

RETURN TO:

This instrument prepared by:
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O'HAIRE, QUINN & CANDLER, CHARTERED
3111 Cardinal Drive
Vero Beach, FL 32963

IN THE RECORDS OF
JEFFREY K. BARTON
CLERK CIRCUIT COURT
INDIAN RIVER CO., FLA.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE ESTUARY

THIS DECLARATION is made this 4th day of September, 1997, by THE ESTUARY DEVELOPMENT, LTD., a Florida limited partnership (hereinafter referred to as "Declarant").

W I T N E S S E T H

WHEREAS, Declarant is the developer of THE ESTUARY, a Residential Development in the Town of Indian River Shores, Indian River County, Florida;

WHEREAS, Declarant desires to impose certain covenants, conditions and restrictions on portions of the lands in THE ESTUARY, as specifically set forth herein;

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in the development and to establish consistent aesthetic standards for architecture and landscaping and provide for the maintenance of The Properties (as hereinafter defined) and improvements thereon and to this end desires to subject THE ESTUARY to the covenants, conditions and restrictions and other provisions hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof;

WHEREAS, Declarant has incorporated under the laws of the State of Florida, a homeowners association, THE ESTUARY COMMUNITY ASSOCIATION, INC. (hereinafter referred to as the Association), a nonprofit corporation;

WHEREAS, Declarant may in its sole discretion, from time to time, convey, lease or grant a license, easement or other use right to lands within or without The Properties (as hereinafter defined), to the Association, and the Association must accept the same for the purpose of maintenance, landscaping, drainage, recreation, security or other purposes that will be for the use and benefit of its Members and their families, tenants and guests, as determined by Declarant.

NOW, THEREFORE, Declarant does hereby declare that the properties described in Exhibit "A", attached hereto and incorporated herein by reference together with any and all

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additions as may hereafter be made thereto, is and shall be owned, used and conveyed subject to the covenants, conditions, restrictions, and all other provisions of this Declaration, all as hereinafter set forth, which shall run with the real property and be binding on and inure to the benefit of all parties having any right, title or interest in the properties or any part thereof and their heirs, successors and assigns.

ARTICLE I DEFINITIONS

Section 1.1 "Association" shall mean and refer to THE ESTUARY COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, its successors and assigns.

Section 1.2 "Benefitted Assessment" shall mean and refer to assessments levied against Lots receiving benefits, items, or services not provided to all Lots within the Properties as more particularly described in Article VIII of this Declaration.

Section 1.3 "Common Areas" shall mean and refer to those areas of land shown as common areas or common elements on any recorded subdivision plat of The Properties and improvements thereto or shown on any declaration of condominium including but not limited to any pools, recreation facilities, clubhouses or docking facilities which are designated for the use of all Members of the Association and equipment located thereon, or which are otherwise dedicated, conveyed, leased or for which a license or use right is granted to the Association and which are intended to be devoted to the common use and enjoyment of all or a portion of the Members of the Association. Each Common Area shall be dedicated, conveyed, leased, licensed or have a use right granted to the Association at such time as is provided in the instrument that dedicates, conveys, leases, licenses or grants a use right for such area of land to the Association. It is expressly understood and agreed that areas intended for common use within The Properties described on Exhibit "A" attached hereto and incorporated herein by reference are Common Areas and shall be maintained by the Association.

Section 1.4 "Common Expenses" shall mean and refer to all expenses incurred by the Association in connection with its ownership, maintenance and other obligations set forth herein including but not limited to the obligation to pay on behalf of the Members a pro rata share for the maintenance, repair and replacement of Common Areas, and to pay the assessments that all the Members are required to pay to any association for the purpose of maintaining, replacing and repairing the Common Areas and any other expense of the association.

Section 1.5 "Declarant" shall mean and refer to THE ESTUARY DEVELOPMENT, LTD., a Florida limited partnership and its successors or assigns of any or all of its rights under this Declaration.

Section 1.6 "Lot" shall mean and refer to a platted lot, a platted parcel, a condominium unit together with the undivided share of common elements which is appurtenant to the unit, or any quantity of land, including any fixtures and improvements thereon, capable

of being described with such definiteness that its location and boundaries may be established, and which is designated by Declarant to be used, developed and conveyed as an individual parcel.

Section 1.7 "Members" shall mean and refer to those persons who are entitled to membership in the Association.

Section 1.8 "Neighborhood" shall mean and refer to any sub-area development within The Properties.

Section 1.9 "Neighborhood Assessments" shall mean assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Article VIII of this Declaration.

Section 1.10 "Neighborhood Association" shall mean and refer to any property owners association, condominium association, homeowners association, or other such entity, their successor and assigns for any particular Neighborhood.

Section 1.11 "Owner" shall mean and refer to a record holder of fee simple title to any Lot located within The Properties, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

Section 1.12 "Person" shall mean and include an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

Section 1.13 "The Properties" shall mean and refer to all real property as shown on Exhibit "A" which has become subject to this Declaration together with such other real property as may from time to time be annexed thereto under the provisions of Article III hereof.

Section 1.14 "Resident" shall mean and refer to the legal occupant of any Lot.

Section 1.15 "Residential" shall mean and refer to use of property as a dwelling unit.

Section 1.16 "Street" shall mean and refer to any street, highway or other thoroughfare constructed within THE ESTUARY, whether the same is designated as street, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, walk or other similar designation.

Section 1.17 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional

restrictions and obligations on the land described therein, including additional services to be provided by the Association to the property described in the Supplemental Declaration.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS

Section 2.1 Members

A. Every Owner and the Declarant, so long as they are Owners, shall be members of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to Assessment by the Association.

B. Members' rights, powers, duties, and privileges shall be as set forth in the Articles of Incorporation and Bylaws of the Association, and this Declaration. A copy of the Articles of Incorporation of the Association is attached hereto as Exhibit "C" and incorporated herein by reference and a copy of the Bylaws is attached hereto as Exhibit "D" and incorporated herein by reference.

Section 2.2 Classes of Voting Rights

The Association shall have two classes of voting membership, Class A and Class B. Class A Members shall be Owners, with the exception of the Declarant when it is a Class B Member. The Class B Member shall be the Declarant until such time as the Class B Membership ceases.

Section 2.3 Determination of Voting Rights

The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

A. Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any. Class "A" Members shall be entitled to one (1) equal vote for each Residential Lot in which they hold the interest required for membership under Section 2.1 hereof; there shall be only one (1) vote per Residential Lot. In any situation where more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting.

B. The Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the Bylaws, are specified elsewhere in the Declaration and the Bylaws. The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III, Section A.2 of the Bylaws. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

1. Two (2) years after expiration of the Class "B" Control Period as described in Article III of the Bylaws; or

2. When, in its discretion, the Declarant so determines.

Section 2.4 Multiple Owners of a Lot

When more than one Person holds an interest in any Lot, all such persons shall be Members. The vote of such Lot shall be exercised as they determine, but in no event shall the vote cast with respect to any Lot exceed the number of votes determined for the Lot in accordance with this Articles of the Declaration.

ARTICLE III
DECLARANT'S RIGHTS AND POWERS

Section 3.1 Additions to The Properties

A. Declarant shall have the right and the power, but neither the duty nor the obligation, in its sole discretion, to add to any lands to The Properties by recording an instrument subjecting such additional lands to this Declaration. Notwithstanding any provisions to the contrary, the prior consent of any mortgagee who has only a mortgage on any Lot(s) sold to a third party is not required in order for Declarant to add any lands to The Properties. THE EFFECT OF SUCH AN ADDITION WOULD BE TO ALLOW FOR AN INCREASE IN THE NUMBER OF LOTS, THE NUMBER OF POTENTIAL MEMBERS OF THE ASSOCIATION AND THE TOTAL NUMBER OF VOTES WHICH COULD BE CAST BY MEMBERS OF THE ASSOCIATION.

At the time any additional lands are made subject to this Declaration, Declarant may also record an instrument which:

1. modifies any of the provisions of this Declaration insofar as they may apply to such additional lands only; or

2. creates new provisions applicable only to such additional lands; or

3. omits the applicability of any of the provisions of this Declaration as to any such additional lands; or

4. does any, all, or none of the above.

B. The execution and recordation of this Declaration shall not be construed to require Declarant to subject any additional lands to the covenants, conditions and restrictions or other provisions of this Declaration or any other recorded instrument.

Section 3.2

Common Areas

A. So long as Declarant owns land in The Properties for development or for sale in the ordinary course of business:

1. Declarant may in its sole discretion, set aside, grant a license, or other use right to real property to the Association within or without The Properties for such purposes as may be expressed in the instrument of conveyance or grant of license or use. The Association must accept from Declarant any such conveyance, dedication, grant of license, or grant of use right. No such real property shall be considered to be the Association Common Area until actually so conveyed, dedicated by platting or a grant of license or other use right is created by a written instrument. The written instrument shall also provide when the area(s) of land are dedicated, conveyed, licensed or a use right is granted to the Association.

2. The Association shall not accept from any person other than the Declarant a conveyance, dedication, grant of license, or grant of use right except upon the prior written consent of the Declarant.

3. Declarant shall have the right, and the power, to regulate and control the external design and appearance of Common Areas in such a manner as Declarant deems appropriate as to promote a quality environment which will preserve the value of the Member's Lots and to foster the attractiveness and functional utility of The Properties as a place to live.

4. Any type use of Common Areas shall be subject to the prior written approval of Declarant.

5. Declarant shall have the right in its sole discretion to grant easements, licenses, or use rights for the Common Areas to persons that are not Members of the Association.

B. Prior to any conveyance, dedication or grant of license or other use right by Declarant to the Association of any property, Declarant shall have the right to charge reasonable fees for the use of such property; thereafter, the right to use such property may be subject to reasonable fees and other charges in favor of the Association; in any event, fees and other charges required to be paid to Declarant under the grants, license or contracts creating the use right shall continue to be paid.

C. Any real property conveyed or the use of which has been granted by Declarant or any third party to the Association as Common Area is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of Members, their guests and tenants unless otherwise provided by the Declarant.

D. No nuisance or obnoxious or offensive activity shall be conducted or permitted on any Common Area. So long as the Declarant owns any Lot located in The Properties for

development or for sale in the ordinary course of business, the Declarant shall have the right and the power in the exercise of its reasonable discretion to determine what activities or uses constitute nuisances or obnoxious or offensive activity and thereafter the Association shall make such determination. Nothing shall be done within the Common Areas which may be or become a nuisance to Residents or Members.

E. Neither the execution and recordation of this Declaration, nor the creation of the Association or other entity, nor the recordation of any other instrument subjecting any land in The Properties to protective covenants, and restrictions shall obligate or require Declarant or any other Person to grant any right, power, duty or privilege of any nature or kind to the Association or other entity; or obligate or require Declarant to perform any act permitted under this Declaration or to enforce any covenants, condition, restriction or other provision thereof.

Section 3.3 Neighborhoods/Supplemental Declarations

So long as Declarant owns land in The Properties for development or for sale in the ordinary course of business, Declarant shall have the right and the power, but neither the duty nor the obligation, to amend the specific provisions of this Declaration insofar as they apply to one or more Neighborhoods by the filing of a Supplemental Declaration creating separate or additional conditions or restrictions relating to that Neighborhood.

Section 3.4 Enforcement and Inaction

A. So long as Declarant owns land in The Properties for development or for sale in the ordinary course of business, Declarant shall have the right and power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any Person violating or attempting to violate such provision, to restrain any violation or attempted violation of such provisions, to require performance of such provisions, to recover damages for violations of such provisions, to levy against the land to enforce any lien created by this Declaration or by the provisions of Chapter 617, Florida Statutes, as amended, and to delegate or assign either exclusively or non-exclusively any or all of its rights, powers, duties or privileges hereunder to the Association, or to any Neighborhood Association, or to an Owner, or to any other Person. In the event Declarant expends any sum of money to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration, the Association shall immediately reimburse the Declarant for such expenditure. Failure by Declarant, or by the Association or by a Neighborhood Association or any other Owner or any other Person to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter. After Declarant no longer owns any land in The Properties for development or sale in the ordinary course of business, the Association shall have the right and power to enforce the covenants, conditions, restrictions, and other provisions imposed by this Declaration.

B. The costs and reasonable attorney's fees, including those resulting from any appellate proceedings, incurred by Declarant or the Association in any action against an Owner

to enforce any provisions of this Declaration shall be a personal obligation of such Owner which shall be paid by such Owner and any amount which remains due and unpaid shall be a continuing lien upon Owner's Lot collectible in the manner provided in Article VIII.

Section 3.5 Transfer of Declarant's Rights

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein or in the Association By-Laws, as applicable, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Indian River County, Florida. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Lots owned by the Declarant as models and sales offices, respectively. In addition, so long as the Declarant shall own or lease any portion of the property described on Exhibits "A" or "B" to this Declaration, Declarant shall have an easement of access, ingress, and egress across and over the Properties, including, without limitation the boulevards, streets, alleys, and other Common Areas.

So long as Declarant continues to have rights under this Section, no person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, which consent shall not be unreasonably withheld. Any attempted recordation without compliance with this Article shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Section may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Section shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE IV
ASSOCIATION'S RIGHTS AND POWERS

Section 4.1 Maintenance, Operation and Repair of the Association Property and Common Areas

The Association shall be responsible for maintenance, operation and repair of the following regardless of whether they are Common Areas:

A. The entryway and gatehouse at Fred Tuerk Drive provide an access control point to be operated and maintained by the association;

NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, HOWEVER, AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE ESTUARY ARCHITECTURAL REVIEW COMMITTEE DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ESTUARY ARCHITECTURAL REVIEW COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO

ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

B. All bike paths, streets and crossovers within any portion of The Properties which are not publicly dedicated;

C. The surface water and storm water management systems;

D. The areas, if any, in which entrance signs are placed identifying The Properties and the entrance signs located in such areas;

E. Routine maintenance of the finger canals.

F. Any Common Areas or other areas conveyed, dedicated, or leased to or used by the Association, with any improvements on such Common Areas including landscaping, street lights, lamps and poles, traffic control signs and markings, landscape lighting and electrical service to same, common area irrigation systems, gatehouse, walls, fences and gates and their operators located within common areas.

The aforescribed property shall be maintained and operated in a first class condition. The landscaping throughout the Common Areas shall be consistently maintained by the Association.

Section 4.2 Management of the Association Property and Common Areas

The Association's authority to manage the Association's property and Common Areas shall include:

A. The right to establish rules and regulations governing the use of the Association's property and Common Areas;

B. The right to dedicate or transfer all or any part of Association property and Common Areas to any governmental agency, public authority, or utility;

C. The right to borrow money for the purpose of improving Association property and Common Areas which are to be publicly dedicated but required to be upgraded or maintained by any local, state or federal government agency, and in aid thereof to mortgage the same;

D. The right to take such steps as are reasonably necessary to protect Association property and Common Areas against foreclosure;

E. Subject to the limitations described in Section 5.4, the right to grant easements to all or any part of the Association property and/or Common Areas to any Person.

F. The right and obligation to establish a budget for its fiscal operations and to establish the assessments needed for such fiscal year.

G. The right to enforce the provisions of this Declaration, or any other applicable recorded instrument adopted by the Association, including the Articles of Incorporation and Bylaws of the Association, and any rules and regulations governing use and enjoyment of the Association property and Common Areas adopted by the Association;

H. The right to enter into contracts for the maintenance of the landscaped areas, private canals, roadways and other features and improvements which are part of The Properties.

I. This Article shall be construed to require the Association to manage and maintain the landscaped area in a Neighborhood and the landscaped areas on the Common Areas dedicated to, owned, leased or otherwise under the control of a Neighborhood Association even if such property is solely for the use and benefit of residents of such Neighborhood.

Section 4.3 Insurance

The Association shall maintain insurance on the Association Property and Common Areas of such types, in such amounts and with such companies as the Association Board of Directors deems appropriate. So long as there is a Class B Member, all liability and hazard insurance policies shall name the Declarant as an additional insured.

ARTICLE V
MEMBERS' RIGHTS AND EASEMENTS

Section 5.1 Members' Rights and Easements

Every Member shall have a right of enjoyment, use of and an easement to Association Common Areas, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the rights of Declarant under Article III and the rights of the Association under Article IV.

Section 5.2 Delegation of Right

A. A member may delegate his right of use and easement to Common Areas to the members of his family, to residential tenants who reside on the Member's Lot and to the Member's guests, but only to the extent of and subject to the conditions, limitations and restrictions as may be provided for in the Bylaws and in accordance with the Association's rules and regulations.

B. Each Member shall be responsible for the actions of any Person to whom the Member has delegated his right of use to the Common Areas. Any unpaid charge against such Person shall be charged against such Member personally and be assessed against such Member's

Lot. Any infraction of the Association's rules and regulations by such Person shall be deemed to be an infraction by such Member.

Section 5.3 Easements

The following easements are hereby granted and/or reserved over, across and through The Properties:

A. Easements for installation and maintenance of utilities and drainage systems are granted as indicated on the recorded subdivision plats of The Properties or any plat or Declaration of Condominium pertaining to any Neighborhood property;

B. Easements are hereby reserved throughout the Common Areas, by Declarant for its use and the use of its agents, employees, licensees and invitees including, without limitation, the Streets to be constructed. Notwithstanding any provision in this Declaration to the contrary, it is expressly understood that Declarant shall have the right to dedicate the Streets (or any part of the Streets) to any governmental agency or public authority.

C. Easements are hereby granted to the Association for the purpose of access to each Lot for the purpose of providing necessary maintenance of the Lot as determined by the Association.

Section 5.4 Restriction on Owner Easements

No Owner, except for the Declarant so long as Declarant owns any Lot in The Properties for development or for sale in the ordinary course of business, shall grant any easement upon any portion of The Properties to any Person or entity, without the prior written consent of the Declarant and thereafter without the prior written consent of the Association if the easement has not been previously granted.

ARTICLE VI
COMMUNITY DOCK AREA

Within and adjacent to Recreation Tract F in the Plat of The Estuary, the Declarant intends to (but is not obligated to) construct a "Community Dock" that may include a number of docks / slips / lockers / utilities available for sale or lease to owners at The Estuary. The tract may also include dock facilities, walkways, limited facilities and limited parking for the use and benefit of all owners at The Estuary. The Tract may also include a dock area for Indian River Shores Public Safety Department use. The final design and construction of these facilities will be determined within the sole discretion of the Declarant and will also be subject to applicable Federal, State and Local permit requirements as well as additional reasonable rules, restrictions and regulations.

ARTICLE VII
PHASE II OF THE ESTUARY

The Declarant presently intends to develop a Phase II of The Estuary which property is included within the description of Exhibit B to this Declaration. The maximum number of units to be located within Phase II will be 45. Phase II owners, their guests, invitees and employees shall at all times have a nonexclusive easement of access and use over all roadways located within The Properties and shall also have rights in Common Areas including the Community Dock on the same basis as Owners in the first phase of The Estuary.

ARTICLE VIII
ASSESSMENTS

Section 8.1 Creation of the Lien and Personal Obligation

Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association initial working capital assessments, if any, regular assessments, benefitted assessments, neighborhood assessments and special assessments for capital improvements.

A. The initial working capital assessment, if any, regular, benefitted and special assessments, together with interest and costs of collection, including reasonable attorney's fees, which includes those resulting from any appellate proceedings, shall be a continuing lien upon the Lot against which such assessment is made.

B. The initial working capital assessment shall be determined by the Board of Directors of the Association. The Board of Directors of the Association shall from time to time establish a budget for its fiscal operations and shall determine whether the regular assessments for such fiscal year shall be payable in either monthly or quarterly payments. The Board of Directors of the Association may provide that special assessments be payable in accordance with a schedule therefor established by the Board of Directors of the Association. Each Lot (except as provided in Sections 8.1.C and 8.2) shall be assessed an equal portion or share of all regular assessments and special assessments for capital improvements imposed on The Properties. Such assessment shall be fixed, levied, established and collected as provided in the Bylaws of the Association.

C. The Board of Directors of the Association shall have the power, by means of a benefitted assessment or neighborhood assessment, specifically to assess Lots receiving benefits, items, or services not provided to all Lots within the Properties. Expenses of the Association (1) that are incurred for specific items or services relating to the Lot, or (2) that are incurred by the Association pursuant to this Declaration, a Supplemental Declaration, or the Bylaws for providing specific items or services relating to or benefitting Lots within a block or Neighborhood shall be specifically assessed against the Lots benefitted, in the amount of the cost

of the benefit received or according to the method of equitably assessing the Lots set forth in this Declaration or the Bylaws.

D. Each such assessment, together with interest and costs of collection, including reasonable attorney's fees, which includes those resulting from appellate proceedings, shall also be the personal obligation of the Person who was the Owner of the Lot at the time such assessment fell due, and shall also be the personal obligation of each Person who subsequently becomes the Owner of the Lot. Each Owner, by the acceptance of a deed for a Lot, personally covenants and agrees to pay any such obligation falling due prior to or during the time of his ownership and such personal obligation shall survive any conveyance.

E. Delinquent assessments shall bear interest at the maximum rate allowed by law from the date when due until paid.

F. The lien of Assessments shall be considered a restriction and servitude running with the land.

G. In the event that a Lot has been submitted to a plan of condominium ownership or to a property owners association, or to another such entity, then the Association thereof shall have the duty and responsibility for collecting and timely remitting to the Association any and all Association assessments and other charges, provided, however, the Association may, in its sole discretion, elect to collect due and unpaid Association assessments and other charges directly from any Owner personally and may impose a lien against such Owner's Lot for the payment of such assessments and charges which are due and unpaid.

Section 8.2 Declarant's Duties and Obligations

For any assessment year, the Declarant may elect, in lieu of paying the assessments described in 8.1 above, to pay the following:

A. The portion of the actual expenses, less any provisions for reserves, that do not exceed budgeted amounts and which were properly incurred by the Association during that year which is greater than the sum of assessments for that year by Owners other than Declarant, or

B. Such amount as it would otherwise be obligated to pay if it had been subject to the assessment for that year on those Lots within The Properties of which it is the Owner.

Section 8.3 Lien

A. If any assessment, or any installment thereof, is not paid within sixty (60) days following the due date, the Association may declare the entire assessment immediately due and payable. The Association may at any time thereafter record in the Public Records a Claim of Lien against the Lot for which the assessment was due and bring an action to foreclose the lien

in the same manner in which mortgages on real property are foreclosed. The Association may also bring an action at law against an Owner to pay his personal obligations to the Association.

B. The Claim of Lien shall include a description of the property encumbered, the Owner's name, the amount then due and the date when due.

C. No Owner may waive or otherwise escape liability for the payments provided herein by nonuse or abandonment of his Lot.

Section 8.4 Priority and Extinguishment of the Lien

A. The lien herein created is specifically declared to be subordinate and inferior to the lien and operation of any first mortgage encumbering the Lot in question given by the Owner to an institutional mortgagee unless a Claim of Lien is recorded prior to said mortgage. For the purpose of this section, an institutional mortgagee shall be a bank, savings and loan association, insurance company, union pension fund or any agency of the United States government, or any Person given a mortgage insured by the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association, or any branch or agency of the United States government or the government of the State of Florida.

B. In the event the lien herein created is extinguished by the sale or transfer of a Lot pursuant to a foreclosure of a first mortgage, such delinquent assessments which were extinguished may be reallocated and assessed to all of the Lots in The Properties. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of any Lot from liability for, nor the Lot from the lien of, any assessments arising thereafter.

C. The lien herein created is specifically declared to be superior to any lien created by any Neighborhood Declaration or imposed by any Neighborhood Association.

ARTICLE IX
ARCHITECTURAL STANDARDS

Section 9.1 Plans, Specifications and Locations of Structures

A. No structure shall be commenced, erected, improved or altered, nor shall any grading, excavation, tree removal or change of exterior color or other work which in any way alters the exterior appearance of any structure or Lot or of any Common Area be done without the prior written approval of the ESTUARY ARCHITECTURAL REVIEW COMMITTEE ("EARC").

B. The EARC may establish and, from time to time, modify standards for the control of the design of all structures and other work within THE ESTUARY which standards shall be known as the ARCHITECTURAL CONTROL AND DESIGN REVIEW STANDARDS.

S U I C R I C C

C. Each Owner shall, prior to the commencement of any construction, submit to the EARC documents such as design proposals and construction plans and specifications which are sufficient and definitive in detail so that there can be determined the character, exterior elevations, appearance, materials and colors, floor plans, and the quality and kind of building and landscape materials proposed. The EARC shall, in writing, after receipt of such submittal, approve, reject or approve, subject to change, such plans, proposals and specifications as are submitted to it as required above. Failure to obtain written approval of The EARC of all such plans, proposals and specifications prior to the commencement of any construction or failure to comply with the terms of the approved plans, proposals and specifications, shall be deemed a material breach hereof and the Board of Directors, on behalf of the Association, shall then have the right, in addition to any other right permitted by law or in equity, to proceed in the courts to obtain a mandatory injunction requiring any construction done without said written approval or not in accordance with such written approval to be torn down or removed forthwith.

D. The approval, rejection or withholding of any approval by EARC of plans, proposals and specifications and the location of all structures, and every alteration of any structure shall not be construed or interpreted as a representation or determination by the EARC that any building, plumbing, electrical code or other applicable governmental regulations or requirements have or have not been properly met by the Owner. Each Owner shall be responsible for obtaining all necessary technical data and to make application to and obtain the approval of the Town of Indian River Shores, Indian River County and any other appropriate governmental agencies prior to commencement of any work or construction.

E. The EARC shall have no duty, responsibility or liability to any Owner or to any other person whomsoever in respect to the exercise of its rights or the failure to exercise its rights. The EARC may reject plans, proposals and specifications based on any grounds, in its sole and absolute discretion. The EARC's decision to approve, reject or withhold its approval of such work may, in the sole exercise of its discretion, be based upon:

1. the harmony of exterior design, color and location in relation to, and its effect upon, surrounding structures, vegetation, topography, and the overall community design;
2. the character of the exterior materials;
3. the planned quality of the exterior workmanship;
4. The EARC's design and construction standards; or
5. any other material and relevant factors.

F. Declarant shall retain control over the EARC until all Declarant properties have been sold or until Declarant assigns this right of control to the Association by a written document.

Section 9.2 Colors

No exterior colors on any structure shall be permitted that, in the sole judgment of the EARC, would be inharmonious or incongruous with The Properties or a particular Neighborhood. Any further exterior color changes desired by Owner must be first approved in writing by the EARC in accordance with Section 9.1.

Section 9.3 Factory-Built Structures

No structure of any kind that is commonly known as "factory-built," "modular," or "mobile home" type of construction or metal sheds shall be erected without the prior written permission of the EARC.

Section 9.4 Landscaping

All landscaping shall be accomplished in accordance with a plan approved by the EARC and in accordance with the Recommended Landscape Plant Palette.

ARTICLE X
USE RESTRICTIONS

Section 10.1 Use Restrictions

Except as otherwise noted herein, these use restrictions apply to all Lots in The Properties.

A. So long as Declarant owns any Lot in The Properties for development or for sale in the ordinary course of business, Declarant may permit one or more Lots to be used or maintained as a sales and/or leasing office and/or construction office or for model homes, and/or parking for same. Declarant, or other party, with Declarant's consent, may operate a commercial real estate sales business or construction development business out of said office. No other commercial activity or professional business shall be permitted on any Lot without the prior consent of Declarant so long as Declarant owns any Lot in The Properties for development or for sale in the ordinary course of business and thereafter without the prior consent of the Association. It is expressly understood and agreed that Declarant, in its sole discretion, may permit one or more of the Lots to be used for commercial activity or as a professional business.

B. Notwithstanding Paragraph A above, a portion of the land in The Properties may be used as the temporary location of a sewage treatment plant and oxidation/evaporation pond or drainfield. Such use shall not be deemed in conflict with or in violation of this Declaration.

C. No dwelling unit may be sold or used on a "time share" basis.

Section 10.2 Vehicles

All vehicles must have a current license plate and registration. All vehicles must be parked either in the driveways (if any), the garages (if any), or parking lot (if any) provided for such Lot. No vehicles may be placed on blocks for the purpose of repairing said vehicles.

Section 10.3 Underground Utility Lines

All electric, telephone, gas and other utility lines must be installed underground.

Section 10.4 Antennas and Flagpoles

No outside antennas, antenna poles, antenna masts, satellite television reception devices, electronic devices, antenna towers or citizen band (CB) or amateur band (ham) antennas shall be permitted except as approved in writing by the EARC. A flagpole for display of the American flag or any other flag shall be permitted if first approved in writing by the EARC. Both its design and location must be first approved in writing by the EARC. An approved flagpole shall not be used as an antenna.

Section 10.5 Temporary and Accessory Structures

No tents, metal sheds, or temporary structures shall be permitted unless their size, appearance and temporary location on the Lot have first been approved in writing by the EARC. Any signs to be used in conjunction with any tent, metal shed or temporary structure must also be approved in writing by the EARC. Adequate landscaping shall be installed by the Owner around any temporary structure in sufficient density so that it shall not be readily visible from any adjacent Street or properties. No accessory structure shall be permitted except with the prior written approval of the EARC.

Section 10.6 Outdoor Equipment

All garbage and trash containers, bottled gas tanks, air conditioning equipment, pool heaters, swimming pool equipment, housing and sprinkler pumps and other such outdoor equipment must be either placed underground, walled-in or placed in sight-screened or fenced-in areas so that they shall not be readily visible from any adjacent Streets or Lots or adequate screening landscaping shall be installed around these facilities and maintained by the Owner. In no event shall gasoline or other hazardous materials, as defined by any state or federal regulation or judicial interpretation thereof, excluding home heating fuels other than heating oil, and excluding gasoline cans for lawn mowers, be stored on any of the Lots.

Section 10.7 Air Conditioning and Heating Equipment

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

Section 10.8 Solar Collectors

The EARC shall approve the location of, color and materials used in the construction of solar collectors.

Section 10.9 Signs

No signs, freestanding or otherwise installed except for identification signs for any Neighborhood, shall be erected or displayed on any Lot or structure, unless the placement, character, form, size, lighting and time of placement of such sign is first approved in writing by the EARC. All signs must also conform with governmental codes and regulations and with any master design plans for signs established by the EARC. Declarant and/or the Association shall have the right to remove any unapproved sign.

Section 10.10 Walls, Fences and Shutters

No wall or fence shall be constructed on any Lot until its height, design and location shall have first been approved in writing by the EARC. The height of any wall or fence shall be measured from the existing property elevations. Any dispute as to height, length, type, design, composition or material shall be resolved by the EARC, whose decision shall be final. Hurricane or storm shutter may only be used on a temporary basis, unless approved by EARC.

Section 10.11 Lighting

All exterior lighting of a Lot shall be accomplished in accordance with a lighting plan first approved in writing by the EARC.

Section 10.12 Clothes Drying Area

No outdoor clothes drying area shall be allowed unless first approved in writing by the EARC and such clothes drying area must be placed in sight-screened or fenced-in areas so they shall not be readily visible from any adjacent Street of Lots.

Section 10.13 Trucks, Commercial Vehicles, Recreation Vehicles, Mobile Homes, Boats, Campers and Trailers

A. No Commercial vehicle of any kind shall be permitted to be parked on a Lot for a period of more than four (4) hours unless such vehicle is necessary in the actual construction

or repair of a structure or for ground and landscape maintenance or is used in connection with a Lot in which commercial activity is permitted.

B. All commercial trucks, commercial vehicles, recreation vehicles, mobile homes, boats, campers and trailers shall be kept in garages. Vans, recreation vehicles, or boats and trailers may be kept outside overnight on a temporary basis not to exceed twelve (12) hours. "Truck", as used herein, is defined as a commercial vehicles, and does not include small pick ups, customized vans, and other such vehicles which contain no commercial identification and are customarily used for personal transportation and not business use. "Commercial vehicle" includes, but is not limited to, any truck or van which displays a company name identification or logo on its exterior.

C. None of the aforementioned vehicles shall be used as a domicile or residence, either permanently or temporarily.

D. Paragraphs A through C shall not be deemed to prohibit any temporary facility permitted pursuant to Sections 10.1.A and 10.5.

Section 10.14 Pets and Animals

Commonly accepted household pets such as dogs, cats, rabbits and birds may be kept in reasonable numbers as determined in the sole judgment of Declarant as long as Declarant is a Class B Member and then as determined by the Association. All animals shall be contained on the Owner's Lot and shall not be permitted to roam freely or permitted to be a nuisance. All such animals shall be licensed by the appropriate state or local authorities. Commercial activities involving pets shall not be allowed. Any animal violating such provision may be removed by the Association and/or Declarant.

Section 10.15 Nuisances

Nothing shall be done which may be or may become an annoyance or nuisance to any person. No obnoxious, unpleasant or offensive activity shall be carried on, nor shall anything be done, which can be reasonably construed to constitute a nuisance, public or private in nature. Any question with regard to the interpretation of this Section shall be decided by the Declarant as long as it owns any Lot in The Properties for development or for sale in the ordinary course of business and thereafter by the Association, whose decision shall be final.

Section 10.16 Lampposts, Building Designation and Mailboxes

The form, size, character and placement of all lampposts, and mailboxes and the method of designating buildings must be first approved by Declarant as long as Declarant owns any Lot in The Properties for development or for sale in the ordinary course of business and thereafter by the Association. Declarant and/or the Association shall have the right to remove any unapproved lamppost, building designation and/or mailbox and/or building designation.