

LARRY WHALEY
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DECLARATION OF COVENANTS AND RESTRICTIONS
FOR FIESTA KEY OWNERS ASSOCIATION
OSCEOLA COUNTY, FLORIDA

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR FIESTA KEY OWNERS ASSOCIATION, OSCEOLA COUNTY, FLORIDA (Hereinafter referred to as the "Declaration"), made this 7 day of July, 2004 by Sala Inc., a Florida Corporation, with principal mailing address of 132 East Colonial Drive, Suite 206, Orlando, FL 32801. (hereinafter to as "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the sole record owner in fee simple absolute of certain real property located in Osceola County, Florida, more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein (which property shall hereinafter be referred to as the "Property"); and

WHEREAS, the Declarant caused the Property to be subdivided into a subdivision, which has been platted as Fiesta Key, which have been recorded in Plat Book 116 at Pages 150 through 153 of the Public Records of Osceola County, Florida and

WHEREAS, it is the intention of the Declarant to develop Fiesta Key as a planned development subdivision of one hundred eighty-nine (189) "Townhomes", and appurtenant improvements; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said planned development subdivision and for the maintenance of parks, recreation areas and facilities, open space, green belt areas, drainage areas and other common facilities as may be specifically designated on the plats of Fiesta Key and to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each an all of which is are for the benefit of the Property and each subsequent owner of all or part thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said planned development subdivision to create a homeowners' association to which should be delegated and assigned the powers of maintaining and administering the Common Area properties and facilities; administering and enforcing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Florida, a non-profit corporation, FIESTA KEY OWNERS ASSOCIATION, INC. (hereinafter referred to as "Association"), for the purpose of exercising the Functions aforesaid;

NOW THEREFORE, the 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 shall bind 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

EFFECT OF DECLARATION

This Declaration shall impose upon the Property certain restrictions, covenants and conditions and the Property shall be held, sold and conveyed subject to the following easements, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall bind 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 hereof.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Fiesta Key Owners Association, Inc., a Florida Corporation not for profit, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property described on the plat of Fiesta Key and on Exhibit "A" attached hereto.

Section 3. "Common Area" shall mean all real property including the improvements thereon owned by the Association for the common use and enjoyment of the "Owners". The term Common Area shall include the entire drainage system of the property (except for any portion of the drainage system that may be dedicated to and accepted by applicable municipalities), including but not limited to, all pipes, retention areas, swales and inlets, it being the intention of the Declarant that the Association have necessary ownership and responsibility to operate and maintain the surface water management system. The term Common Area shall also include any intangible personal property acquired by the Association, if such property is designated as such by the Association. The term Common Area shall also include all recreational facilities

constructed or to be constructed on one of the tracts hereafter described. All Common Areas are to be devoted to and intended for the common use and enjoyment of the members of the Association, their families, guests, persons occupying "Dwelling Units" on a guest or tenant basis, and to the extent designated on recorded plats or authorized by the Board of Directors of the Association. The ownership of the Common Area and of any streets, roadways, driveways or parking areas within the Property shall be determined by the Declarant. For purposes of determining ownership of property within the Common Areas, the boundaries so as to cause closure as shown on the plat of Fiesta Key filed of Public Record shall be conclusive. The completed Common Area together with any streets, roadways, driveways or parking areas designated by the Declarant as the property of the Association shall be conveyed to the Association, by a deed of conveyance recorded among the Public Records of Osceola County, Florida.

Section 4. "Lot" shall mean and refer to any plot of land shown upon the Plat of the Property with the exception of any Common Area, street, roadway, driveway or common parking area.

Section 5. "Dwelling Unit" shall mean and refer to a Lot as defined herein with a "Townhome" constructed thereon as to which a certificate of occupancy has been issued by the applicable governmental authorities.

Section 6. "Declarant" shall mean and refer to Sala Inc, a Florida corporation.

Section 7. "ARC" shall mean and refer to the Architectural Review Committee appointed in accordance with Article VI of this Declaration, whose duties shall be as set forth in said Article VI.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Dwelling Unit 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.

Section 9. "Townhome" shall mean and refer to any portion of a building situated upon the Property designed and intended for use and occupancy as a residence by a single family susceptible to ownership in fee simple as a non-condominium, having a private outdoor living area and being constructed having party walls and being attached to other similar units.

Section 10. "Member" shall mean and refer to any Owner.

Section 11. "Subdivision Community" shall mean and refer to Fiesta Key.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which is the property of the Association, which right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area, which is the property of the Association;
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Lot or Dwelling Unit remains unpaid; and for a period not to

exceed sixty (60) days for any infraction of its published rules and regulations.

- (c) The right of the Association to dedicate or transfer all 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.

Section 2. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot or Dwelling Unit owned within the Property, hereby covenants, and each Owner of any Lot or Dwelling Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land, shall be a continuing lien upon the Lot and Dwelling Unit against which each such assessment is made, together with such interest thereon and the cost of collection thereof as hereinafter provided, and shall also be the personal obligation of the person who was the Owner of such Lot and Dwelling Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

Notwithstanding anything contained herein to the contrary, the obligation shall be joint and several as to the Owner in the event that the Owner constitutes more than one person or entity.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be exclusively for the purpose of implementing the corporate purposes and powers of the Association and promoting the recreation, health, safety and welfare of the residents of the Property, including, but not limited to, the payment of taxes on the Common Area and insurance thereon and repair, replacement, and additions thereto, and for the costs of labor, equipment, materials, management, and supervision thereof. Specifically the Association is required to establish and maintain an adequate fund for replacement of roof, road and recreation areas.

Section 3. Basis and Maximum of Annual Assessments:

Until January 1 of the year immediately following the conveyance of the first Lot and Dwelling Unit to an Owner, the maximum annual assessment by the Association for all Lots on which a Dwelling Unit has been completed and for which a Certificate of Occupancy has been issued, or any similar governmental approval permitting occupancy of a Dwelling Unit shall be EIGHTEEN HUNDRED DOLLARS AND NO/100 DOLLARS (\$1800.00) per Lot and Dwelling Unit. The maximum annual assessment by the Association for all other Lots shall be ONE HUNDRED TWENTY AND NO/100 DOLLARS (\$120.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot or Dwelling Unit the maximum annual assessment by the Association may not be increased each year more than fifteen percent (15%) cumulative, above the maximum assessment for the previous year without a vote

of the membership of the Association.

- (b) From and after January 1 of the year immediately following the conveyance of the first lot or Dwelling Unit to an Owner, the maximum annual assessment may be increased by the Association above fifteen percent (15%) by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose.
- (c) The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year at a lesser amount than the maximum and may fix the assessment for each calendar year and may increase the maximum assessment by as much as fifteen percent (15%), cumulative, over the maximum amount set for the previous calendar year. If the Directors do not so raise the assessment by fifteen percent (15%) in any one-year, the difference between the fifteen percent (15%) maximum and the actual percentage increase in assessment in any given year may be accumulated and used in subsequent years by the Board of Directors.
- (d) Both annual and special assessments by the Association must be fixed at a uniform rate for all Lots with Dwelling Units and for all Lots without Dwelling Units and may be collected on a monthly, quarterly or annual basis as evidenced by resolution of the Board of Directors of the Association.
- (e) Notwithstanding the foregoing to the contrary, the Association shall have the right to make special assessments for Lots on a non-uniform basis for such matters as are specifically set forth in this Declaration including but not limited

to the items set forth in Sections 16, 17, and 19 of Article VII of the Declaration.

- (f) At the first closing of the sale of each Residential Unit, the Purchasers thereof shall pay a Five Hundred Dollar (\$500.00) fee to the Association, which shall be used by Association to pay for any operating costs.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Area which is the property of the Association, including the necessary fixtures and personal property related thereto, provided that such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days in advance and not more than sixty (60) days in advance of the meeting and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments.

Subject to the limitations of Section 3 hereof, and the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for that purpose, written notice of which shall be sent to all Members not less than thirty (30) days in advance and not more than sixty (60) days in advance of the meeting and shall set forth

the purpose of the meeting.

Section 6. Quorum for an Action Authorized Under Section 4 and 5.

The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows: At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members of the Association, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Sections 4 and 5 and the required quorum at any such subsequent meeting shall be one—half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on the first day of the month following the conveyance of the Common Area. The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of January of said year. As provided in Section 3, subparagraph (d), the assessments may be collected on a payment schedule set by the Board of Directors of the Association. The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bears to twelve (12). The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall determine the amount of the assessment against each Lot or Dwelling Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Nonpayment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot or Dwelling Unit which shall bind such Lot or Dwelling Unit in the hands of the then Owner, the Owner's heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain the Owner's personal obligation. If the Owner is comprised of more than one (1) person or entity, the elements comprising the Owner shall be jointly and severally liable for the obligation to pay such assessment. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the maximum rate of interest permitted by law per annum, and the Association may bring an action at law against the

Owner personally obligated to pay the same or to foreclose the lien against the Lot or Dwelling Unit, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys fee to be fixed by the Court, together with the costs of action. In addition, if any Assessment is not paid within fifteen (15) days after the due date, the Board of Directors may impose a fine.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage or mortgages now or hereafter placed upon the Lot or Dwelling Unit subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

(a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use.

(b) All Common Areas as defined in Article II, Section 3 hereof.

(c) All properties exempted from taxation by the laws of the State of Florida, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Section 12. Effect on Declarant. Notwithstanding any provision that may be contained to the contrary in this Declaration, so long as a Class B Membership in the Association exists, the Declarant shall not be liable for any Assessments for the Lots owned by the Declarant (whether annual, special, individual or general). In lieu thereof, the Declarant shall pay the amount of any deficits incurred by the Association for expenses incurred in excess of the amounts collected as annual Assessments from other Lot Owners. For purposes hereof, the existence, or nonexistence of a deficit for the Association for expenses incurred in excess of the amounts collected as annual Assessments from other Lot owners shall be determined on cash basis accounting instead of accrual basis. At such time as Class B Membership in the Association ceases, then the Declarant shall pay annual Assessments but shall not be obligated to pay any other Assessment charged to the Owners of the Lots. When Declarant has sold and conveyed all of its Lots in the Property, Declarant shall not have further liability of any kind to the Association for the payment of any Assessments or for funding any deficits of the Association

ARTICLE V

EASEMENT RESERVED TO DEVELOPER

Section 1. Easement Over Common Area. For a term of six (6) years from the date of execution hereof, the Declarant hereby reserves unto itself a perpetual easement over upon, under and across all Common Areas as aforesaid, shown on the, recorded sub-division plat of the Property (identified on plat as tracts A, B, C & D) together with the right to grant easements to others and such easement shall include, but shall not be limited to, the right to use the said Common Area to erect, maintain and use electric and telephone poles, wires, cables, conduits,

sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities, drainage and the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to provide for drainage and to maintain reasonable standards of health, safety and appearance and the right to locate wells, pumping stations and tanks; provided, however, that said reservation and right shall not be considered an obligation of the Declarant to provide or maintain any such utility or services.

Section 2. Easement over Lots. For a term of six (6) years from the date of execution hereof, the Declarant hereby reserves unto itself the right to grant a perpetual easement to itself or any other entity over that portion of every Lot lying within fifteen (15) feet of the boundary line of such Lot. This right shall remain in the Declarant whether or not any such Lot has been conveyed to another party and regardless of whether this right is stated in the deed of conveyance. The Declarant shall not be entitled to grant easements over any particular Lot in such a manner so as to interfere with the reasonable use of said Lot as a residence. The Declarant shall not be entitled to grant easements over that portion of a Lot; which adjoins another Lot and is contained within the boundaries of a Townhome.

Section 3. Establishment of Easements. All easements, as provided for in the sections 1 & 2, shall be established by one of the following methods, to wit:

- (a) By a specific designation of an easement on the recorded plat of Fiesta Key;
- (b) By a reservation or specific statement providing for an easement in the deed of conveyance of a given Lot or Dwelling Unit; or

(c) By a separate instrument executed by the Declarant referencing this Article V, said instrument to be subsequently recorded by the Declarant.

Section 4. Non-Exclusive Easement Over the Lots for Utilities. The Declarant hereby reserves for itself, its successors, assigns, agents, contractors, perpetual easement for utility purposes to install, operate, maintain, repair and replace electricity and telephone lines and facilities under any Dwelling Unit; provided, however, that any such electricity and/or telephone lines must be installed inside of a conduit.

Section 5. Easement for Encroachments. In the event that after completion of construction of a Dwelling Unit, any portion of such Dwelling Unit shall encroach upon any portion of Common Areas or upon any other lot for any reason other than the intentional, tortuous act of the Owner of the encroaching property, then an easement shall exist to the extent of that encroachment for so long as the encroachment shall exist.

Section 6. Electric Meter and Telephone Box Easement. The Declarant hereby reserves for itself, its successors, assigns, agents, employees, contractors and the City of Kissimmee, as non-exclusive, perpetual easement over and upon exterior of any and all Dwelling Units constructed for the purpose of attaching, installing, operating, maintaining, repairing and replacing electric meters and telephone boxes, cable boxes and such other similar types of facilities as may be now or hereafter commonly used by electric and/or telephone and/or cable companies.

ARTICLE VI

ARCHITECTURAL CONTROL

No Building, fence, wall or other structure shall be commenced, erected or

maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made unless it is in compliance with the zoning code of the City of Kissimmee, Florida, and other applicable and development regulations and until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by the Architectural Review Committee (ARC).

The ARC shall be composed of at least three (3) Members appointed by the Association. However, so long as ten (10) or more of the Lots shown on the plat of Fiesta Key remain titled in the Declarant or within five (5) years of the date of this Declaration, whichever shall last occur, the Declarant shall be entitled to appoint all members of the ARC and any successors members. The Association or Declarant may appoint non-members of the Association to the ARC. The members of the ARC shall be appointed for staggered three (3) year terms, provided, however, the initial members of the ARC appointed by the Declarant shall serve so long as Declarant has the right to appoint all members of the ARC. In the event of death, resignation, inability to serve, or other vacancy in office of any member of the ARC, the Association or Declarant (whichever then has power to appoint) shall promptly appoint a successor member who shall serve for the duration of the un-expired term of the member whom he replaced. The membership, rules of procedure and duties of the ARC shall be prescribed by and, from time to time, changed or modified by the Association.

Any Owner needing the approval of the ARC shall deliver an application or request for action to the ARC by certified mail with return receipt requested or by hand delivery with signed

receipt together with a floor plan, elevation, site clearing plan and abbreviated specifications, including exterior material and colors. As soon as reasonably possible, the ARC shall indicate its approval or disapproval of the matters required to be acted upon by them by a written instrument filed with the Secretary of the Board of Directors of the Association, and served personally or by certified mail upon the Owner and all interested parties, identifying the proposed building or structure and the reasons for such disapproval. The decision of the ARC may be appealed to the Board of Directors of the Association within ten (10) days of the date after which the ARC makes its written decision as provided hereinabove. If there is no appeal within ten (10) days, then the decision of the ARC is final. Said appeal shall be affected by delivering a letter to the Association by certified mail with return receipt requested or by hand delivery with signed receipt, which said letter shall specifically identify the decision of the ARC with respect to which the appeal is being taken. The Board of Directors of the Association shall take action on such appeal and either approve or disapprove the decision of the ARC as soon as reasonably possible.

ARTICLE VII

GENERAL RESTRICTIONS

Section 1. General Restrictive Covenants. The general restrictive covenants contained in this Article shall apply uniformly to all Lots and Dwelling Units of Fiesta Key unless otherwise set forth herein.

Section 2. Residential Use Only. No Lot shall be used for any purpose except residential. The term "residential" is intended to prohibit any commercial use, including professional office use, of any portion of any Lot or Dwelling Unit. No building shall be erected, altered, placed or permitted to remain on any Lot other than buildings designed for residential use, private garages,

accessory buildings and structures such as swimming pools and screened enclosures. The foregoing shall not prohibit the Declarant from using Dwelling Units as model homes or offices permitted in residences. Nothing contained herein prohibits the use of the Unit as rental on a short or long-term basis.

Section 3. No Temporary Structures. No structure of a temporary nature or character, including, but not limited to, a trailer, house trailer, mobile home, camper, tent, shack, shed, barn, or other similar structure or vehicle, shall be used or permitted to remain on any Lot as a storage facility or residence, or other living quarters whether temporary or permanent, unless approved by the ARC for use during construction only.

Section 4. Parking Restrictions. No automobile, truck, boat, boat and house, trailer, mobile home, camper, or other similar vehicle shall be parked on the street, including right-of-way thereof, overnight or for a continuous period of time in excess of four (4) consecutive hours.

Section 5. Storage Restrictions. No automobile, truck, house trailer, mobile home, camper, boat, boat and trailer, or trailer or other similar vehicle alone shall be parked for any period of time in excess of four (4) consecutive hours or stored or otherwise permitted to remain on any Lot except in a garage attached to a Dwelling Unit or within the confines of a paved driveway leading from the street adjoining a Lot to the doorway of a garage attached to a Dwelling Unit. No automobile, truck or other commercial vehicle which contains lettering or advertising thereon or which is identified with a business or commercial activity, shall be parked for any period of time in excess of four (4) consecutive hours or stored or otherwise permitted to remain on any Lot except in a garage attached to a dwelling unit.

Section 6. Livestock and Animal Restrictions. No livestock, poultry, or animals of any kind or size shall be raised, bred, or kept on any Lot or in any Dwelling Unit provided, however, that dogs, cats, or other common domesticated household pets may be raised and kept; provided such pets are not kept, bred or maintained for any commercial purposes. Such permitted pets shall be kept on the Owner's Lot and shall not be allowed to roam free in the Subdivision Community or on to any other Owner's property. No permitted pet shall be allowed to make noise in a manner or of such volume as to annoy or disturb other Owners. Use of "Pooper Scoopers" is mandatory for dogs. The Board of Directors may vote for removal of a pet that may be a nuisance to other unit owners.

Section 7. Restriction on Activity. No obnoxious or offensive activity shall be conducted or permitted to exist upon any Lot, or in any Dwelling Unit, nor shall anything be done or permitted to exist on any Lot or in any Dwelling Unit that may be or may become an annoyance or private or public nuisance.

Section 8. Restrictions on Hedges. No hedge over six (6) feet tall as measured from existing ground level shall be planted, placed, altered, maintained, or permitted to remain on any Lot unless and until the height, type or location thereof have been approved by the ARC in accordance with Article VI hereof.

Section 9. Sewerage Restrictions. No septic tank, drain field, mobile home storage tank, or other similar container shall be permitted to exist on any Lot.

Section 10. Restriction of Potable Water Wells: For a period of thirty (30) years from the date of this Declaration, no wells for the production of potable water shall be dug or used or permitted to be dug or used on the Property.

Section 11. Antenna Restrictions: Except for one Satellite reception dish of not greater than eighteen inches (18") in diameter on each Unit, which dish shall not be visible from the street in front of the lot, no one shall be permitted to install or maintain on any lot, Dwelling Unit, any outside television or radio antenna, dish, mast aerial or other tower for the purpose of audio or visual reception unless the same is approved by the ARC.

Section 12. Aesthetic and Safety Control. In order to implement effective insect, reptile and fire control, the Association shall have the right, but not the duty, to enter upon any Lot or Dwelling Unit, such entry to be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Association detracts from the setting and safety of Fiesta Key. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass but shall be deemed a license coupled with an interest. The Association and its agents may likewise enter upon such land to remove any trash, which has collected on such Lot or Dwelling Unit without such entrance and removal being deemed a trespass. The provisions in this Section shall not be construed as an obligation on the part of the Association to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services. The costs incurred by the Association in exercising its rights under this Section shall constitute a special assessment against the owner of the Lot or Dwelling Unit and shall in every respect constitute a lien against said Lot or Dwelling Unit as would any assessment or special assessment.

Section 13. Signs. No commercial signs, including "For Rent," "For Sale" and other similar signs, shall be erected or maintained on any Lot or Dwelling Unit except with the written permission of the Association or except as may be required by legal proceedings, it being

understood that the Association will not grant permission for said signs unless their erection is reasonably necessary to avert serious hardship to the property Owner. If such permission is granted, the Association shall have the right to restrict size, color and content of such signs. Property identification and like signs exceeding a combined total of more than two (2) square feet may not be erected without the written permission of the Association. This restriction shall not apply to the Declarant or its agents for erecting such signs as Declarant deems in its sole discretion to be necessary to assist Declarant in selling any Lot or Dwelling Unit.

Section 14. Allowable Trim. No Owner or tenant of an Owner shall install shutters, awnings, or other decorative exterior trim, except small exterior decorations such as address plates and name plates.

Section 15. Party Walls. All common or party walls shall be maintained by the Owners of those Dwelling Units adjoining a party wall subject to the right of the Association to maintain the same as hereinafter set forth. If an Owner or an Owner's tenant damages a party or common wall, or causes damage to the person or Property of an adjoining Owner or tenant as a result of damage to a party or common wall, then the Owner who caused or whose tenant caused said damage shall be liable and responsible to the Association for the damages to the party wall and to the adjoining Owner or tenant for the damages to their person or property, and for any costs incurred by the Association or the adjoining Owner or tenant in the collection thereof, including reasonable attorneys' fee.

All costs of reconstructing a party wall in the event such party wall is destroyed or damaged shall be borne equally by the Owners of the residences adjoining such party wall. In the event one Owner bears the entire expense for reconstruction of a party wall, then in such event

the Owner of the adjoining residence shall pay to the Owner who reconstructed the party wall one-half (1/2) of the expense incurred in that reconstruction. Either adjoining Lot Owner shall have the right to enter on the other adjoining Lot for the purpose of reconstructing a party wall.

Either adjoining Lot Owner shall have an equal right to use a party wall for the support of structural members of a Dwelling Unit to be constructed on either adjoining Lots.

Each party wall shall be subject to an easement of support for adjoining Dwelling Units subject to payment of costs as provided above and shall be subject to an easement for conduits, plumbing, wiring and other facilities for the furnishing of utility services to adjoining Dwelling Units.

Section 16. Lawn and Landscaping Maintenance. All lawn maintenance and landscaping for any areas not walled or fenced are to be provided by the Association. And all costs incurred by the Association in performing maintenance under this section shall be paid out of assessments levied by the Association; provided, however, that if an Owner erects a fence or wall on his Lot, then the Association shall not have the obligation for lawn maintenance within said fenced or walled area nor shall there be any reduction in the maintenance assessments with respect to said Lot or Dwelling Unit. If change to the lawns or landscaping, other than ordinary wear and tear, is caused by the Owner, his agents, guests, or invitees or others whose presence is authorized by the Owner, The Association shall have the right to impose a special assessments against said Owner to pay for such extraordinary costs. Such assessment shall in every respect constitute lien on the lot or Dwelling Unit as would any other assessment on special assessment by the Association. The Association shall have the right to enter upon any Lot for the purpose of maintenance, as provided in this Section, and any such try by the Association

or its agents shall not be deemed a trespass. No fence may be erected without allowing for a gate or gates providing access to adjoining lot or lots.

Section 17. Exterior Maintenance. The Association is to maintain all rooves & exterior paint of the Buildings. However, each individual Owner shall have the responsibility not to cause damage to the exterior of their prospective Dwelling Unit. In the event the exterior of said Dwelling Unit is damaged in such fashion so as to create a health or safety hazard to adjoining Dwelling Units or to create a nuisance or to be unsightly and not in keeping with the quality of Fiesta Key and such damage is not repaired within thirty (30) days from the occurrence of the damage, then in such an event, the Association shall have the right to make reasonable repairs to the exterior of such Dwelling Unit and shall be entitled to make a special assessment against the Owner of the Dwelling Unit responsible for such damage for the costs of such repairs. Such assessment shall in every respect constitute a lien on the Lot or dwelling Unit as would any other assessment or special assessment by the Association.

Section 18. General Rules of how to Apply: To the extent not inconsistent with Sections 15, 16 and 17 above, the general rules of law regarding liability for property damage due to negligence or willful acts or omissions shall apply concerning Party Walls and Common Roof.

Section 19. Access at Reasonable Hours. For the sole purpose of performing the lawn and landscaping maintenance, exterior maintenance, when required as set forth above, maintenance to party walls, or any other repairs authorized by this Declaration, the Association, through its duly authorized agents, contractors or employees shall have a license which shall be exercisable after reasonable notice to the Owner to enter upon any Lot or exterior or interior of any Dwelling Unit at reasonable hours on any day of the week.

Section 20. Insurance on Dwelling Units. Each Owner shall have an affirmative duty to obtain and keep in good standing a hazard insurance policy on the Owner's Dwelling Unit in an amount not less than the replacement value thereof and naming the Association as a coinsured thereunder. Each Owner shall deliver a copy of said policy to the Association on the closing date on which an Owner obtains title to a Dwelling Unit and shall deliver evidence of the continued good standing of said policy annually thereafter. An Owner shall have an affirmative duty to promptly repair a Dwelling Unit damaged by a hazard insured against by said policy. In the event an Owner of a Dwelling Unit fails to commence repairs of a Dwelling Unit within Thirty (30) days after funds from said insurance policy are made available for repair, then the Association shall be entitled, but not obligated, to make repairs utilizing the portion of the insurance funds allotted for that Dwelling Unit for such repairs and shall be entitled to levy a special assessment against said Lot or Dwelling Unit for any costs of repairs in excess of the allocated insurance funds. The Association shall have the right, but not the duty, to maintain a master insurance policy on all Dwelling Units which policy, if obtained, shall be paid for from special assessments levied against the Owners by the Association or annual assessments. Said policy shall be with an insurance company chosen by the Association and shall be in an amount sufficient to replace the entire structure or Dwelling Unit (not including interior furnishings and contents) if such loss is caused by the named perils in the insurance policy. The Association shall be the named loss payee on said policy. Proceeds from the policy shall be paid into a special fund to be controlled by the Association for the purpose of reconstructing Dwelling Units. The Association shall be entitled to apportion said funds for reconstruction in the manner it deems necessary.

Section 21. Development Agreement Provision. The Declarant may enter into a "Development Agreement" for the Fiesta Key Planned Unit Development with the city of Kissimmee the provisions of which apply and be a part of the ordinances of this declaration. The following specific provisions from the said document are hereby mentioned specifically for reference.

- (a) The Association is responsible for maintaining Common Areas including at a minimum, stormwater ponds, the recreational facilities, the ground and landscaping and new landscape areas as well as the maintenance of the exterior of the Townhomes, including roof and paint.
- (b) The Association is responsible for maintaining street pavement, curb, and sidewalks.

Section 22. Municipal Service Taxing Units. The Property shall be subject to Municipal Service Taxing Units for drainage and lighting, if established in accordance with law, whether such Municipal Service Taxing Units exist on the effective date of this Declaration or are created in the future at the request of the Declarant. The Declarant reserves into itself and all Owners grant to the Declarant the right to request the formation of Municipal Service Taxing Units for drainage and lighting purposes and to subject the Lots to the taxes or assessments imposed thereby

Section 23. Easement for Lawn Watering System. Declarant reserves unto itself an easement for the establishment, installation and maintenance of a lawn watering system over, upon, under and across any portion of any Lot. This easement shall exist for so long as this Declaration is effective. Declarant shall not be entitled to install said lawn watering system over

any particular Lot in such a manner so as to interfere with the reasonable use of said Lot as a residence. The easement reserved in this Section 23 shall be in addition to and shall not substitute for the easement reserved to the Declarant in Article V.

Section 24. Association Easement over Lots: The Association has a perpetual easement over, under and across all lots that are not covered with Buildings, driveways or concrete patios in order to plant trees, shrubs or any other landscaping materials. Any additions to patios or fences must be approved by ARC.

ARTICLE VIII

COVENANTS AGAINST PARTITION AND SEPARATE TRANSFER OF MEMBERSHIP RIGHTS

Recognizing that the full use and enjoyment of any Lot or Dwelling Unit located in Fiesta Key is dependent upon the right to the use and enjoyment of Common Area and the improvements made thereto, and that it is in the interests of all of the Owners that the right to the use and enjoyment of the Common Area be retained by the Owners of Lots and Dwelling Units, it is therefore declared that the right to the use and enjoyment of any Owner in the Common Area shall remain undivided, and such Owners shall have no right at law or equity to seek partition or severance of such right to the use and enjoyment of the Common Area. In addition there shall exist no right to transfer the right to the use and enjoyment of the Common Area in any manner other than as an appurtenance to and in the same transaction with, a transfer of title to a Lot or Dwelling Unit in Fiesta Key, provided however, that nothing herein shall preclude a conveyance by the Declarant herein of any undivided interest in the Common Area to the Owners of Lots or Dwelling Units within Fiesta Key for the purpose of effectuating the intent of this Declaration.

Any conveyance or transfer of a Lot or Dwelling Unit shall include the right to use and enjoyment of the Common Areas appurtenant to such Lot or Dwelling Unit subject to reasonable rules and regulations promulgated by the Declarant or the Association for such use and enjoyment, whether or not such rights shall have been described or referred to in the deed by which said Lot or Dwelling Unit is conveyed.

ARTICLE IX

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is record owner of a fee simple interest or undivided interest in fee simple in any Lot or Dwelling Unit which is subject to assessment by the Association shall be a Member of the Association; provided, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member. No Owner's tenants shall be Members.

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

Class A. Class A Members shall be every person or entity who is a record owner of a fee simple or undivided fee simple interest in any Lot or Dwelling Unit which is subject by this Declaration to assessment by the Association, excluding the Declarant. A Class A Member shall be entitled to one (1) vote for each Lot or Dwelling Unit owned by such Member and in no event shall more than one (1) vote be cast with respect to any such Lot or Dwelling Unit.

Class B. The Class B Member shall be the Declarant and shall be entitled to nine (9) votes for each Lot owned. The Class B Membership shall terminate and become converted to Class A Membership on the happening of any of the following events whichever occurs earlier:

- (a) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership, or
- (b) On December 31, 2010.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. 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 any of the aforesaid to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severity. Invalidation of any one of these covenants or restrictions by judgment and court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Covenants to Run With the Land. The restrictions and burdens imposed by the provisions and covenants of this Declaration shall constitute covenants running with the land, and each shall constitute an equitable servitude upon the Owner of each Lot and Dwelling Unit and the appurtenant undivided interest in the Common Areas and upon the heirs, personal representatives, successors, and assigns of each Owner, and the same shall likewise be binding upon the Declarant and its successors and assigns. This Declaration shall be binding and in full force and effect for a period of Twenty (20) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive ten (10) year periods. Notwithstanding the foregoing, this declaration shall not be terminated or materially

modified without the written approval of the city of Altamonte Springs.

Section 4. Amendment of Declaration. The Declarant hereby reserves the right to amend, modify or rescind such parts of this Declaration, as it, in its sole discretion, deems necessary or desirable so long as it is a Class B Member of the Association. At such time as the Declarant becomes a Class A Member of the Association as provided in Article IX, Section 2 hereof, this Declaration may be amended by an instrument signed by not less than seventy-five (75%) of the Lot or Dwelling Unit Owners of record; provided that any amendment which would affect the surface water management system, including the water management portion of the Common Area, must have the prior approval of the applicable Florida Water Management District. Any amendment must be recorded.

Section 5. Short-term Rentals. There shall be no prohibitions or minimum time period imposed on the lease or rental of any Lot or Unit. Any provision herein prohibiting business operations shall not be construed to prohibit short-term rentals. All Owners agree and accept that any Unit in the subdivision could be rented daily or with longer terms.

Section 6. Fine on Violations. The Association is authorized to impose fines of up to one hundred (\$100.00) dollars per violation and up to one thousand (\$1,000.00) dollars for a continuing violation of any provision of the Declaration or Rules and Regulations, which may be established by the Association. These fines are enforceable as a lien against the Owner's property. The Board of Directors will adopt the procedures for imposing these fines.

Section 7. Supplements. Declarant may from time to time bring additional property under the provisions hereof by recorded Supplemental Declarations (which shall not require the consent of the existing Owners or the Association, or any mortgagee) and thereby add to and

include as part of the property subject to this Declaration.

NOTHING HEREIN, HOWEVER, SHALL OBLIGATE THE DECLARANT TO ADD TO INITIAL PORTION OF THE PROPERTY, TO DEVELOP ANY SUCH FUTURE PORTION.

Without limiting the foregoing, The additional property may be developed and subjected to uses and restrictions different than the uses and restrictions which are set forth in this Declaration, and nothing contained in this Declaration shall be binding upon any Lot, Parcel or any other portion of the additional property not specifically made a part of the property in accordance with the terms of this Declaration by recording of a Supplemental Declaration in the public records of Osceola County, Florida.

Section 8. FHA/VA Approval. In the event that the Declarant seeks Federal Housing Administration or Veteran Administration approval of the Subdivision Community then as long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veteran Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

Section 9. Covenants Running With the Land ANYTHING TO THEN CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY (AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) THAT THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTY. IF ANY PROVISION OR APPLICATION OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS

AFORESAID, SUCH PROVISION AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER WHICH WILL ALLOW THESE COVENANTS AND RESTRICTIONS TO SO RUN WITH THE LAND; BUT IF SUCH PROVISION AND/OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND/OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THESE COVENANTS AND RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

Section 10. Dissolution of association. In the event of a permanent dissolution of the Association,

(a) All assets of the Association shall be conveyed to a non-profit organization with similar purposes and acceptable to the applicable Water Management District having jurisdiction over the Property or

(b) all Association assets may be dedicated to Osceola County, Florida, or any applicable municipal or other governmental authority to the extent such governmental entity is willing to accept such assets and is willing to assume the Association's obligations arising hereunder. Said successor non-profit organization or governmental entity shall pursuant to this Declaration provide for the continued maintenance and upkeep of the Common Area, including without limitation the surface water management system, the Property and such other Property as may be contemplated herein.

(c) All Association assets may be dedicated to Osceola County, Florida, or any

applicable municipal or other governmental authority.

Section 11. Turnover. The turnover of the Association by the Declarant shall occur at the time specified in the documents which govern the Association. The turnover meeting shall be conducted in accordance with the most recent revision of Robert's Rules of Order. Notwithstanding the foregoing, however, for as long as the Declarant shall own any portion of the Property, it shall have the right to appoint one member of the Board of Directors.

IN WITNESS WHEREOF, Declarant has caused these presents to be executed on the day and year first above written.

Sala, Inc. a Florida Corporation
Hank Sabeti, Director

By:

Hank Sabeti
Hank Sabeti

As Its:

Director

(CORPORATE SEAL)

Witness:

Lewis J. Bauknight
Signature

Lewis J. Bauknight
Printed Name

STATE OF FLORIDA)
) SS.
COUNTY OF ORANGE)

BEFORE ME, the undersigned, a Notary Public in and for the State of Florida, duly commissioned and sworn, personally appeared HANK SABETI, as Director of Sala, Inc. a Florida Corporation who is personally known to me or who produced 7/1/04 as identification, and who acknowledged that he signed and sealed the same on behalf of said corporation as his voluntary act and deed for the uses and purposes therein contained and without taking an oath.

WITNESS my hand and official seal in the County and State aforesaid this 16th day of June, 2004.

(Notary Signature)

Notary Name Printed
NOTARY PUBLIC
Commission No. _____



RONALD SOLON HOWSE
MY COMMISSION # DD 143359
EXPIRES: August 21, 2008
Bonded Thru Budget Notary Services