Perez	1155 S. Semoran Blvd., #1120 Winter Park, FL 32792

## ARTICLE XII

### FHA/VA Approval

As long as there is a Class B membership, the following actions will require the prior approval of the Department of Housing and Urban Development, Federal Housing Administration or Veteran's Administration (as applicable); annexation of additional properties, mergers, and consolidations, mortgaging of Common Area, dedication of

Common Area, dissolution and amendment of these Articles.

#### ARTICLE XIII

##### Dissolution

Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for one or more of the purposes of the corporation to the federal government or to a state or local government, for a public purpose. Any assets not so disposed of shall be disposed of by the Circuit Court of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for one or more of the purposes of the corporation.

Upon dissolution, the responsibility for the operation and maintenance of the surface water or storm water management systems must be transferred to and accepted by an entity which would comply with Rule 40C-42.027, Florida Administrative Code, and be approved by the South Florida Water Management District prior to such dissolution.

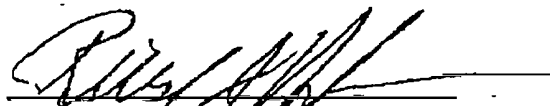
#### ARTICLE XIV

##### Incorporator

The name and address of the incorporator of the corporation is as follows:

REINHARD G. STEPHAN, 241 S. Westmonte Drive, #1010, Altamonte Springs, FL 32714

IN WITNESS WHEREOF, I, the undersigned incorporator, have executed these Articles of Incorporation this 17<sup>th</sup> day of May, 2006.

  
REINHARD G. STEPHAN

Com'l Cay HOA Art of Inc.

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PAGE 08/09

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**CERTIFICATE DESIGNATING PLACE OF BUSINESS FOR THE SERVICE OF  
PROCESS WITHIN FLORIDA AND REGISTERED AGENT UPON WHOM  
PROCESS MAY BE SERVED**

In compliance with Sections 48.091 and 617.0503, Florida Statutes, the following is  
submitted: \_\_\_\_\_

**CORAL CAY RESORT Homeowners' Association, Inc.** (the "Corporation"), desiring  
to organize as a Florida corporation not for profit, has named and designated  
**REINHARD G. STEPHAN** as its Registered Agent to accept service of process within  
the State of Florida with its registered office located at 241 S. Westmonte Drive, #1010,  
Altamonte Springs, FL 32714.

**ACKNOWLEDGMENT**

Having been named as Registered Agent for the Corporation at the place designated in  
this Certificate, I hereby agree to act in this capacity; and I am familiar with and accept  
the obligations of Section 617.0503, Florida Statutes, as the same may apply to the  
Corporation; and I further agree to comply with the provisions of Section 48.091, Florida  
Statutes, and all other statutes, all as the same apply to the Corporation relating to the  
proper and complete performance of my duties as Registered Agent.

Dated the 17<sup>th</sup> day of May, 2006.

  
Name: **REINHARD G. STEPHAN**  
Registered Agent

**FILED**  
2008 MAY 17 PM 2:03  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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Coral Cay HOA Art of Inc.

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**EXHIBIT C**

**BYLAWS**

COPY

**BYLAWS**  
**OF**  
**CORAL CAY RESORT HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I**  
**Members**

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

A. The Declarant and owners of all Lots in the Subdivision shall be members of the Corporation, and no other persons or entities shall be entitled to membership. Membership is appurtenant to, and inseparable from, ownership of a Lot.

B. Membership shall be established by the acquisition of fee title to a Lot in the Subdivision or by acquisition of a fee ownership interest therein, whether by conveyance, devise, judicial decree or otherwise, and the membership of a party shall be automatically terminated upon his or her being divested of all title to his or her entire fee ownership interest in any Subdivision Lot, except that nothing herein contained shall be construed as terminating the membership of any party who may own two or more Subdivision Lots, so long as such party shall retain title to or a fee ownership interest in any Lot.

C. The interest of a member in the funds and assets of the Corporation cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to his or her Lot. The funds and assets of the Corporation shall belong solely to the Corporation, subject to the limitation that the same be expended, held or used for the benefits of the membership and for the purposes authorized herein in the Declaration and in the Bylaws.

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

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

2. CLASS B. Class B members shall be the Declarant, who shall be entitled to eight (8) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership ("Turnover") on the happening of any of the following events, whichever occurs earlier:

(a) the date exactly ten (10) years after the recording of the Declaration; or

(b) 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; or

(c) three (3) months after 90% of the Lots have been conveyed to Owners.

Alternatively, Declarant may elect to convert its Class B Membership to Class A Membership upon thirty (30) days notice to the Board, whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association.

## **ARTICLE II**

### **Meetings of Members**

Section 1. Annual Meeting. The annual meeting of the members of this Corporation shall take place each calendar year at a date, time and location as selected by the Board of Directors for transaction of any business as stated in the agenda for the meeting. The annual meeting may be held at the principal office of the Corporation or at any other place designated by the Board of Directors.

Section 2. Special Meeting. A special meeting of the members, at the principal office of the Corporation or at any other place designated by the Board of Directors, may be called at any time by the President, or in his absence, by the Vice-President, or by at least three Directors. It shall be the duty of the Board of directors to call such a meeting whenever requested by a majority of the members.

Section 3. Notice. Notice of the time and the place of all annual meetings and specials meetings shall be delivered, either personally or by mail, to each member by the Secretary or by the Officer or persons calling the meeting at least fourteen (14) days before the date thereof. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the members at the address as it appears on the records of the Corporation, with first class postage thereon prepaid.

Section 4. Presiding Officer. The President of the Corporation, or in his absence any other persons designated by the Board of Directors, shall preside at all meetings.

Section 5. Member Quorum and Voting. Thirty percent (30%) of the members entitled to vote shall constitute a quorum at a meeting of the members, except that the Class B member, if any, must be present at the meeting to make a quorum. Every member shall have the right to vote in person or by proxy. If a quorum is present, either in person or by proxy, the affirmative vote of the majority of the members constituting the quorum and entitled to vote on a subject matter shall be the act of the members unless the vote of a greater number is required. If less than a quorum is present at any meeting, the meeting shall not be called to



order, and the Board of Directors shall reset the date for the meeting. Notice shall be provided as stated in Section 3 of this Article.

### **ARTICLE III**

#### **Voting**

Section 1. Class A. Subject to the restrictions and limitations hereinafter set forth, each Class A member shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership. When more than one person holds such interest, all such persons shall be members, and the votes for such property shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. The votes of a member cannot be divided for any issue and must be voted as a whole. Except where otherwise required under these Bylaws, by the Declaration of Covenants and restriction for Coral Cay Resort, or by law, the affirmative vote of the owners of the majority of lots represented at any meeting of the members duly called at which a quorum is present, shall be binding upon the members. In the event of an even split of votes by the members, the presiding officer, or whoever was appointed in his absence, shall have one vote which upon exercise shall constitute the deciding/majority vote.

Section 2. Class B. So long as the Class B member is the owner of any portion of the property in Coral Cay Resort, the Class B member shall be entitled to eight (8) votes for each lot owned by the Declarant.

### **ARTICLE IV**

#### **Board of Directors**

Section 1. Powers and Duties. All corporate powers shall be exercised by or under the authority of, and the affairs of the corporation shall be managed under the direction of, the Board of Directors.

Section 2. Election. So long as there is a Class B member, the Board of Directors shall be appointed by the Class B member. When there is no longer a Class B member, the Board of Directors shall be elected by the members of the corporation at the annual meeting of the members and shall hold office for a term of one year.

Section 3. Number of Directors. The number of Directors may be increased or decreased from time to time by a majority vote of those Directors present at any regular meeting or at any special meeting duly called for that purpose, provided that (i) a quorum of the Board is present, (ii) no decrease shall have the effect of shortening the term of any incumbent Director, and (iii) the number of Directors shall not be less than three (3); provided, however, the Board of Directors shall be composed of not less than three (3) and not more than five (5) Directors.

**ARTICLE V**  
**Meetings of the Board of Directors**

Section 1. Regular Meetings. A regular quarterly meeting of the Board of Directors for the election and appointment of officers and for the transaction of any other business shall be held without other notice than this bylaw; provided, however, one of these four quarterly meetings shall coincide with the annual meeting of the members of the Corporation. This meeting of the Board of Directors that coincides with the annual meeting of the members shall be referred to as the Annual Meeting of the Board of Directors and shall immediately follow, and be at the same place as, the annual meeting of the members. The Board may provide by resolution the time and place for the holding of additional regular meetings of the Board without other notice than such resolution.

Section 2. Special Meetings. Special Meeting of the Board of Directors may be called by the President, or in his absence by the Vice-president, or by any three Directors. The person or persons calling a special meeting of the Board may fix any place for holding the special meeting.

Section 3. Unanimous Consent. Unless otherwise provided in the Articles of Incorporation or these Bylaws, any action that is required or permitted to be taken at a meeting of the Board of Directors or a committee of Directors may be taken without a meeting if a consent in writing setting forth the action to be taken is signed by all the Directors or all the Directors on the committee, as applicable. The consent shall be filed in the minutes of the proceedings of the Board of directors, or committee as applicable. The consent shall have the same effect as a unanimous vote.

Section 4. Notice. Notice of all meetings shall be delivered, either personally or by mail to each Director by the Secretary or by the officer or persons calling the meeting at least three (3) days before the date thereof. All notices shall include an Agenda, which shall include specific items to be addressed by the Board of Directors and voted upon at the duly called meeting. Items not on the Agenda shall not be discussed at the meeting unless it is an item, which constitutes an emergency, which shall include any threat to life or property. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Director at the address as it appears on the records of the Corporation, with first class postage thereon prepaid. No meeting may be held without proper notice except for meetings with counsel for the Corporation.

Section 5. Director Quorum and Voting. A majority of the number of Directors then authorized shall constitute a quorum for the transaction of any business at any meeting of the Board of Directors, and the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Articles of Incorporation or these Bylaws otherwise expressly require.

Section 6. Vacancies. Any vacancy occurring in the Board of Directors, including any vacancy created by reason for an increase in the number of Directors, shall be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the

Board of Directors. A Director elected to fill a vacancy shall hold office only until the next election of Directors by the members.

## ARTICLE VI

### Officers

Section 1. Officers. The officers of the Corporation shall be a President, Vice-president, Secretary, and Treasurer. The offices of Secretary and Treasurer may be combined in one individual.

Section 2. Election. All officers shall be elected from among persons who are Directors. Officers shall be elected by the Board of Directors at the Annual Meeting of the Board and shall take office immediately following their election. An officer shall serve until a successor is elected or until his or her earlier resignation, removal from office, or death.

Section 3. Removal. Any officer may be removed by the Board of Directors, with or without cause, at any duly called meeting of the Board of Directors.

Section 4. Compensation. The officers of the Corporation shall be entitled to the reimbursement of reasonable expenses incurred by them as officers in the administration of the Corporation.

Section 5. Vacancies. If any office becomes vacant for any reason, the Board of Directors shall fill such vacancy. Any officer so appointed or elected by the Board of Directors shall serve only until such time as the unexpired term of his predecessor shall have expired unless reelected by the Board of Directors.

Section 6. President The President shall be the chief executive officer of the Corporation. The President shall be an ex officio member of all standing committees. The President shall preside at all meetings of the members and of the Board of Directors. The President shall serve at the pleasure of the Board of Directors, shall be subject to the control of the Board of Directors, and shall see that all orders, resolutions, and policies of the Board of Directors are carried into effect.

Section 7. Vice-President. The vice-president, in addition to the duties hereinafter set forth, shall perform such duties as may be assigned by the Board of Directors from time to time. In the case of the absence or disability of the President, the Vice-president shall perform the President's duties.

Section 8. Secretary. The Secretary, in addition to the duties hereinafter set forth, shall perform such duties as may be assigned by the Board of Directors from time to time. The Secretary shall attend all meetings of the Board of Directors and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall keep a membership book containing the name and mailing address of each member. A termination of membership shall

be recorded in the membership book. The Secretary shall give, or cause to be given, notice of all meetings of the members and the Board of Directors; shall have charge of all corporate books, records and papers; shall be custodian of the corporate seal; shall attest by signature and impress with the corporate seal all written contracts of the corporation; and shall perform all such other duties as are incident to the office.

Section 9. Treasurer. The Treasurer, in addition to the duties hereinafter set forth, shall perform duties as may be assigned by the Board of Directors from time to time. The Treasurer shall have the care and custody of the monies of the Corporation and other valuable effects, including securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation at such banks, trust companies or other depositories as may be designated by the President of the Board of Directors. He shall disburse the monies of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and Directors at an annual meeting of the Board, or whenever required, an account of all transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall give bond in such sum and with such surety as the Directors may require, conditioned upon the faithful performance of the duties of maintaining vouchers, receipts, records and other papers for the Directors for their examination and approval, as often as they may require; and shall perform all other such duties as are incident to the office.

Section 10. Delegation of Duties. At the discretion of the Board of Directors, duties of the officers of the Corporation may be delegated from time to time to persons approved by the Board of Directors.

Section 11. Rules of Procedure. Robert's Rules of Procedure shall be the standard for the conduct of all meetings provided for under these Bylaws, except where to do so would otherwise interfere with the Articles of Incorporation, these Bylaws or the Declarations of Covenants, Conditions and Restrictions of Coral Cay Resort Homeowners Association to be recorded in the Public Record of Osceola County, Florida.

## **ARTICLE VII**

### **Seal**

The seal of the Corporation shall be in the form and style adopted from time to time by the Board of Directors.

## **ARTICLES VIII**

### **Waiver of Notice**

Whenever any notice is required to be given under the provisions of these Bylaws or under the prohibitions of the Articles of Incorporation or the Florida Not For Profit Corporation Act as currently in effect and as it may be amended, a waiver thereof in writing signed by the person or persons entitled to such notice shall waive the right to such notice,

whether before or after the meeting or other event for which notice must be given. Attendance at a meeting shall constitute waiver of any right to notice of such meeting except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of business at the meeting because the meeting is not lawfully called or convened.

#### **ARTICLE X** **Amendments**

These Bylaws may be amended, altered or rescinded by the Board of Directors at any regular or special meeting of the Board.

#### **ARTICLE XI** **Indemnification**

Every member of the Board of Directors and every officer of the corporation shall be indemnified by the corporation against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Board of Directors or an officer of the corporation whether or not he is a member of the Board of Directors or an officer at the time such expenses are incurred, except in such cases wherein the member of the Board of Directors or the officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the member of the Board of Directors or an officer seeking such reimbursement or indemnification, the indemnification herein shall apply only if the Board of Directors approves such settlement and reimbursement as being in the best interests of the corporation. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such member of the Board of Directors or officer may be entitled.

#### **ARTICLE XI** **Dissolution**

Upon dissolution of the Association, all of its assets remaining after provisions for creditors and payment of all costs and expenses of such dissolution shall be distributed in accordance with Article XIII of the Articles of Incorporation.

#### **ARTICLE XII** **Contracts**

No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are Directors, Trustees, or officers, have a financial interest, shall be invalid, void or avoidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board

or committee hereof that authorized the contract or transaction, or solely because his or their votes are counted for such purposes. No Director or officer of the Corporation shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction.

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

Its: \_\_\_\_\_

COPY

**EXHIBIT D**

SFWMD PERMIT

COPY



COC 2.08P

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE  
STANDARD GENERAL PERMIT NO. 49-01404-P  
DATE ISSUED: June 22, 2004**

Form #0941  
08/95

**PERMITTEE:** SALA INC  
PO BOX 533116  
ORLANDO, FL 32853

**PROJECT DESCRIPTION:** Construction and operation of a surface water management system to serve a 21.86 acre project known as Old Vineland Townhomes.

**PROJECT LOCATION:** OSCEOLA COUNTY, SEC 13 TWP 25S RGE 28E

**PERMIT DURATION:** See Special Condition No:1. See attached Rule 40E-4.321, Florida Administrative Code.

This is to notify you of the District's agency action concerning Notice of Intent for Permit Application No. 040402-28, dated April 2, 2004. This action is taken pursuant to Rule 40E-1.603 and Chapter 40E-40, Florida Administrative Code (F.A.C.).

Based on the information provided, District rules have been adhered to and an Environmental Resource General Permit is in effect for this project subject to:

1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 19 General Conditions (See Pages : 2 - 4 of 6 ),
3. the attached 17 Special Conditions (See Pages : 5 - 6 of 6 ) and
4. the attached 9 Exhibit(s).

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights," we will assume that you concur with the District's action.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a "Notice of Rights" has been mailed to the Permittee (and the persons listed in the attached distribution list) no later than 5:00 p.m. on this 22nd day of June, 2004, in accordance with Section 120.60(3), Florida Statutes.

BY: Thomas P. Genovese  
Thomas P. Genovese  
Service Center Director  
Orlando Service Center

Certified mail number 7003 2260 0004 4267 9277

Page 1 of 6



**40E-4.321 Duration of Permits**

(1) Unless revoked or otherwise modified the duration of an environmental resource permit issued under this chapter or Chapter 40E-40, F.A.C. is as follows:

(a) For a conceptual approval, two years from the date of issuance or the date specified as a condition of the permit, unless within that period an application for an individual or standard general permit is filed for any portion of the project. If an application for an environmental resource permit is filed, then the conceptual approval remains valid until final action is taken on the environmental resource permit application. If the application is granted, then the conceptual approval is valid for an additional two years from the date of issuance of the permit. Conceptual approvals which have no individual or standard general environmental resource permit applications filed for a period of two years shall expire automatically at the end of the two year period.

(b) For a conceptual approval filed concurrently with a development of regional impact (DRI) application for development approval (ADA) and a local government comprehensive plan amendment, the duration of the conceptual approval shall be two years from whichever one of the following occurs at the latest date:

1. the effective date of the local government's comprehensive plan amendment.
2. the effective date of the local government development order.
3. the date on which the District issues the conceptual approval, or
4. the latest date of the resolution of any Chapter 120.57, F.A.C., administrative proceeding or other legal appeals.

(c) For an individual or standard general environmental resource permit, five years from the date of issuance or such amount of time as made a condition of the permit.

(d) For a noticed general permit issued pursuant to Chapter 40E-400, F.A.C., five years from the date the notice of intent to use the permit is provided to the District.

(2)(a) Unless prescribed by special permit condition, permits expire automatically according to the timeframes indicated in this rule. If application for extension is made in writing pursuant to subsection (3), the permit shall remain in full force and effect until:

1. the Governing Board takes action on an application for extension of an individual permit, or
2. staff takes action on an application for extension of a standard general permit.

(b) Installation of the project outfall structure shall not constitute a vesting of the permit.

(3) The permit extension shall be issued provided that a permittee files a written request with the District showing good cause prior to the expiration of the permit. For the purpose of this rule, good cause shall mean a set of extenuating circumstances outside of the control of the permittee. Requests for extensions, which shall include documentation of the extenuating circumstances and how they have delayed this project, will not be accepted more than 180 days prior to the expiration date.

(4) Substantial modifications to Conceptual Approvals will extend the duration of the Conceptual Approval for two years from the date of issuance of the modification. For the purposes of this section, the term "substantial modification" shall mean a modification which is reasonably expected to lead to substantially different water resource or environmental impacts which require a detailed review.

(5) Substantial modifications to individual or standard general environmental resource permits issued pursuant to a permit application extend the duration of the permit for three years from the date of issuance of the modification. Individual or standard general environmental resource permit modifications do not extend the duration of a conceptual approval.

(6) Permit modifications issued pursuant to subsection 40E-4.331(2)(b), F.A.C. (letter modifications) do not extend the duration of a permit.

(7) Failure to complete construction or alteration of the surface water management system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization in order to continue construction unless a permit extension is granted.

Specific authority 373.044, 373.113 F.S. Law Implemented 373.413, 373.416, 373.419, 373.426 F.S. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(4), Amended 7-1-86, 4/20/94, 10-3-95

**GENERAL CONDITIONS**

1. All activities authorized by this permit 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 and Part IV, Chapter 373, F.S.
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 does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.
5. 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. Status report forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a professional engineer or other individual authorized by law, utilizing the supplied Environmental Resource/Surface Water Management Permit Construction Completion/Certification Form Number 0881A, or Environmental Resource/Surface Water Management Permit Construction Completion Certification - For Projects Permitted prior to October 3, 1995 Form No. 0881B, incorporated by reference in Rule 40E-1.659, F.A.C. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawings. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (6) above, and submitted a request for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and

**GENERAL CONDITIONS**

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 initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. 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 served by that 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 the phase or portion of the system to a local government or other responsible entity.
9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, 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 government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.
10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
11. 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 40E-4 or Chapter 40E-40, F.A.C..
12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(3), F.A.C., also known as the "No Notice" Rule.
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 construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
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 binding, 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

**GENERAL CONDITIONS**

ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and 40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.

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 appropriate District service center.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

2007

**SPECIAL CONDITIONS**

1. The construction phase of this permit shall expire on June 22, 2009.
2. Operation of the surface water management system shall be the responsibility of OLD VINELAND TOWNHOMES OWNERS ASSOCIATION. Within one year of permit issuance or concurrent with the engineering certification of construction completion, whichever comes first, the permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association.
3. Discharge Facilities:  
  
Structure: 1  
  
1-4" dia. CIRCULAR ORIFICE with invert at elev. 78.1' NGVD.  
300 LF of 18" dia. REINFORCED CONCRETE PIPE culvert.  
1-24" W X 37" L drop inlet with crest at elev. 78.89' NGVD.  
  
Receiving body : Existing wetland  
Control elev : 78.1 feet NGVD.
4. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
5. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.
6. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
7. Lake side slopes shall be no steeper than 4:1 (horizontal:vertical) to a depth of two feet below the control elevation. Side slopes shall be nurtured or planted from 2 feet below to 1 foot above control elevation to insure vegetative growth, unless shown on the plans.
8. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.
9. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
10. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.
11. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur, the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.
12. Minimum building floor elevation: BASIN: Vineland Townhomes - 83.10 feet NGVD.
13. Minimum road crown elevation: Basin: Vineland Townhomes - 80.10 feet NGVD.
14. Silt fencing shall be installed at the limits of construction to protect all of the preserve areas from silt and sediment deposition during the construction of the project. A floating turbidity barrier shall be installed

**SPECIAL CONDITIONS**

during the construction of the final discharge structure into the adjacent canal/water body. The silt fencing and the turbidity barrier shall be installed in accordance with "Florida Land Development Manual" Chapter 6 "Stormwater and Erosion and Sediment Control Best Management Practices for Developing Areas". The sediment controls shall be installed prior to the commencement of any clearing or construction and the installation must be inspected by the District's Environmental Resource Compliance staff. The silt fencing and turbidity barriers shall remain in place and be maintained in good functional condition until all adjacent construction activities have been completed and all fill slopes have been stabilized. Upon completion of the project and the stabilization of the fill, the permittee shall contact the District's Environmental Resource Compliance staff to inspect the site and approve the removal of the silt fencing and turbidity barriers.

15. A maintenance program shall be implemented for the preserved wetland areas on a regular basis to ensure the integrity and viability of those areas as permitted. Maintenance shall be conducted in perpetuity to ensure that the conservation area is maintained free from Category 1 exotic vegetation (as defined by the Florida Exotic Pest Plant Council at the time of permit issuance) immediately following a maintenance activity. Coverage of exotic plant species shall not exceed 5% of total cover between maintenance activities. Coverage of nuisance plant species shall not exceed 10% of total cover between maintenance activities. In addition, the permittee shall manage the conservation areas such that exotic/nuisance plant species do not dominate any one section of those areas.
16. Sixty (60) days from permit issuance and in accordance with the work schedule in the attached exhibits the permittee shall submit two certified copies of the recorded conservation easement for the mitigation area and associated buffers. The data should also be supplied in a digital CAD (.dxf) or GIS (ESRI Coverage) format. The files should be in the Florida State Plane coordinate system, East Zone (3601) with a data datum of NAD83, HARN with the map units in feet. This data should reside on a CD or floppy disk and be submitted to the District's Environmental Resource Compliance Division in the service area office where the application was submitted.

The recorded easement shall be in substantial conformance with the attached exhibit. Any proposed modifications to the approved form must receive prior written consent from the District. The easement must be free of encumbrances or interests in the easement which the District determines are contrary to the intent of the easement. In the event it is later determined that there are encumbrances or interests in the easement which the District determines are contrary to the intent of the easement, the permittee shall be required to provide release or subordination of such encumbrances or interests.

17. The District reserves the right to require remedial measures to be taken by the permittee if monitoring or other information demonstrates that adverse impacts to onsite or offsite wetlands, upland conservation areas or buffers, or other surface waters have occurred due to project related activities.

## NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (1999), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply." Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

### Petition for Administrative Proceedings

1. A person whose substantial interests are affected by the South Florida Water Management District's (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

a. Formal Administrative Hearing: If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

b. Informal Administrative Hearing: If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

c. Administrative Complaint and Order: If a Respondent objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.

d. State Lands Environmental Resource Permit: Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.

e. Emergency Authorization and Order: A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

f. Order for Emergency Action: A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.

g. Permit Suspension, Revocation, Annulment, and Withdrawal: If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by

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any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

#### CIRCUIT COURT

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

#### DISTRICT COURT OF APPEAL

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

#### LAND AND WATER ADJUDICATORY COMMISSION

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (FLAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with FLAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with FLAWAC within 30 days of rendition of the DEP's order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

#### PRIVATE PROPERTY RIGHTS PROTECTION ACT

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

#### LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

#### MEDIATION

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or

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publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing. Mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

(1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;

(2) a statement of the preliminary agency action;

(3) an explanation of how the person's substantial interests will be affected by the agency determination; and

(4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

#### VARIANCES AND WAIVERS

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

(a) the caption shall read:

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, telephone number and any facsimile number of the petitioner;

(c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);

(d) the applicable rule or portion of the rule;

(e) the citation to the statute the rule is implementing;

(f) the type of action requested;

(g) the specific facts that demonstrate a substantial hardship or violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) a statement of whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

a) the specific facts that make the situation an emergency; and

b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

#### WAIVER OF RIGHTS

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

#### 28-106.201

#### INITIATION OF PROCEEDINGS

(INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(f) A demand for relief.

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**28-106.301 INITIATION OF PROCEEDINGS**  
(NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(e) A demand for relief.

**28-107.004 SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL**

(3) Requests for hearing filed in accordance with this rule shall include:

(a) The name and address of the party making the request, for purposes of service;

(b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and

(c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

**42-2.013 REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217**

(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.

(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity:

(a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;

(b) How the rule or order sought to be reviewed affects the interests of the party seeking review;

(c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;

(d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and

(e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

**28-107.005 EMERGENCY ACTION**

(1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.

(2) The 14-day notice requirement of Section 120.569(2)(b), F. S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.

(3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57, and 120.60, F.S.

**40E-1.611 EMERGENCY ACTION**

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

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## **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

**ORLANDO SERVICE CENTER** 1707 Orlando Central Parkway, Suite 200, Orlando, FL 32809  
(407) 858-6100 • FL WATS 1-800-250-4250 • Suncom 358-6100 • Fax (407) 858-6121 •  
[www.sfwmd.gov/org/exo/orlsc/index.html](http://www.sfwmd.gov/org/exo/orlsc/index.html)

**CON 24-06**

**Application No.:** 040712-25

**General Permit No.:** 49-01420-W

September 10, 2004

SALA INC

PO BOX 533116

ORLANDO, FL 32853

**RHPA**

**SEP 13 2004**

**RECEIVED**

**Dear Permittee:**

**SUBJECT: General Water Use Permit No.:** 49-01420-W

**Project:** OLD VINELAND TOWNHOMES

**Location:** OSCEOLA COUNTY, S13/T25S/R28E

**Permittee:** SALA INC

This letter is to notify you of the District's agency action concerning your Notice of Intent to Use Water. This action is taken pursuant to Chapter 40E-20, Florida Administrative Code (F.A.C.). Based on the information provided, District rules have been adhered to and a General Water Use Permit is in effect for this project subject to:

1. Not receiving a filed request for Chapter 120, Florida Statutes, administrative hearing and
2. The attached Limiting Conditions.

The purpose of this application is to obtain a Water Use Permit for dewatering associated with the excavation and construction of one storm water management pond at the residential development known as Old Vineland Townhomes. Withdrawals are from the Water Table aquifer via one proposed withdrawal facility. The project is located in Osceola County, as shown on exhibits 1 through 3.

A copy of the permit, its limiting conditions, and dewatering plan is required to be kept on site at all times during dewatering operations by the lead contractor or site manager.

The Permittee is advised that this permit does not relieve any person from the requirement to obtain all necessary federal, state, local and special district authorizations.

### GOVERNING BOARD

Nicolás J. Gutiérrez, Jr., Esq., Chair  
Pamela Brooks-Thomas, Vice-Chair  
Irela M. Bagué

Michael Collins  
Hugh M. English  
Lennart E. Lindahl, P.E.

Kevin McCarty  
Harkley R. Thornton  
Trudi K. Williams, P.E.

### EXECUTIVE OFFICE

Henry Dean, Executive Director

**DISTRICT HEADQUARTERS:** 3301 Gun Club Road, P.O. Box 24680, West Palm Beach, FL 33416-4680 • (561) 686-8800 • FL WATS 1-800-432-2045

Application Number: 040712-25  
SALA INC  
September 10, 2004  
Page 2

**Date Of Issuance:** September 10, 2004  
**Expiration Date:** September 10, 2005  
**Water Use Classification:** Dewatering  
**Water Use Permit Status:** Proposed  
**Environmental Resource Permit Status:** Permitted (No. 49-01404-P).  
**Right Of Way Permit Status:** Not Applicable.  
**Surface Water From:** Water Table aquifer

**Permitted Allocation(s):**

**Annual Allocation:** 367,920,000 Gallons  
**Maximum Daily Allocation:** 1,008,000 Gallons

**Proposed Withdrawal Facilities - Surface Water**

Source: Water Table aquifer  
1 - 6" X 76 HP X 700 GPM turbine Pump

**Rated Capacity**

Source(s)	Status Code	GPM	MGD	MGM	MGY
Water Table aquifer	P	700	1.01	30.6	368
<b>Totals:</b>		<b>700</b>	<b>1.01</b>	<b>30.6</b>	<b>368</b>

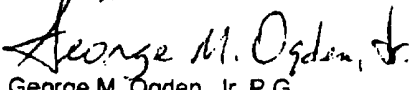
Application Number: 040712-25  
SALA INC  
September 10, 2004  
Page 3

Should you object to the Limiting Conditions, please refer to the attached Notice of Rights which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have questions concerning this matter. If we do not hear from you prior to the time frame specified in the Notice of Rights, we will assume that you concur with the District's recommendations.

**Certificate Of Service**

I HEREBY CERTIFY that a Notice of Rights has been mailed to the addressee not later than 5:00 p.m. this 10th day of September, 2004, in accordance with Section 120.60(3), Florida Statutes.

Sincerely,



George M. Ogden, Jr. P.G.  
Lead Hydrogeologist  
Water Use Regulation Division

GMC /lb

Certified Mail No.: 7003 2260 0004 4267 9574

Enclosure

c: Div of Recreation and Park - District 6  
Florida Fish & Wildlife Conservation Commission  
Rhpa  
Ron Howse Pa  
St. John's River WMD

Application Number: 040712-25  
SALA INC  
September 10, 2004  
Page 4

#### Limiting Conditions

1. This permit shall expire on September 10, 2005.
2. Application for a permit modification may be made at any time.
3. Water use classification:

Dewatering water supply

4. Source classification:

Surface Water from:  
Water Table aquifer

5. Annual allocation shall not exceed 367.92 MG.

Maximum daily allocation shall not exceed 1.008 MG.

6. Pursuant to Rule 40E-1.6105, F.A.C., Notification of Transfer of Interest in Real Property, within 30 days of any transfer of interest or control of the real property at which any permitted facility, system, consumptive use, or activity is located, the permittee must notify the District, in writing, of the transfer giving the name and address of the new owner or person in control and providing a copy of the instrument effectuating the transfer, as set forth in Rule 40E-1.6107, F.A.C.

Pursuant to Rule 40E-1.6107 (4), until transfer is approved by the District, the permittee shall be liable for compliance with the permit. The permittee transferring the permit shall remain liable for all actions that are required as well as all violations of the permit which occurred prior to the transfer of the permit.

Failure to comply with this or any other condition of this permit constitutes a violation and pursuant to Rule 40E-1.609, Suspension, Revocation and Modification of Permits, the District may suspend or revoke the permit.

This Permit is issued to:  
Old Vineland Townhomes

7. Withdrawal Facilities:

Surface Water - Proposed:

1 - 6" x 76 HP X 700 GPM turbine Pump

### Limiting Conditions

8. Permittee shall mitigate interference with existing legal uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. As necessary to offset the interference, mitigation will include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means.

Interference to an existing legal use is defined as an impact that occurs under hydrologic conditions equal to or less severe than a 1 in 10 year drought event that results in the:

(1) Inability to withdraw water consistent with provisions of the permit, such as when remedial structural or operational actions not materially authorized by existing permits must be taken to address the interference; or

(2) Change in the quality of water pursuant to primary State Drinking Water Standards to the extent that the water can no longer be used for its authorized purpose, or such change is imminent.

9. Permittee shall mitigate harm to existing off-site land uses caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm as determined through reference to the conditions for permit issuance, includes:

(1) Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged, not including aesthetic values. The designed function of a water body is identified in the original permit or other governmental authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g. fill for construction, mining, drainage canal, etc.)

(2) Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use; or

(3) Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

10. Permittee shall mitigate harm to the natural resources caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance includes:

(1) Reduction in ground or surface water levels that results in harmful lateral movement of the fresh water/salt water interface,

(2) Reduction in water levels that harm the hydroperiod of wetlands,

(3) Significant reduction in water levels or hydroperiod in a naturally occurring water body such as a lake or pond,

(4) Harmful movement of contaminants in violation of state water quality standards, or

(5) Harm to the natural system including damage to habitat for rare or endangered species.

Application Number: 040712-25  
SALA INC  
September 10, 2004  
Page 6

#### Limiting Conditions

11. If any condition of the permit is violated, the permit shall be subject to review and possible modification, enforcement action, or revocation.
12. Authorized representatives of the District shall be permitted to enter, inspect, and observe the permitted system to determine compliance with special conditions.
13. The Permittee is advised that this permit does not relieve any person from the requirement to obtain all necessary federal, state, local and special district authorizations.
14. The permit does not convey any property right to the Permittee, nor any rights and privileges other than those specified in the Permit and Chapter 40E-2, Florida Administrative Code.
15. Permittee shall submit all data as required by the implementation schedule for each of the limiting conditions to: S.F.W.M.D., Supervising Hydrogeologist - Post-Permit Compliance, Water Use Regulation Dept. (4320), P.O. Box 24680, West Palm Beach, FL 33416-4680.
16. The Permittee is advised that this Permit does not relieve the Permittee of complying with all county, state, and federal regulations governing these operations, maintenance, and reclamation of the borrow pit.
17. All dewatering water shall be retained on the Permittee's land. Off-site discharge of dewatering effluent shall not be made.
18. The excavation shall be constructed using sound engineering practice. If the excavation endangers the properties of adjacent owners through erosion, side wall collapse, etc., the Permittee shall cease operation upon notification by the District until a method to prevent such occurrences is found and instituted.
19. Permittee shall immediately cease dewatering when continued dewatering would create a condition hazardous to the health, safety, and general welfare of the people of the District.
20. Permittee shall be responsible for clearing shoaling if the Permittee's dewatering operation creates shoaling in adjacent water bodies.
21. Permittee shall comply with turbidity and general water quality standards for surface discharge into receiving streams, as established by Chapter 62-302, Florida Administrative Code.
22. Permittee shall not lower the water table below the following depths:  
46.33 feet NGVD
23. A copy of the permit, its limiting conditions, and dewatering plan is required to be kept on site at all times during dewatering operations by the lead contractor or site manager.
24. In the event of a declared water shortage, water withdrawal reductions will be ordered by the District in accordance with the Water Shortage Plan, Chapter 40E-21, F.A.C. The Permittee is advised that during a water shortage, pumpage reports shall be submitted as required by Chapter 40E-21, F.A.C.



## NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (1997), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68, shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply." Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

### PETITION FOR ADMINISTRATIVE PROCEEDINGS

1. A person whose substantial interests are affected by the South Florida Water Management District's (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

#### a. Formal Administrative Hearing:

If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

#### b. Informal Administrative Hearing:

If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

#### c. Administrative Complaint and Order:

If a Respondent(s) objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.

#### d. State Lands Environmental Resource Permit:

Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.

#### e. Emergency Authorization and Order:

A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

#### f. Order for Emergency Action:

A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.

#### g. Permit Suspension, Revocation, Annulment and Withdrawal:

If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

### CIRCUIT COURT

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

#### DISTRICT COURT OF APPEAL

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

#### LAND AND WATER ADJUDICATORY COMMISSION

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (LAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with LAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with LAWAC within 30 days of rendition of the DEP's order; and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

#### PRIVATE PROPERTY RIGHTS PROTECTION ACT

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

#### LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

#### MEDIATION

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not adversely affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

- (1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;
- (2) a statement of the preliminary agency action;
- (3) an explanation of how the person's substantial interests will be affected by the agency determination; and
- (4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

#### VARIANCES AND WAIVERS

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

- (a) the caption shall read:  
Petition for (Variance from) or (Waiver of) Rule (Citation)
- (b) The name, address, telephone number and any facsimile number of the petitioner;
- (c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner;
- (d) the applicable rule or portion of the rule;
- (e) the citation to the statute the rule is implementing;
- (f) the type of action requested;
- (g) the specific facts that demonstrate a substantial hardship or violation of principles of fairness that would justify a waiver or variance for the petitioner;
- (h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and
- (i) a statement of whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

- a) the specific facts that make the situation an emergency; and
- b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

#### WAIVER OF RIGHTS

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

#### 28-106.201

##### INITIATION OF PROCEEDINGS (INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;

- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- (f) A demand for relief.

**28-106.301.1 INITIATION OF PROCEEDINGS (NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT)**

- (2) All petitions filed under these rules shall contain:
  - (a) The name and address of each agency affected and each agency's file or identification number, if known;
  - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
  - (c) A statement of when and how the petitioner received notice of the agency decision;
  - (d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
  - (e) A demand for relief.

**28-107.004 SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL**

- (3) Requests for hearing filed in accordance with this rule shall include:
  - (a) The name and address of the party making the request, for purposes of service;
  - (b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and
  - (c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

**42-2.013 REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217**

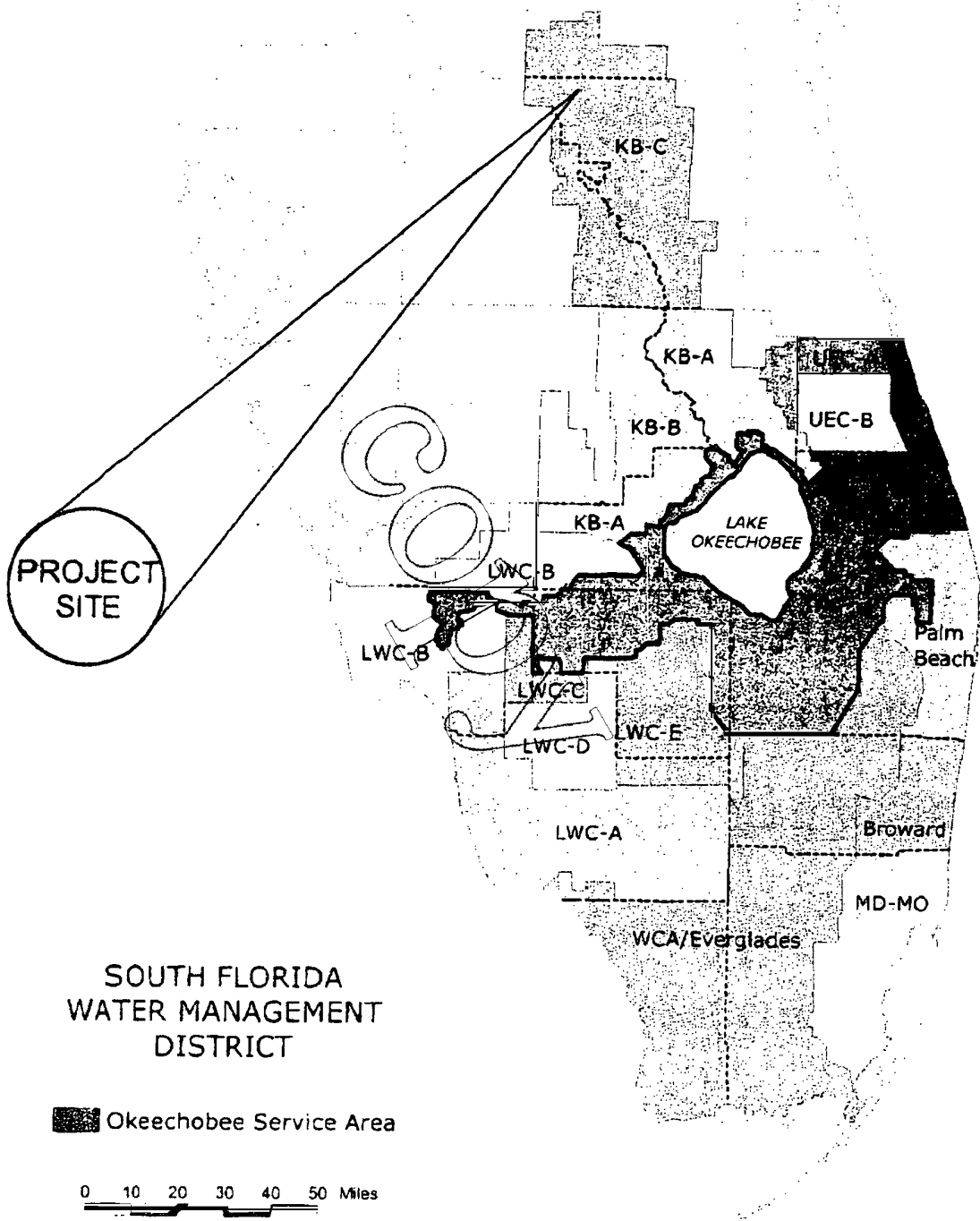
- (1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.
- (2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity:
  - (a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S.; or rules duly adopted thereunder;
  - (b) How the rule or order sought to be reviewed affects the interests of the party seeking review;
  - (c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;
  - (d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and
  - (e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

**28-107.005 EMERGENCY ACTION**


- (1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license
- (2) The 14-day notice requirement of Section 120.569(2)(b), F.S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.
- (3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57, and 120.60, F.S.

**40E-1.611 EMERGENCY ACTION**

- (1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.
- (2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.



SOUTH FLORIDA  
WATER MANAGEMENT  
DISTRICT

 Okeechobee Service Area

0 10 20 30 40 50 Miles

Permit Expiration Basins  
Exhibit 1

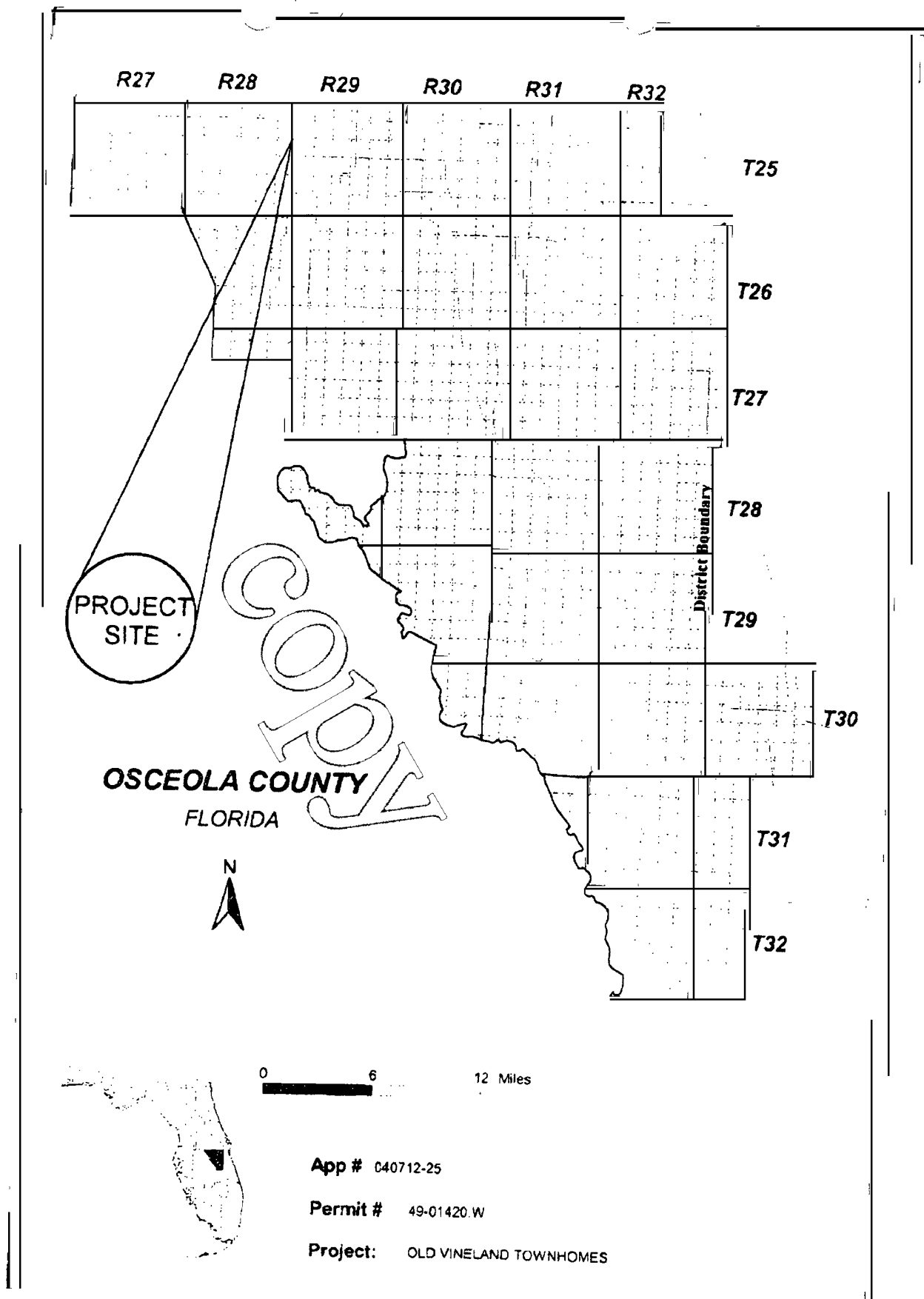


Exhibit 2

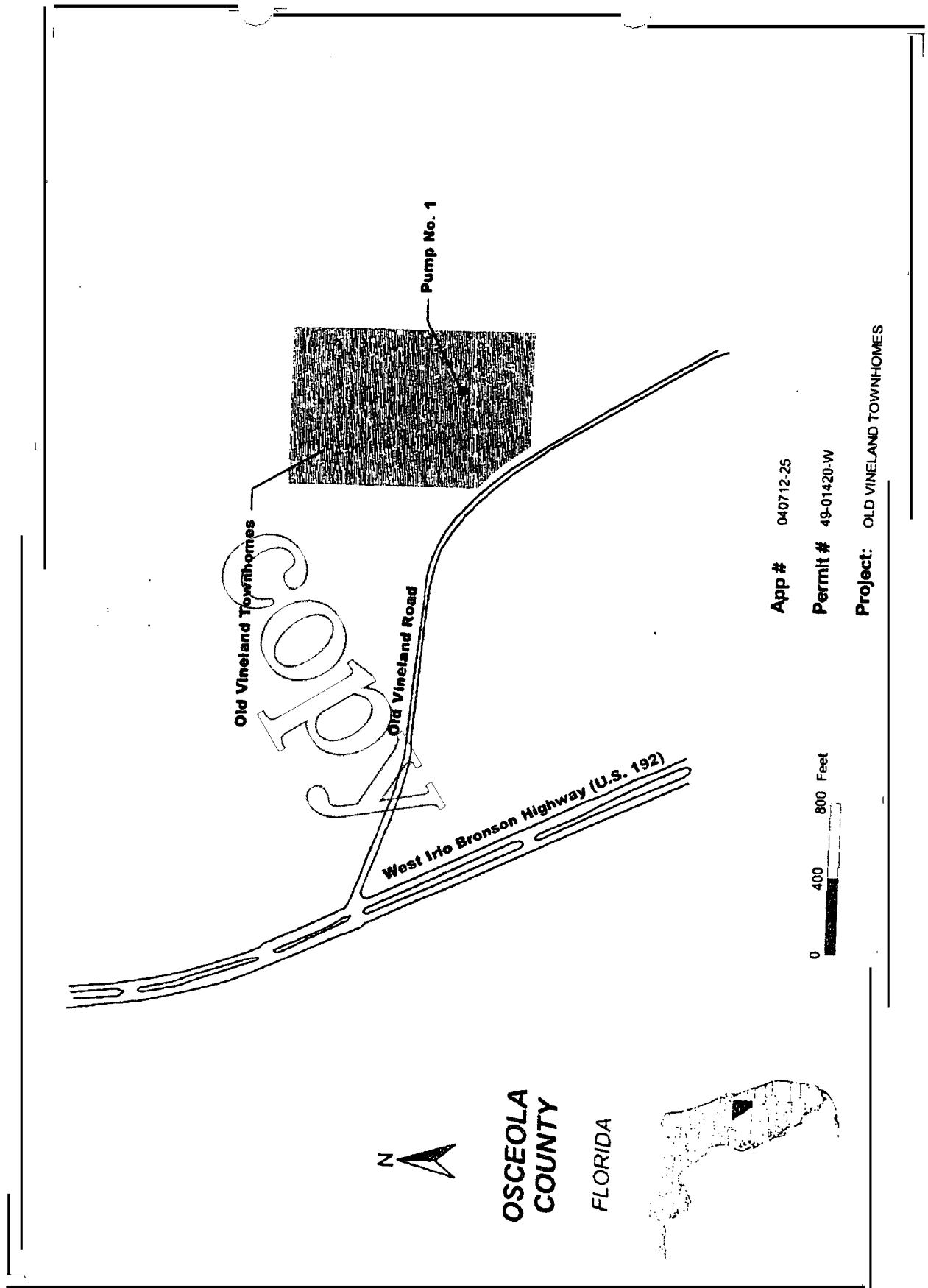


Exhibit 3

TABLE - B

Description Of Surface Water Pumps

Page 1

Application Number: 040712-25

Pump ID	156394
Name	Pump No. 1
Map Designator	Pump No. 1
Facility Group	
Existing/Proposed	P
Pump Type	turbine
Diameter(Inches)	6
Pump Capacity(GPM)	700
Pump Horse Power	76
Two Way Pump ?	N
Elevation (ft. NGVD)	63
Planar Location	
Source	DIGITIZED
Feet East	507858
Feet North	1447924
Accounting Method	none
Use Status	Primary
Water Use Type	Mining / Dewatering
Surface Water Body	Water Table aquifer

Exhibit No: 4

Page 1 of 1