

Prepared by and Return To:
David G. Larkin, Esq.
Fallace & Associates, P.A.
1900 S. Hickory Street
Melbourne, Florida 32901



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Scott Ellis

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DECLARATION OF COVENANTS AND RESTRICTIONS FOR CANARY ISLES

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF CANARY ISLES (the "Declaration") is made this 26th day of January, 2001, and contains certain covenants and restrictions made by the Canary Isles, Ltd., a Florida Limited Partnership (the "Developer").

DEVELOPMENT PLAN

Canary Isles, Ltd., is a Florida Limited Partnership, and is the owner of that certain parcel of property identified on Schedule "2.9", attached hereto and as otherwise identified on the Plat for Canary Isles subdivision, as recorded at Plat Book 46, Page 51 of the Public Records of Brevard County, Florida (the "Plat"). Developer intends to develop the land as a private subdivision for construction of single family detached homes with a gated entranceway and private street ending in a cul-de-sac, along with open spaces, sanitary sewer and drainage and water services (the "Subdivision"). The Developer anticipates that there will be a total of 22 Lots within the Subdivision and the Developer intends to and does subject the property identified in Schedule 2.9, attached hereto as and identified in the Plat. This Declaration shall be enforced by an overall homeowner's association ("Association"). Each owner of a lot, or parcel of real property in the Subdivision and subjected to these Covenants shall be a member of the Association. At the time of its development, the Subdivision will be subjected to use restrictions and architectural controls and other covenants in this Declaration. These use restrictions and controls are contained in this Declaration of Covenants, Conditions and Restrictions, and in the Plat for the Subdivision.

PURPOSE OF THIS DOCUMENT

The purpose of this document is to subject the Property which is described in Schedule 2.9, attached hereto, to the covenants and restrictions contained in this Declaration. For purposes of this Declaration the term "Property" shall mean the property identified on Schedule 2.9 attached hereto and on the Plat and all property subsequently annexed and made subject to and encumbered by this Declaration.

Developer declares that all real property subject to this Declaration by recorded instrument shall be conveyed and occupied subject to all matters set forth in this Declaration. These Covenants shall run with title to the Property and shall be binding upon the Developer and upon all parties acquiring any right, title or interest in or to the Property upon annexation hereunder after the recording of these Covenants in the Public Records of Brevard County, Florida and after such property is subjected to this Declaration.

ARTICLE 1 MUTUAL BENEFITS AND OBLIGATIONS

The Covenants contained in this Declaration are for the purpose of protecting the value and desirability of the Property and made for the mutual benefit of each and every owner of a parcel of property or Lot within the Property. They are intended to be nondiscriminatory. They are also intended to create enforceable rights and obligations in favor of and against each Lot and its owner for the purpose of protecting and ensuring the aesthetic nature and appearance of the Property and its value. Each owner, his or her family, friends, guests, tenants and invites shall comply with the provisions of these Covenants while present within the Property.

ARTICLE 2 DEFINITIONS

In addition to any terms defined in and throughout this Declaration, the following words when used in this Declaration shall have the following meaning:

- 2.1 "Association" or "Subdivision Association" shall mean and refer to the homeowner's association created pursuant to Chap. 617, Fla. Stat., as of the date of recording of this Declaration, and any amendment thereto, to manage and maintain common areas and common property owned by the Associations for which they are created and to enforce covenants and restrictions herein.
- 2.2 "Board of Directors" or "Board" shall mean the Board of Directors of the Association.
- 2.3 "Common Property" or "Common Area" shall mean any and all real property (including improvements thereto) owned by the Association, which is intended for the common use and benefit of all owners and which is to be deeded to the Association at the time that the control of the Association is turned over to the owners.
- 2.4 "Declarant" or "Developer" shall mean and refer to Canary Isles, Ltd., a Florida Limited Partnership, and its successors and assigns. The Declarant may assign all or a portion of its rights hereunder. In the event of a partial assignment, the assignee shall be deemed the Declarant and may exercise such rights of the Declarant specifically assigns to it. Any such assignment may be made on a non-exclusive basis.
- 2.5 "Institutional Lender" shall mean a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, agency of the United States Government, mortgage banker or company, Federal National Mortgage Association, the Declarant or any affiliate of the Declarant or other lender generally recognized as an institutional type lender, which holds a mortgage on one or more of the Lots.
- 2.6 "Lot" shall mean each lot or plot of land shown on any plat of the whole or portion of the Property, regardless of whether a dwelling has been constructed on such Lot, with the exception of the Common Property, Common Areas, and/or road right-of-ways if dedicated to a public authority or the Association.
- 2.7 "Owner" shall mean each person who owns record title to a Lot or parcel of property within the Property, including contract sellers, but excluding those that have such interest merely as security for performance of an obligation. A "Contract Seller" is any owner who sells a Lot or parcel of property under a contract for deed, agreement for deed, or other similar instrument by which such Owner retains record title until the full purchase price or consideration is paid.
- 2.8 "Person" shall mean and include an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, sole proprietorship, joint venture, two or more persons having a joint or common interest, or any other legal entity.



- 2.9 "Property" or "Properties" shall mean and refer to that certain real property described in Schedule 2.9 attached hereto and in the Plat and in the Development Plan and Purpose sections of this Declaration and such additions thereto as may be brought within the jurisdiction of the Association and under the covenants and restrictions of this Declaration.
- 2.10 "Subdivision" shall mean those portions of the Property that are platted under the name Canary Isles by plat or plats designated as a Subdivision, and all other property subject to these Covenants by the Developer or otherwise annexed as provided herein.
- 2.11 "Surface Water" or "Stormwater Management System" shall mean a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C.

ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

- 3.1 Every Owner of a Lot or portion of the Property, which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.
- 3.2 The Association shall have two classes of voting Membership:
- Class A: Class A members shall be all owners, with the exception of the Declarant, of any plot of land shown upon any recorded plat of the Property ("Lot" or "Lots"). Each Class A member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, each such person shall be a member, however, the vote for such Lot shall be exercised as they collectively determine, and in no event shall more than one vote be cast with respect to any Lot.
- Class B: The Class B member shall be the Declarant (as defined in the Declaration), who shall be entitled to five (5) votes for each Lot owned. Unless converted earlier and voluntarily by the Declarant, the Class B membership shall cease and be converted to Class A membership upon the first to occur of either of the following events:
- (a) the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
 - (b) fifteen (15) years from the date of the original recording of the Declaration in the public records of Brevard County, Florida; or
 - (c) at the election of the Declarant (whereupon the Class A Members shall be obligated to elect the Board of Directors and assume control of the Corporation).
- 3.3 **General Matters.** When reference is made herein, or in the Articles of Incorporation, Bylaws, rules and regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members and not of the Members themselves.



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ARTICLE 4
PROPERTY SUBJECT TO THIS DECLARATION AND
ADDITIONS TO THE PROPERTY

- 4.1 **Property Subject to Declaration.** Upon the recording of this Declaration, Declarant shall subject the Property identified in Schedule 2.9, attached hereto, to this Declaration. The Property is, and shall be held, transferred, sold, conveyed and occupied, subject to the terms, provisions and covenants within this Declaration.
- 4.2 **Annexation Without Association Approval.** The Developer may from time to time bring, in whole or in part, such additional real property under the provisions hereof by recording supplemental declaration or declaration of annexation in the public records of Brevard County, Florida, which shall not require the consent of the existing Owners, or the Association, or any mortgagee or the Federal Housing Administration or Veterans Administration. The additional lands annexed in accordance with the provisions hereof shall become subject to the provisions of this Declaration upon the recording in the Public Records of Brevard County, Florida a declaration of annexation properly executed by the Developer and without the consent of the members of the Association. Until such amendment or declaration of annexation is recorded, no provision of this Declaration shall be effective as to any other such real property, nor shall this Declaration constitute a cloud or encumbrance on the title to any such other real property.
- 4.3 **Additions or Modifications.** Such amendments or supplements to the Declaration may contain such complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of any parcels of real property annexed pursuant to this Declaration which is the subject of such amendments or supplements to the Declaration, and which are not inconsistent with the scheme of this Declaration, as determined by the Developer. Further, such amendments or supplements to the Declaration may contain provisions relating to such real property, dealing with, among other things, assessments and the basis thereof, rules and regulations, architectural controls and other provisions consistent with the nature of the development of such property and pertaining to all or part of such property to the exclusion of the other portions of the Property which may be subject to this Declaration.
- 4.4 **Platting.** As long as there is a Class B membership, the Declarant shall be entitled, at any time and from time to time, to plat and/or replat all or any part of the Property and to file subdivision restrictions and/or amendments thereto with respect to any of the Property or portions of the Property without the consent or approval of an Owner.
- 4.5 **Amendment.** As long as there is a Class B membership, the provisions of this Declaration cannot be amended without the written consent of the Declarant and any amendment of this Declaration without the written consent of the Declarant shall be deemed null and void.
- 4.6 **Recordation.** Upon each commitment of additional real property to this Declaration, a recordation of such additions shall be made as a supplement to this Declaration in the Official Records of Brevard County, Florida, such real property described therein shall be committed to the covenants contained in this Declaration and shall be considered "Property" as fully as though originally designated and defined herein as the Property.
- 4.7 **Merger.** Nothing in these Articles is intended to limit or restrict in any way the Association's rights or ability to merge with any other association as the Board may feel is in the best interests of the Association and its Members. Upon a merger or consolidation of the Association with another association, all Common Areas, rights and obligations shall by operation of law, be transferred to the surviving or consolidated association or, alternatively, the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants by this Declaration within the Property together with the covenants and restrictions established by any supplement upon any other properties as one scheme. No such merger or consolidation, however, shall

cause a revocation, change or addition to the covenants in the Declaration as it pertains to the Property, except as provided herein.

ARTICLE 5 ASSOCIATION ASSESSMENTS

- 5.1 **General Purpose.** The Association is organized for the purpose of providing common services to lot owners, owning and maintaining the lake retention areas and grounds dedicated and conveyed to the Association, landscaping on Common Property, entrance signs, gates and lights on the Common Property and private roadways dedicated and conveyed to the Association, and providing for the enforcement of the Declaration, and engaging in activities for the mutual benefit of the Owners. All Lot Owners are members of the Association. Provisions relating to the Association are contained in the Articles of Incorporation and Bylaws of the Association. The initial services to be provided by the Association are: maintenance of Common Property, insurance on Common Property, entrance sign gate and sign maintenance, maintenance of streets, and lighting for streets, maintenance of water retention areas, surface or storm water retention areas and drainage areas. In the event of a conflict between the Articles, Bylaws and this Declaration, the Declaration shall govern and control.

The Association shall be responsible for the maintenance, operation and repair of the Stormwater Management System as provided herein. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other Stormwater Management System capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the Stormwater Management System shall be as permitted, or if modified, as approved by the St. Johns River Water Management District. The St. Johns River Water Management District shall have the right to enforce by a proceeding at law or in equity the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Stormwater Management System. Any amendment to the Declaration which alters any provision relating to the Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have the prior approval of the St Johns River Water Management District.

The Association shall have the right to increase or reduce the level of services it provides and to add or delete services by affirmative vote of the Members in accordance with the Bylaws of the Association; except that, the Association shall be responsible for the maintenance, operation and repair of the portion of the Surface Water or Stormwater Management Systems, including but not limited to work within the retention areas, drainage structures and drainage easements, to be maintained by it and shall not delete, reduce or modify any services related to the Storm Water Management System without prior approval of the St. Johns River Water Management District. In order to pay for these services, the Association shall charge assessments against the Lots and their owners (other than Lots owned by the Developer). Except as otherwise provided herein, each Owner (except the Developer) is personally obligated for assessments which come due during the time such Owner owns the Lot.

5.2 **Enforcement of Assessments.**

- 5.2.1 **Personal Obligation.** Except for limitations herein as to the Developer, each Owner is personally responsible and liable for assessments which become due during the time such Owner owns the Lot. The personal obligation of an Owner for assessments shall not pass to such Owner's successors in title unless assumed by them and upon the purchase of a Lot, that Owner shall become personally obligated for assessment due on a Lot which have not been paid or collected at Closing and for all assessments which become due thereafter.
- 5.2.2 **Lien.** All Lots or parcels of Property subject hereto, except those held by the Developer for resale (improved or unimproved), are subject to a continuing lien to secure unpaid assessments due to the Association in accordance with the provisions of these covenants, whether or not the deed to the Lot refers to these covenants. This continuing lien also secures interest on unpaid assessments and the



cost of collecting unpaid assessments, including reasonable attorney's fees, whether or not an action is brought. Notice of the lien shall be given by recording a claim of lien in the Public Records of Brevard County, Florida, stating the Lot description, the name of the record owner, the amount due and the due date. A claim of lien may be filed against a Lot (other than Lots owned by the Developer) for unpaid assessments after conveyance of the Lot. The Association shall, without charge, on written request of any owner or the mortgagee of any owner, furnish a certificate in recordable form signed by an officer or duly authorized agent of the Association which sets forth the assessments levied against an owner and the Owner's Lot and whether the assessment has been paid. A properly executed certificate shall be binding on the Association as of the date of its issuance. The lien shall remain in effect until all sums due to the Association have been fully paid.

- 5.3 **Annual Assessments.** The Association shall fix the amount and due date of the annual assessment, the periods of collection, whether annually, semi-annually, quarterly or monthly. Initially, annual assessments shall be payable annually. The Board of Directors shall notify the Owners of each Lot in writing of the amount and the date on which the assessments are payable and the place of payment. Annual assessments shall be uniform. The initial annual assessment for the first fiscal year shall be Four Hundred and No/100 Dollars (\$400.00). Additionally, upon the conveyance of a Lot to an Owner, other than the Developer, the Owner shall pay, at Closing of such Lot, an initial start-up fee to the Association of Four Hundred and No/100 Dollars (\$400.00).
- 5.4 **Date of Commencement of Annual Assessments.** Annual and special assessments for each Lot (other than Lots owned by the Developer) or parcels of real property subject to this Declaration shall become due, owing and begin to accrue, only upon conveyance of the Lot to a Class A member who is not the Developer and as to Lots or parcels owned by the Developer, thirty (30) days after the date Class B voting rights are converted to Class A voting rights. The first annual assessment for each Lot shall be made for the balance of the fiscal year of the Association. The first annual assessment shall be due and payable in advance in the installments and at the place established by the Association at the time of such conveyance. ALL PROPERTY EXCEPT THAT WHICH IS LEGALLY PLATTED INTO INDIVIDUAL LOTS AS PER A RECORDED PLAT OF A SUBDIVISION SHALL BE EXEMPT FROM ASSESSMENTS (SPECIAL OR ANNUAL). FURTHERMORE, UNTIL SUCH TIME AS THERE IS NO CLASS B VOTING RIGHTS, ALL PROPERTY OWNED BY THE DEVELOPER, IN THE ORDINARY COURSE OF BUSINESS, INCLUDING INDIVIDUALLY PLATTED LOTS, SHALL BE EXEMPT FROM ASSESSMENTS, HOWEVER, THE DEVELOPER WILL PAY ALL COSTS INCURRED BY THE ASSOCIATION IN ACCOMPLISHMENT OF THE PURPOSES IDENTIFIED IN SECTION 5.1 HEREIN, IN EXCESS OF THE TOTAL AMOUNT COLLECTED BY THE ASSOCIATION THROUGH ALL ASSESSMENTS.
- 5.5 **Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to any Owner other than the Declarant, the maximum annual assessment to be charged by any Owner other than the Declarant shall not exceed \$400.00 per Lot.
- 5.5.1 From and after January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment may be increased each year by a maximum of ten percent (10%) above the maximum assessment for the previous year unilaterally by the Board of Directors without approval by a vote of the Membership.
- 5.5.2 From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, to increase the maximum annual assessment by more than ten percent (10%), 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 that purpose, must occur.
- 5.5.3 The Board of Directors may fix the Annual Assessment at any amount not in excess of the maximum provided herein.



- 5.6 **Special Assessments.** In addition to the Annual Assessments, the Association may levy a special assessment to pay in whole or in part for the cost of any major construction, reconstruction, repair or replacement of a capital improvement owned by the Association or repair any privacy walls without concurrence of the owners. A major repair is a repair made to an existing capital improvement which exceeds Ten Thousand and No/100 Dollars (\$10,000.00) and the useful life of which is greater than one (1) year. Replacement of a capital improvement means any replacement of an existing capital improvement.

The Association may also levy or collect a special assessment to acquire a new capital improvement or for any other purpose (other than major repair or replacement of a capital improvement) if the special assessment is approved by a vote of two-thirds (2/3) of the votes of each class of the Members of the Association.

- 5.7 **Classes of Special Assessments.** There are two (2) classes of Lots for special assessment purposes:

5.7.1 Class I: All Lots which have a home constructed thereon which has been issued a certificate of occupancy.

5.7.2 Class II: All Lots which are not Class I Lots.

Special assessments for each class shall be uniform. Special assessments for each Class II Lot shall not be more than twenty-five (25%) percent of the assessment for Class I Lots.

- 5.8 **Effect of Non-Payment of Assessment; Remedies of the Association.** Any assessment not paid within fifteen (15) days after the due date shall bear interest from the date due at the rate of eighteen percent (18%) per annum or the highest rate allowed under the laws of the State of Florida, whichever is less, until paid in full. The Association may bring an action against the owner of the Lot for payment of the assessment and may enforce its lien for the assessment by foreclosure or any other means available under the law. The Association may waive payment of late fees and interest on an assessment, but may not waive payment of the assessment. No member may waive or otherwise escape liability for assessments by non-use of Common Property or by abandonment of the Lot owned by such owner. The Association shall be entitled to collect its costs, expenses and attorney fees in any action taken by the Association, including recording of a lien, and whether litigation is filed or not, to collect any amounts due herein or to otherwise enforce this Declaration.

- 5.9 **Subordination of the Lien to Mortgages.** The lien of the assessments provided for in this Declaration shall be a lien superior to all other liens less and except real estate tax liens and the lien of any mortgage to any Institutional Lender which is now or hereafter placed upon any property subject to assessment as long as said mortgage lien is a first lien against the property encumbered thereby provided, however, that any such mortgagee, when in possession, or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this section shall be deemed to be an assessment divided equally among, payable by and a lien against all Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Notwithstanding any contrary provision hereof, no Institutional Lender acquiring title to a Lot through foreclosure or conveyance in lieu of foreclosure, and no purchaser at a foreclosure sale, and no persons claiming by, through or under such Institutional Lender or purchaser, shall be personally obligated to pay assessments that accrue prior to the Institutional Lender's or the foreclosure purchaser's acquiring title. In the event that the Association has claims or liens upon any Lot paid assessments or charges, the Association's lien or claim shall have priority.

- 5.10 **Damage by Owners.** The Owner of a Lot, shall be responsible for any expense incurred by the Association to maintain, repair or replace Common Property which is necessary by reason of the Owner's carelessness, neglect or willful action or by that of the Owner's family, his guests, agents, tenants or invitees. Any such



expense shall be a part of the assessment to which the Owner's Lot is subject and shall be due any payable in the same manner as assessments provided for in these Covenants.

ARTICLE 6 OWNER'S RIGHTS

- 6.1 **Right to Use Common Property.** Each Owner and members of such owner's family residing with the Owner or the tenant of a non-resident owner has the non-exclusive right to use Common Property for the purpose for which it is intended, which shall be appurtenant to and shall pass with title to the Lot owned by the Owner, subject to the following provisions:
- 6.1.1 The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon Common Area;
 - 6.1.2 The right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against the Owner's Lot remains unpaid or for a continuing violation of this Declaration, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
 - 6.1.3 The right of the Association to mortgage the Common Area or dedicate or transfer all or part of the Common Area to any homeowners association, public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such mortgage, dedication, or transfer shall be effective unless an instrument agreeing to such mortgage, dedication or transfer approved by two thirds (2/3) of each class of Members has been recorded.
- 6.2 **Utilities.** Each Owner shall have access to the underground utility lines, lift and pumping stations, pipes, sewers and drainage lines constructed in the roads or other easements as shown on any Plat recorded for the Subdivision, as the same may be relocated from time to time, subject to regulations and ordinances of Brevard County, Florida or any other governmental authority having jurisdiction over the Property.
- 6.3 **Lot Easements.** Except for easements for Surface Water or Stormwater Drainage areas, or in the event the Association elects to maintain any given easement or drainage areas on the Property, each owner shall be responsible for the maintenance of all easements situated on their respective Lot or Lots for utility or drainage purposes.

ARTICLE 7 RIGHTS OF THE ASSOCIATION

- 7.1 **Enforcement Rights.** The Association, its agents or employees, shall have the right, but not the obligation, to enter upon any Lot or parcel of real property subjected to this Declaration to cure any violation of these Covenants, including without limitation, the right to remove any structure which is in violation of these Covenants and to enforce maintenance and repair of Lots and improvements. Any such removal, curing, maintenance or repair shall be at the expense of the owner of the Lot or parcel of Property on which the violation has occurred or exists, which expense shall be payable by such owner to the Association on demand. Entry to remove and cure any violation of these Covenants shall not be a trespass and the Association shall not be liable for any damages on account of the entry.

The rights of the Association described in this Section shall not be construed as a limitation of the rights of the Developer or any owner to prosecute proceedings at law or in equity for the recovery of damages against persons violating or attempting to violate these Covenants or for the purpose of preventing or enjoining any violations or attempted violations. The remedies contained in this Section shall be construed as cumulative of all other remedies provided at law or in equity. The failure of the Association to enforce these Covenants, however long continuing, shall not be a waiver of the right to enforce these Covenants at a later time. In



any action taken by the Association to enforce the provisions of these Covenants, whether or not litigation is filed or initiated, the Association shall be entitled to recover its reasonable attorney fees and costs.

- 7.2 **Other Assessments.** Any amounts owed by any Owner to the Association as a result of the Association's abating or curing violations of these Covenants or maintaining or repairing Lots or homes shall be due and payable within thirty (30) days from the date of receipt of a statement for such amounts from the Association. If any of said sums are not paid when due, they shall be added to and become part of the annual assessment to which the Lot is subject and enforceable as provided in these Covenants.

- 7.3 **Common Property Rights.** The Association shall have the right:

- 7.3.1 To adopt reasonable rules and regulations pertaining to the use of the Common Property and Lots, the preservation and maintenance of such property, and the safety and convenience of the owners;
- 7.3.2 To convey, lease, grant an exclusive use or license in, or encumber any Common Property if authorized by two-thirds (2/3) vote of the Class A and Class B members. No dedication or transfer shall be effective unless an instrument agreeing to the dedication or transfer, by the Class B membership (until Class B membership terminates) and thereafter by the president and secretary of the Association certifying that the conveyance was approved by two-thirds (2/3) of the Class A members eligible vote, is recorded. The authorization contemplated by this subparagraph may be obtained at a meeting of the Members or by execution of a written consent by the Owners of the requisite number of Lots, or both of such methods.
- 7.3.3 To grant easements and rights-of-way over the Common Property as it deems necessary or appropriate for the proper servicing and maintenance of the Common Property and for the development and improvement of any portion of the community.
- 7.3.4 To assess fines for violation of these Covenants which shall be added to the next installment of the annual assessment to which the Lot is subject and be enforceable as provided in Section 3 of these Covenants.
- 7.3.5 To release any Common Property from the dedication to the Association by the plat if approved by the Class B membership until it terminates and thereafter, by two-thirds (2/3) of the Class A membership.

- 7.4 **Association's Rights of Entry.** The Association's duly authorized representatives or agents shall, at all reasonable times, have and possess a reasonable right of entry and inspection upon the Common Area or any Lot for the purposes of fully and faithfully discharging the duties of the Association. Non-exclusive easements are hereby granted in favor of the Association throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot which shall include an Easement for the maintenance of any sprinkler or watering systems for the Common Property. Furthermore, an easement is hereby granted in favor the Association, including its agents and designees, for purposes of carrying out all obligations and/or rights of the Association pursuant to this Declaration. Furthermore, a nonexclusive easement is hereby created over all utility easements or other right of ways contained on any Plat of any Subdivision which easement is in favor of the Association, including its agents and designees, in perpetuity, to utilize for all proper purposes of the Association.

- 7.5 **Authorized Services.** The Association shall be authorized, but not required, to provide the following functions and services and shall have easement rights necessary to perform same:

- 7.5.1 lighting of roads, sidewalks, walks and paths throughout the Property;
- 7.5.2 fire protection and prevention;



- 7.5.3 garbage and trash collection and disposal;
- 7.5.4 conducting recreation, sport, craft and cultural programs of interest to Owners, including their families, tenants, guests and invites;
- 7.5.5 protection and security, including, but not limited to, the employment of stationary or patrolling security guards within the Property and operation of a guardhouse;
- 7.5.6 maintenance of electronic and other surveillance devices;
- 7.5.7 installation, operation and maintenance of cable television facilities, or other communication systems throughout the Property;
- 7.5.8 maintain and repair of any roadways, streets, entranceways or right-of-ways for use by the Members and dedicated to the Association;
- 7.5.9 cleanup, landscaping, maintenance, dredging, water treatment or other care of canals, roads or other property (public or private) adjacent to or near the Property to the extent such care would, in the reasonable determination of the Board, be beneficial to the Property and to the extent that the Association has been granted the right to so care for the affected property by the owner thereof or the other person authorized to grant such right, including, but not limited to, any appropriate governmental authority;
- 7.5.10 such other services as are authorized in the Association's Articles or Bylaws;
- 7.5.11 emergency repairs and other work on the Lots reasonably necessary for the proper maintenance and operation of the Subdivision, including, but not limited to party wall repairs.

ARTICLE 8 RIGHTS RESERVED BY DEVELOPER

- 8.1 **Eminent Domain.** If all or part of any easement granted by Developer over property of the Developer is taken by eminent domain, no claim shall be made by the Association or any owner other than Developer for any portion of any award, provided Developer shall grant a similar easement, if necessary, to provide owners with access to their Lots and with utility service.
- 8.2 **Easements for Utilities and Cable Television.** Developer reserves a perpetual easement on, over and under the Lots and Common Property shown on the Plat for construction and maintenance of electric and telephone poles, wires, cables, conduits, water mains, drainage lines or drainage ditches, sewers, irrigation lines and other conveniences or utilities. To the extent permitted by law, Developer reserves an exclusive easement over, on and under each Lot for the installation and maintenance of utilities, lines, wires, pipes, power, telephone, CATV, radio and television cables within the Property or any Subdivision. The Owners of Lots subject to the easements reserved in this Section shall acquire no right or interest in utility or cable television equipment placed on, over or under the portions of the Property which are subject to such easements. All easements reserved by the Developer are and shall remain private easements and the sole and exclusive property of the Developer.
- 8.3 **Drainage Easement.** Drainage flow shall not be obstructed or diverted from drainage easements or swale areas as shown on the Plat. Developer may, but shall not be required to, cut drainways for surface water wherever and whenever necessary to maintain reasonable standards of health, safety and appearance. Except as provided in this Section, existing drainage shall not be altered so as to divert the flow of water onto an adjacent Lot or into sanitary sewer lines.



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- 8.4 **Maintenance Easement.** Developer reserves an easement in, on, over and upon each Lot for the purpose of preserving, maintaining or improving the Common Property and any easements thereon.
- 8.5 **Developer Rights Re: Temporary Structures, Etc.** Developer reserves the right to erect and maintain temporary dwellings, model houses and/or other structures upon Lots owned by Developer and to erect and maintain such commercial and display signs as Developer, in its sole discretion, deems advisable. Developer reserves the right to do all acts necessary in connection with the construction of improvements on the Lots. Notwithstanding anything in this Declaration to the contrary, Developer shall have the right to use the Property and any Lot for ingress and egress thereover, including the use of construction machinery and trucks thereon and no person shall in anyway impede or interfere with Developer, its employees or agents in the exercise of this right herein reserved, or interfere with the completion of the contemplated improvements or sale of Lots or improvements thereon. Furthermore, the Developer may make such use of the Property free from the interference of Owners or contract purchasers as may be reasonably necessary to facilitate the completion and sale of Lots and improvements thereon, including, but not limited to, maintenance of a sales office and model area, the showing of property, the display of signs, and the right to construct or place sales and construction offices of a temporary on the property. Nothing contained in these Covenants shall be construed to restrict the foregoing rights of the Developer.
- 8.6 **Further Restrictions.** So long as the Developer owns any Lot or parcel of real property within the Property or otherwise subject to this Declaration, Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on the Property, any Lot in Canary Isles, and on the Common Property. The easements granted by Developer shall not materially or adversely affect any improvements or unreasonably interfere with use of the Common Property.
- 8.7 **Release of Restrictions, Easements.** If a home or other structure is erected or the construction of a home or structure is substantially advanced in a manner that violates the restrictions contained in these Covenants or in a manner that encroaches on any setback line, lot line, Common Property or easement area, Developer shall have the right to release the Lot from the restriction it violated. Developer shall also have the right to grant an easement to permit encroachment by the home or structure over the lot line, or on the Common Property or the easement area, so long as the Developer, in the exercise of its sole discretion, determines that the release or easement will not materially adversely affect the health and safety of owners, the value of adjacent Lots and appearance of Canary Isles. Notwithstanding any contrary provisions of this Declaration, the Developer shall have the right without the approval or consent of any Member of the Association to convey any portion of the Common Property that is the subject of any encroachment by a home to the owners of the home. Nothing contained in this Section shall be construed to conflict with any adopted ordinance of Brevard County or the City of Melbourne.
- 8.8 **Easement for Access and Drainage.** The Developer and the Association shall have a perpetual non-exclusive easement over all areas of the Surface Water or Storm water Management System for access to operate, maintain or repair the Storm water Management System. By this easement, the Developer and Association shall have the right to enter upon any portion of any Lot which is a part of the Surface Water or Storm water Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water or Storm water Management System as required by the St. Johns River Water Management District. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water or Storm water Management System. No person shall alter the drainage flow of the Surface Water or Storm water Management System, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System.
- 8.9 **Swale Maintenance.** The Developer has constructed a Drainage Swale upon each Lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. Unless agreed to otherwise by the Association, each Lot owner, including builders, shall be responsible for



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

- 8.10 **Survival.** Any and all easements, licenses, or other rights granted or reserved pursuant to this Declaration shall survive any termination of this Declaration and conveyance of any Lot and shall be deemed to run with the land more particularly described on any Plat or any portion of the Property within Canary Isles and all other land annexed hereunder.
- 8.11 **Common Property Irrigation Systems.** Developer reserves the right to connect any sprinkler, water or irrigation systems necessary for the watering of any Common Property identified on the Plat and dedicated and owned by the Association to any sprinkler, watering or irrigation system maintained by any Owner, for adjacent to such Common Property and for the mutual benefit of the Members. Developer and the Association reserves an easement over any upon any and all Lot(s) adjacent to such Common Property for the purpose of maintaining any and all pipes, sprinkler heads, pumps, or other such apparatus necessary to provide a watering and/or sprinkler or irrigation system to the Common Property adjacent to such Lot which shall include without limitation the right to connect to any such sprinkler, watering or irrigation system maintained by any Owner upon his or her Lot. The Association shall be responsible for the repair, maintenance and installation of all such lines, pumps, or other apparatus, and the Owner of such Lot to which such pipes, pumps, or other apparatus are connected is responsible for any cost for the water or electrical services to provide such a sprinkler, watering or irrigation system to the adjacent Common Property.

ARTICLE 9 ARCHITECTURAL CONTROLS

- 9.1 **Duties and Powers of Association.** Except for the construction of homes and other improvements upon any Lot and improvements to the Common Property by the Developer, and except as otherwise provided in this Declaration, NO IMPROVEMENTS SHALL BE CONSTRUCTED ON THE COMMON PROPERTY AND NO ALTERATIONS OF THE EXTERIOR OF ANY HOME OR ALTERATION OR PERMANENT IMPROVEMENT OF ANY LOTS SHALL BE EFFECTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE ASSOCIATION OR AN ARCHITECTURAL COMMITTEE COMPOSED OF THREE (3) OR MORE REPRESENTATIVES APPOINTED BY THE BOARD OF DIRECTORS OF THE ASSOCIATION. The Association shall have the right to approve or disapprove any building, fence, wall, screened enclosure, grading, floor, elevation and drainage plan, drain, mailbox, solar energy device, antenna, satellite dish, decorative building, landscaping plan, landscape device or object, or other improvement, change or modification and to approve or disapprove any exterior additions, changes, modifications or alterations to the home. Disapproval of any change, addition, modification or alteration may be solely on the grounds of aesthetics. It is Developer's intent to protect the community from nuisances and maintain the aesthetic quality, with substantial uniformity, of the homes. The Association may adopt additional standards and criteria to effect the purposes of this Section and Article and all such additional standards or criteria may be enforced, as if specifically set forth herein.
- 9.2 **Duties of Association.** The Association shall approve or disapprove the plans for an improvement or modification within thirty (30) days after the same is submitted to it in proper form. If the plans are not approved within such period, they shall be deemed to have been disapproved. The plans submitted to the Association for approval shall include all plans necessary for construction and shall meet the following standards:



- 9.2.1 Be not less than 1/8" - 1' scale.
- 9.2.2 Show the elevation of the ground on all sides of the proposed structure as it will exist after the modification.
- 9.2.3 Include a list of proposed materials and samples of exterior materials and finishes which cannot be described to the Association's satisfaction.

The Association shall not be responsible for defects in plans or specifications or for defects in the improvements. The Association's review of plans is limited solely to appearance of the improvements and does not include any review to determine compliance with applicable building codes.

Any landscaping plan changes or alterations submitted to the Association shall provide for and include the following items:

- 9.2.3.1 A landscape plan providing at least six (6) trees of species approved by the Association, of 6' to 10' minimum height;
- 9.2.3.2 A list of plant stock included in the plan; and
- 9.2.3.3 The size of such stock at the time of planting.

The entire Lot, together with the land between the street pavement and the right-of-way line adjacent to the Lot, shall be landscaped and maintained. No gravel, rocks, artificial turf or other similar materials shall be permitted as a substitute for a grass lawn. It shall be the goal of the Association in the approval of any landscape plan and layout plan to preserve all existing trees where possible.

- 9.3 **Maintenance of Homes and Lots.** Each Lot, home and other improvement on the Lot shall be maintained by the Owner of such Lot in a neat and attractive condition. All landscaping on Common Property shall be maintained by the Association. The Association may, but is not required to, replace trees on Common Property.

- 9.4 **Miscellaneous Restrictions.** Each Lot shall be subject to the following restrictions:

- 9.4.1 Each dwelling, unit or other permitted use shall have access to a public street, either directly or indirectly via an approach, private road, pedestrian way, court or other area dedicated to public or private use or common easement guaranteeing access. Permitted uses are not required to front on a public dedicated road. County or City officials, officials of the Declarant or the Board of Directors shall be allowed access on privately owned roads, easements and common open space to insure police and fire protection of the area, to meet emergency needs, to conduct services as are their responsibility, and to generally insure the health and safety of the residents of the properties within the Association.
- 9.4.2 Except as otherwise approved by the Association, a minimum of twenty-five (25) feet set back shall be required from the nearest part of any wall of any building, structure, or improvement constructed upon a Lot to the edge of any public or private right-of-way, street or road, and a minimum of twenty-five (25) feet set back shall be required from the nearest part of any wall of any building, structure, or improvement constructed on any Lot and the rear boundary line of a Lot. A minimum of twenty-five (25) feet from any wall of any building, structure, or improvement constructed upon a Lot shall be maintained between the walls of all structures and the perimeter of the Property adjacent to land not owned by Declarant or "owners". A minimum of ten (10) feet set-back shall be maintained between the walls of any building, structures or improvements on any Lot and the adjoining common open areas and between the walls of all structures, building or improvements constructed upon any Lot and the perimeter boundary lines of the Lot adjacent to another Lot within



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the Property. All set-backs from any wall of any structure, building or improvement upon any Lot shall otherwise be in accordance with all rules, regulations or ordinances of the governmental authority having jurisdiction over the Property.

- 9.4.3 The minimum floor area for single family dwelling units is two thousand (2,000) square feet.
- 9.4.4 All utilities, including telephone, televisions, cable and electrical systems, except on arterial roads, shall be installed underground. Electrical transformers shall be placed on the ground and shall be contained in paramount enclosures or vaults. Landscaping with shrubs and plants to screen all utility facilities permitted above ground must be provided.
- 9.4.5 The minimum construction requirements for streets or roads, sidewalks, sewer facilities, utilities and drainage shall be in compliance with the requirements of the Brevard County or the City of Melbourne subdivision regulations.
- 9.4.6 No structures shall be constructed, dug or erected in any of the greenways, canals, lakes or other connecting bodies of water except as approved by the Board of Directors or its agents. Likewise, no internal combustion engine shall be used for the purpose of propelling a boat in any of the lakes. Boats are prohibited from being used in the lakes within said properties, except by specific individual permit issued by the Board of Directors or its agents.
- 9.4.7 All buildings, improvements or structures constructed on any Lot shall be connected at the Owner's expense to Central Water and Sewer Utilities within ninety (90) days after completion. Incidental utility or service structures and detached garages shall not be required to make such utility connections. However, wells may be maintained for outside use, including watering of lawns, swimming pools, etc., subject to approval of duly constituted public authorities and the Board of Directors or its agents.
- 9.4.8 No Lot set forth in the Plat can be divided or resubdivided without the specific written authorization and approval by the Board of Directors or its agents. In no event, shall a lot be redivided so as to create a violation of any of the restrictions herein established or ordinances and regulations of the City of Melbourne and if applicable, Brevard County, Florida.
- 9.4.9 No parking is permitted in the travel section of any roadway, street or right-of-way.
- 9.4.10 In the event a construction project of any sort is abandoned and remains so for a period of six (6) months, the Board of Directors of the Canary Isles may take possession of the site and complete the construction accordingly. In such event, the Board of Directors then may sell the building and recover its cost for performing the work. The Board of Directors also reserves the right to take possession of such uncompleted construction and destroy the work, landscaping the area and selling the Property in order to recover its cost.
- 9.4.11 No residential dwelling unit may be used for commercial purposes. The Board of Directors or its agent may allow certain professional and commercial uses in residential units after a request has been made and authority granted in writing.
- 9.4.12 No fences shall be constructed on any Lot without the prior written approval of the Association, which may be withheld for any reason. All shrub lines must be approved by the Association prior to construction or installation. Additionally, all fences, hedges or shrubs approved by the Association shall, at a minimum, comply with the following requirements and restrictions:
- a. No fence or hedge shall be erected within the Subdivision which shall unreasonably restrict or block the view of an adjoining Lot. For this purpose, a hedge or fence shall be maintained at a height not greater than five (5) feet and no wall or fence shall be erected



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or placed within the front set-back lines of any Lot, unless said wall or fence shall be ornamental and shall not in any manner impair the general scheme of said Property. No wall or fence of any kind, whatsoever, shall be constructed on any Lot until after the height, type and design, and location thereof shall have been approved in writing by the Association.

- b. No wooden fences, chain link fences or wire fences are permitted on a Lot. The only fencing that will be permitted will be white vinyl fences installed by the Developer or installed with the prior approval of the Association.

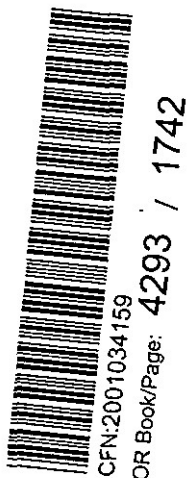
9.4.13 All Lots in Canary Isles are residential parcels and shall be used exclusively for single family residential purposes. Detached auxiliary buildings, including dog houses or storage buildings, are not permitted without prior approval of the Association unless delegated to the Association.

9.4.14 Except as otherwise approved by the Association, trash, garbage or other waste shall not be kept on any Lot except in sanitary containers such as trash bags or trash cans or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened as not to be visible from any road or adjacent Property within sight distance of the Lot at any time prior to or immediately after except during refuse collection. Swimming pool equipment and housing must be underground or placed in walled-in areas or landscaped areas so that they are not visible from any adjoining Lot or any street. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted. No Lot shall be used or maintained as a dumping ground for rubbish, trash or other waste. Clotheslines, if any, shall be contained within the fenced areas of Lots. No clothing or cleaning articles shall be hung or displayed on any part of the Lot so that it is visible outside of the Lot. Any pole, line or other device used for hanging of laundry shall be portable and shall be removed when not in use. Nothing herein contained shall be construed to conflict with §163.04, Florida Statutes.

9.4.15 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 Association. The Association will approve an outside antenna, antenna pole, antenna mast, satellite television reception device, electronic device, antenna tower or citizen band (CB) or amateur band (ham) antenna only if it is so located that it cannot be seen from any street and is shielded from view from any adjoining Lot. A flagpole for display of the American flag or any other flag shall be permitted only if first approved in writing by the Association, as to its design, height, location and type of flag. No flagpole shall be used as an antenna.

9.4.16 Unless otherwise approved by the Association, all game and play structures, including basketball hoops and supports, shall be located at the side (adjacent to the driveway) or rear of the improvement, or on the inside portion of the corner Lots within the set back lines. Tree house or platforms of a like kind or nature shall not be constructed on any part of the Lot located in front of the rear line of the building, structure, or improvement constructed thereon without prior approval of the Association.

9.4.17 In the event an improvement is damaged or destroyed by casualty, hazard or other loss, then, within a reasonable period of time after such incident, the Owner thereof shall either commence to rebuild or repair the damaged improvement and diligently continue such rebuilding or repairing activities to completion or, upon a determination by the Owner that the improvement will not be repaired or replaced promptly, shall clear the damaged improvement and grass over and landscape such Lot in a slightly manner consistent with the Declarant's plan for beautification of the Property. A destroyed improvement shall only be replaced with an improvement of an identical size, type and elevation as that destroyed unless the prior written consent of the Association is obtained.



- 9.4.18 Nothing shall be stored, constructed within or removed from any Common Area other than by the Association unless prior written approval is obtained.
- 9.4.19 Nothing shall be done or kept on any Common Area which shall increase the insurance rates of the Association without prior written consent of the Association.
- 9.4.20 No animals, livestock, or poultry of any kind shall be raised, bred or kept within the Property, other than household pets provided they are not kept, bred or maintained for any commercial purpose and provided they do not become a nuisance or annoyance to any other Owner. Residents are encouraged to have such animals neutered. Pets shall be kept only in the home, within screened patio or pool areas, or fenced yards if permitted. No animal shall be permitted off the Lot unless on a leash. Pets shall not be permitted to place or have excretions on any portion of the Property other than the Lot of the owner of the pet unless the owner of the pet physically removes any such excretions from that portion of the Property. For purposes hereof, "household pets" shall mean dogs, cats, domestic birds and fish. Pets shall also be subject to applicable Rules and Regulations of the Association and their Owners shall be held accountable for their actions. The Association may establish limits on the number and kind of pets that may be kept or permitted on any Lot.
- 9.4.21 No commercial activity shall be conducted on any Lot with the exception of the Developer's real estate sales office or agent or that of any person or entity constructing improvements within any subdivision.
- 9.4.22 No mineral, oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot; or shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot. Excepted from the foregoing shall be activities of the Developer or the Association, or any assignee of the Developer or the Association, in dredging the water areas, creating, excavating or maintaining drainage or other facilities or easements, and/or the installation of wells or pumps in compliance with applicable governmental requirements, or for sprinkler systems for any portions of the Property.
- 9.4.23 All signs, billboards and advertising structures of any kind are prohibited, except building and subcontractor signs during construction periods, and one (1) sign to advertise the Property for sale during any sales period. No signs may be nailed or attached to trees. "For Sale" signs shall not exceed four (4') square feet or be taller than thirty-six (36") inches and in accordance with uniform sign standards adopted by the Association or Association or approved in writing by the Association as to appearance and location.
- 9.4.24 No mailbox or paper box of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected on any Lot or Common Property until the size, location, design and type of material for the box are approved by the Association. If the United States mail services involved shall indicate a willingness to make delivery to wall receptacles attached to home, each owner, on the request of the Association, shall promptly replace the boxes previously employed for such purpose of purposes with all receptacles attached to homes.
- 9.4.25 No home shall be leased or rented for any period without the express consent of the Association. A copy of the lease on each home shall be delivered to the Association at or before the time the tenant takes possession of the home.
- 9.4.26 The parking of vehicles is restricted as follows:
- 9.4.26.1 **Automobiles.** Automobiles without any advertising or logos on the vehicle shall be permitted to be parked in driveways and garages. Automobiles with advertising or logos shall be parked only in garages.



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- 9.4.26.2 **Passenger Vans.** Passenger vans not outfitted for recreational purposes and without any advertising or logos shall be permitted to be parked in driveways and garages. Passenger vans outfitted for recreational purposes or with advertising or logos shall be permitted only in garages.

A "passenger van" is a van that weighs less than five thousand (5,000) pounds, has seating for more than two (2) passengers, and has non-commercial license plates. "Outfitted for recreational purposes" shall mean a van that has running water, LP gas or sanitary waste facilities. No removable ladders or other commercial equipment shall be stored on the exterior of any passenger van. A "non-passenger van" is any van that does not comply with the definition of a "passenger van." A non-passenger van shall be subject to the same restrictions as a truck rated one-half (½) ton or less, as more fully provided herein.

- 9.4.26.3 **Trucks and Non-Passenger Vans.** Trucks rated one-half (½) ton or less, without any advertising or logos, used as the resident's regular or usual form of transportation, and non-passenger vans without any advertising or logos shall be permitted in Canary Isles if parked in driveways or garages. Trucks of more than one-half (½) ton, or trucks or non-passenger vans with any advertising or logos, or trucks not the resident's regular or usual form of transportation are not permitted to be parked in Canary Isles unless present solely for the actual and continuous repair or construction of residence, but in no event shall any such trucks remain parked in Canary Isles for more than 3 months.

- 9.4.26.4 **Boats, Campers and Trailers.** Boats, campers and trailers shall be permitted to be parked in Canary Isles only if parked in garages, behind approved fences in accordance with the City of Melbourne Code, or other areas designated and approved by the Association, unless such is for loading, unloading, or cleaning, in which event they may not be parked upon any Lot or within any street, road or right-of-way or the Property for more than forty-eight (48) hours.

- 9.4.26.5 **Travel Trailers, Motor Coaches, Motor Homes and Mobile Homes.** Travel trailers, motor coaches, motor homes and mobile homes and any other trailer or vehicle not specifically permitted herein, shall not be parked in Canary Isles at any time.

- 9.4.26.6 **Repairs.** No maintenance or repairs shall be performed on any vehicles upon any portion of the Property except in an emergency situation and unless it is completely within a garage area. Notwithstanding the foregoing, all repairs to disabled vehicles within the Property must be completed within four (4) hours from its immobilization or the vehicle must be removed.

- 9.4.26.7 **Hardship.** In cases of undue hardship, the Association may grant a special exception of limited duration to the provisions of this section upon written request to the Association.

- 9.4.26.8 **Lawns and Streets.** No vehicle shall be parked on any lawn, yard, travel area of streets, or other area not intended for vehicular use.

- 9.4.27 Owners shall not do anything that will disturb or interfere with the reasonable rights and comforts of other Owners.

- 9.4.28 No obnoxious, unpleasant, unsightly or offensive activity shall be carried on, nor may anything be done, which can be reasonably construed a nuisance, public or private in nature. Any questions



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with regard to the interpretation of this section shall be decided by the Association whose decision shall be final.

9.4.29 No sheets or aluminum foil shall be permitted in any window. Solar film may be installed with written consent of the Association if it is non-metallic in appearance.

9.5 **Common Area.** Other than those improvements constructed by the Declarant, no improvements shall be constructed upon any portion of the Common Area without approval from the Association

9.5.1 No activities constituting a nuisance shall be conducted upon any Common Area.

9.5.2 No rubbish, trash, garbage or other discarded items shall be placed or allowed to remain upon any Common Area.

9.5.3 The Association may from time to time adopt reasonable rules and regulations concerning use of the Common Area which shall be binding upon all Members of the Association.

9.6 **Property Maintenance.** In the event an Owner (as to Common Property) of any Lot shall fail to maintain the structure, building and improvements situated thereon, including lawns and landscaped areas, in a manner satisfactory to the Association, including but not limited to landscaping, grass and shrubbery, the Owner shall be notified and given thirty (30) days within which to correct or abate the situation. If the Owner fails to do so, the Association shall have the right (although it shall not be required to do so) to enter upon the Lot for the purpose of repairing, maintaining and restoring the Lot and the exterior of the structure, building and other improvements located thereupon at the sole cost of the Owner of the Lot. The cost of such repair, maintenance and restoration, together with reasonable attorneys' fees and costs for collection thereof incurred through all appellate levels (whether or not an action is brought), shall thereupon constitute a lien upon the Lot which lien shall become effective only upon the filing of a written claim of lien. The form, substance and enforcement of the lien shall be in accordance with the construction lien law of the State of Florida, and the Owner of the Lot shall, by virtue of having acquired the Lot subject to these restrictions, be deemed to have authorized and contracted for such repair, maintenance and restoration. The lien herein provided will be subordinate to a first mortgage lien of an Institutional Lender.

9.7 **Fines.** It is acknowledged and agreed among all Owners that a violation of any of the provisions of these Declarations or this Article by an Owner or residence will result in irreparable harm to other Owners or residents and the Developer. Each Owner, the Association and the Developer shall have the right to order, enforce and file all actions to obtain orders or judgments for specific performance and injunction of the terms and provisions of these covenants and this Declaration. All Owners agree that a fine may be imposed by the Developer or Association for each day of violation of these covenants continues after notification by the Developer or the Association. All fines collected shall be used for the benefit of the Association. Any fine levied shall be paid within fifteen (15) days after mailing of notice of that fine. Not paid within fifteen (15) days, the amount of such fine shall accrue interest at a rate of eighteen (18%) percent per annum, and shall be treated as a special assessment as provided in these Declarations.

ARTICLE 10 UTILITY PROVISIONS

10.1 **Water system.** The central water supply system provided by the City of Melbourne, Florida for the service of Canary Isles shall be used as the sole source of water. Each owner shall pay water meter charges established by the City and shall maintain and repair all portions of such water lines located within the boundaries of his Lot.

10.2 **Sewage System.** The central sewage system provided by Brevard County, Florida for the service of Canary Isles shall be used as the sole sewage system for each Lot. Each owner shall maintain and repair all portions of such sewer lines located within the boundaries of his Lot and shall pay when due the periodic charges or



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rates for the furnishing of such sewage collection and disposal service made by the operator thereof. No septic tank or drain field shall be placed or allowed within Canary Isles.

- 10.3 **Garbage Collection.** Garbage, trash and rubbish shall be removed from the Lots by the entity selected by Brevard County. Each Lot Owner shall pay when due the periodic charges or taxes for such garbage collection service.
- 10.4 **Electrical and Telephone Service.** All telephone, electric and other utility lines and connections between the main or primary utility lines and the residence and the other buildings located on each Lot shall be concealed and located underground in a manner acceptable to Brevard County, Florida.

ARTICLE 11 GENERAL PROVISIONS

- 11.1 **Privacy Wall.** The Declarant may construct privacy walls or fences within the Property ("Privacy Wall"). A Privacy Wall shall hereinafter be defined as any wall or fence built by the Declarant, or later built by the Association, in any Common Area, easement, or elsewhere on the Property as a visual barrier, decorative or architectural feature, safety feature, or for any other reason at the sole discretion of the Declarant, or as a requirement of any municipality or governing authority.
- 11.2 **Maintenance of Privacy Walls.** Unless the Association elects to maintain Privacy Walls, Owners shall be responsible for the maintenance of Privacy Walls situated on their respective Lot or Lots.
- 11.3 **Failure to Maintain a Privacy Wall.** To the extent an Owner does not maintain the Privacy Wall contiguous with the boundary line of that Owner's Lot, and the Association has elected not to maintain said Privacy Wall, the Association shall have the right to paint, repair or otherwise maintain that portion of the Privacy Wall. Upon the occurrence of such an event, the Association shall have the right to assess said Owner for the costs thereof and the enforcement provisions contained in this Declaration shall apply.
- 11.4 **Easement for Privacy Wall.** An easement is hereby created in favor of the Declarant and the Association for the construction, management, inspection, painting, maintenance and repair of Privacy Walls located within the Property. The easement shall extend 3.75 feet from the rear lot or boundary line into each affected Lot. Entry upon a Lot by the Declarant or the Association, or their agents, as provided herein, may occur without notice and shall not be deemed a trespass.
- 11.5 **Duration and Amendment.** These covenants and restrictions of this Declaration shall run with and bind the land submitted or subjected hereto and shall be and remain in effect for a period of twenty (20) years from the date this Declaration is recorded after which time they will be automatically extended for periods of ten (10) years, and shall inure to the benefit of and be enforceable by the Developer, the Association, the Owners and their respective legal representatives, heirs, successors and assigns, unless modified or terminated by a duly recorded written instrument executed in conformity with requirements described below. For so long as there remains Class B membership voting rights, the Declarant may amend, change, supplement, modify or terminate this Declaration without the approval of the Owners. In addition to any other manner herein provided for the amendment of this Declaration, these covenants and restrictions may be amended, changed, supplemented, modified or terminated at any time and for any reason from time to time upon the execution and recordation of an instrument approved by the Owners holding not less than two-thirds (2/3) vote of each class of membership in the Association. No provision of this Declaration may be amended if such provision is required to be included herein by any law. Additionally, no such amendment shall adversely affect the right or lien of any Institutional Lender without such mortgagee's express consent. Additionally, the Developer specifically reserves the absolute and unconditional right so long as it owns any Lots to amend the Declaration to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or the St. John's Water Management District, any other governmental agency or authority or any other generally recognized institution involved in the purchase and sale of home loan mortgages or to clarify the provisions herein,



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without the consent or joinder of any party. Notwithstanding anything contained in these Covenants to the contrary, the provisions of these Covenants affecting the rights or duties of the Developer shall not be amended or terminated at any time without the consent in writing of the Developer. Notwithstanding anything contained herein to the contrary, this provision shall not restrict the right of the Developer to annex additional property in accordance with paragraph 4.2 of this Declaration, without the consent of the other members of the Association.

Any amendment or termination of any covenant, or part thereof, which would affect the Surface Water Management System, including the water management portions of the Common Property, must have the prior approval of the St. Johns River Water Management District.

- 11.6 **Notices.** Any notice required to be sent to any person pursuant to any provision of these Covenants shall be effective if such notice has been deposited in the United States Mail, postage prepaid, addressed to the person for whom it is intended at his last known place of residence, or to such other address as may be furnished to the secretary of the Association. The effective date of the notice shall be the date of mailing.
- 11.7 **Severability.** Whenever possible, each provision of these Covenants shall be interpreted in a manner that is effective and valid. If any provision of these Covenants is prohibited or held invalid, the prohibition or invalidity of such provision shall not affect any other provision which can be given effect. To this end, the provisions of these Covenants are declared to be severable.
- 11.8 **Assignment by Developer.** Developer shall have the sole and exclusive right to transfer to such persons, firms, or corporations as it shall select, who acquire any part of Canary Isles for development, in whole or in part, any or all of the easements and rights whatsoever given to or reserved by Developer in these Covenants. All easements and rights reserved in these Covenants shall be for the benefit of Developer, its successors and any entities to whom such rights are assigned in writing. If the Developer sells, transfers, or assigns all of its then remaining interest in Canary Isles to any person or entity, such person or entity shall be deemed to be the successor developer of Canary Isles and the Class B member of the Association; if Developer transfers or assigns less than all of its remaining interest in Canary Isles to another person or entity, the successor in interest shall not be the successor developer or the Class B member unless the Developer specifically assigns its rights, obligations and privileges under these Covenants and the Articles of Incorporation of the Association to such person or entity by instrument recorded in the Public Records of Brevard County, Florida.
- 11.9 **Disputes and Construction of Terms.** In the event of any dispute arising under these Covenants, or in the event of any provision of these Covenants requiring construction, the issue shall be submitted to the Board of Directors of the Association for non-binding arbitration or mediation. The Board of Directors shall give all persons having an interest in the issue an opportunity to be heard after reasonable notice. The Board shall, when appropriate, render its decision in writing, mailing copies thereof to all parties who have noted their interest.
- 11.10 **No Waiver.** The failure of the Association or Developer to enforce any right, provision, covenant or condition which may be granted by this Declaration or the Governing Documents shall not constitute a waiver of the right of the Association or Developer to enforce such right, provision, covenant, or condition in the future.
- 11.11 **Enforcement/Attorney Fees.** In addition to any other rights or remedies provided in this Declaration, this Declaration may be enforced by the Developer, the Association, or any Owner by procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain any violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. In any action or proceeding to enforce the provisions of this Declaration or in any way relating to this Declaration, including, without limitation, any action for declaratory relief, the prevailing party shall be entitled to recover from the unsuccessful party all attorney fees incurred at all trial and appellate levels in addition to all other costs and other expenses.



- 11.12 **Indemnification of Officers, Directors or Agents.** The Association shall be entitled to indemnify and procure insurance for any person acting as an officer, director or agent for the Association.
- 11.13 **Conflict.** This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and Bylaws of the Association and the Articles of Incorporation shall take precedence over the Bylaws.
- 11.14 **Governing Law/Venue.** The construction, validity and enforcement of this Declaration shall be determined in accordance with the laws of the State of Florida and the exclusive venue for enforcement of this Declaration shall be in Brevard County, Florida.

IN WITNESS WHEREFORE, the Developer has executed this instrument on the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

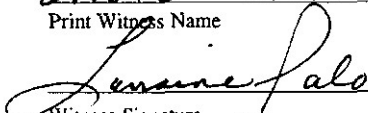
DEVELOPER:

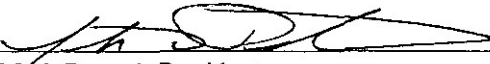

Witness Signature

CANARY ISLES, LTD. , a Florida Limited Partnership

By: AAVANTI BUILDING & DEVELOPMENT,
INC., AS GENERAL PARTNER

DAVID LARKIN
Print Witness Name


Witness Signature

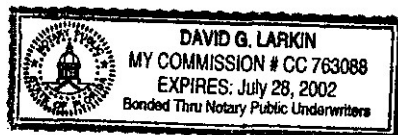
By: 
Mark Petroni, President
3410 N. Harbor City Boulevard
Melbourne, FL 32935

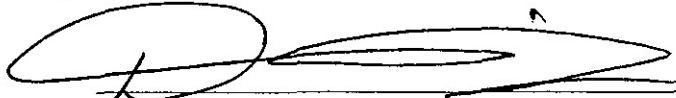
Lorraine Palo
Print Witness Name

(Corporate Seal)

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

Sworn to, affirmed and subscribed before me this 26th day of January, 2001, by Mark Petroni, as President of Aavanti Building & Development, Inc., a Florida corporation, as general partner of Canary Isles, Ltd., a Florida Limited Partnership, on behalf of said partnership. He is personally known to me.




Notary Public

Commission Stamp



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SCHEDULE 2.9
THE PROPERTY

LEGAL DESCRIPTION

PART OF THE PLAT OF CLUB MANOR NO. 1, AS RECORDED IN PLAT BOOK 5, PAGE 17, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE SOUTHEAST CORNER OF THE AFORESAID PLAT OF CLUB MANOR NO. 1, RUN N1°05'31"E ALONG THE EAST SIDE OF SAID PLAT A DISTANCE OF 149.90 FT. TO THE NORTHEAST CORNER OF LOT 11, BLOCK 3, IN SAID PLAT AND BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE N89°44'44"W A DISTANCE OF 334.41 FT. TO THE NORTHWEST CORNER OF LOT 11, BLOCK 4, IN AFORESAID PLAT OF CLUB MANOR NO. 1; THENCE N1°03'05"E ALONG THE WEST LINE OF CLUB MANOR NO. 1 A DISTANCE OF 935.00 FT.; THENCE S89°44'44"E A DISTANCE OF 142.53 FT.; THENCE N1°04'18"E A DISTANCE OF 202.05 FT. TO THE SOUTH RIGHT-OF-WAY LINE OF EDGEWOOD DRIVE AS ESTABLISHED BY O.R.B. 771, PAGE 184; THENCE EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 192.62 FT. TO THE EAST LINE OF AFORESAID CLUB MANOR NO. 1; THENCE S1°05'31"W ALONG SAID EAST LINE A DISTANCE OF 1137.92 FT. TO THE POINT OF BEGINNING

CONTAINS 8.080 ACRES, MORE OR LESS.



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**ARTICLES OF INCORPORATION OF
CANARY ISLES
HOMEOWNERS ASSOCIATION, INC.**

In compliance with the requirements of Chapter 617 of the Florida Statutes, the undersigned, all of whom are residents of the State of Florida, and all of whom are of full age, have this day voluntarily associated themselves together for the purpose of forming a corporation not for profit and do hereby certify:

**ARTICLE I
NAME OF CORPORATION**

The name of the corporation is CANARY ISLES HOMEOWNERS ASSOCIATION, INC., a corporation not for profit organized under Chapter 617 of the Florida Statutes, as it existed on the date of incorporation, and all subsequent amendments thereto (hereinafter referred to as the "Association").

**ARTICLE II
PRINCIPAL OFFICE**

The principal office of the Association is located at 3410 N. Harbor City Boulevard, Melbourne, Florida 32935, which shall be the initial registered office and mailing address of the Association.

**ARTICLE III
INCORPORATOR**

Mark Petroni, whose address is 3410 N. Harbor City Boulevard, Melbourne, Florida 32935, is the sole incorporator of the Association.

**ARTICLE IV
REGISTERED AGENT**

David G. Larkin, whose address is 1900 South Hickory Street, Suite A, Melbourne, Florida 32901 is hereby appointed as the initial registered agent of the Association.

**ARTICLE V
PURPOSE AND POWERS OF THE ASSOCIATION**

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is organized and for which it is to be operated are to provide for maintenance, preservation, and care of the property of the Association, and to provide the architectural control of the residential lots and common area within that certain tract of property described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property"), and to promote the health, safety, and welfare of the residents within the Property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for these purposes. In connection therewith, the Association shall have the following powers:

- (a) To exercise all the powers and privileges and to perform all the duties and obligations of the Association as set forth in a Declaration of Covenants and Restrictions for Canary Isles (the "Declaration"), applicable to the Property and to be recorded in the Office of the Clerk of the



Circuit Court, Brevard County, Florida and as the same may be amended from time to time as therein provided;

- (b) Enforcing the provisions of the Declaration and these Articles of Incorporation, and the By-Laws of the corporation which may be hereafter adopted, and the rules and regulations governing the use of the common areas as the same may be hereafter established.
- (c) To fix, levy, collect, and enforce payment by any lawful means, all charges or assessments due to the Association or any other person affiliated with the Association pursuant to the terms of the Declaration; to pay all expenses in connection therewith; and to pay all office and other expenses incident to the conduct of business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;
- (d) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (e) To borrow money, and with the assent of two-thirds ($\frac{2}{3}$) of each class of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (f) To dedicate, sell, or transfer all or any part of the common areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds ($\frac{2}{3}$) of each class of members, agreeing to such dedication, sale, or transfer unless otherwise set forth in the Declaration;
- (g) To participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds ($\frac{2}{3}$) of each class of members;
- (h) To annex additional property and common areas in the manner set forth in the Declaration;
- (i) To have and to exercise any and all powers, rights and privileges which a corporation organized under Florida law, including Chapter 617, Florida Statutes, by law may now or hereafter have or exercise.
- (j) To levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the Surface Water or Stormwater Management Systems, including but not limited to work within retention areas, drainage structures, and drainage easements.
- (k) To operate maintain and manage the Surface Water or Stormwater Management Systems in a manner consistent with the St. John's River Water Management District permit requirements and applicable District rules, and assist in the enforcement of the restrictions and covenants contained therein.
- (l) Maintaining, repairing, replacing, operating, and managing the common areas of this subdivision and the property comprising same, including the right to reconstruct improvements after casualty and to make further improvement of said property.



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- (m) To make and establish reasonable rules and regulations governing the use of common areas in accordance with the terms and provisions as set forth and defined in the Declaration.
- (n) To enter into leases and agreements of every nature or kind.

ARTICLE VI **MEMBERSHIP**

Every person or entity who is a record owner who holds a fee or undivided fee interest in any lot which is subject to the Declaration, including contract sellers, shall be a member of the Association with the voting rights described in Article VII hereof. The foregoing shall not to include persons or entities who hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

ARTICLE VII **VOTING RIGHTS**

The Association shall have two classes of voting membership with the relative rights and preferences as follows:

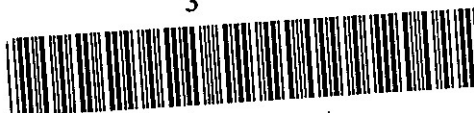
Class A: Class A members shall be all owners, with the exception of the Declarant, of any plot of land shown upon any recorded plat of the Property ("Lot" or "Lots"). Each Class A member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, each such person shall be members, however, the vote for such Lot shall be exercised as they collectively determine, and in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B member shall be the Declarant (as defined in the Declaration), who shall be entitled to five (5) votes for each Lot owned within the Property. Unless converted earlier and voluntarily by the Declarant, the Class B membership shall cease and be converted to Class A membership upon the first to occur of either of the following events:

- (a) the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- (b) fifteen (15) years from the date of the original recording of the Declaration in the public records of Brevard County, Florida; or
- (c) at the election of the Declarant (whereupon the Class A Members shall be obligated to elect the Board of Directors and assume control of the Association).

ARTICLE VIII **BOARD OF DIRECTORS**

The affairs of the Association shall be managed by a Board of seven (7) Directors, who need not be members of the Association. The number of directors may be changed by amendment of the Bylaws of the Association. The Board of Directors shall be elected at the first meeting of the Association in the manner described in the Bylaws.



ARTICLE IX **DISSOLUTION**

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust, or other organization to be devoted to such similar purpose.

In the event of termination, dissolution, or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water or Stormwater Management Systems must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and be approved by St. John's River Water Management District prior to such termination, dissolution, or liquidation.

ARTICLE X **EXISTENCE AND DURATION**

The existence of the Corporation shall commence with the filing of these Articles of Incorporation with the Secretary State, Tallahassee, Florida. The Corporation shall exist in perpetuity.

ARTICLE XI **AMENDMENTS**

The Association shall have the right to amend these Articles at any time upon the affirmative vote of two-thirds (2/3) of each class of the voting interests of the Association as described in Article VII hereof. Amendments may be proposed by resolution approved by a majority of the Board of Directors; provided, however, that no amendment shall make any changes in the qualifications for membership nor the voting rights of the members, without approval in writing by all members and the joinder of all record owners of mortgages upon the Lots. No amendment shall be made that is in conflict with Florida law or the Declaration unless the latter is amended to conform to the same.

ARTICLE XII **BYLAWS**

The Bylaws of the Association shall be adopted by the Board of Directors at the first meeting of Directors, and may be altered, amended, or rescinded thereafter in the manner provided therein.

ARTICLE XIII **ASSESSMENTS**

The assessments shall be used for the maintenance and repair of the Surface Water or Stormwater Management Systems including but not limited to work within retention areas, drainage structure, and drainage easements and for the maintenance and repair of the common areas within the Property, and other property of the Association, as set forth in the Declaration.



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ARTICLE XIV
INDEMNIFICATION

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

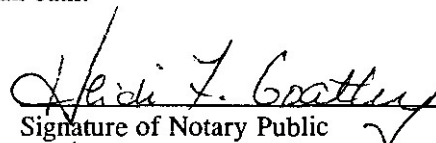
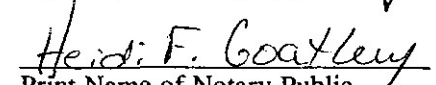
IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, constituting the sole Incorporator of this Association, has executed these Articles of Incorporation this 12 day of January, 2001.


Mark Petroni, Incorporator

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 12th day of January, 2001, by Mark Petroni who is personally known to me and did ~~not~~ take an oath.

 Heidi F. Goatley
My Commission CC985963
Expires May 06, 2003


Signature of Notary Public

Print Name of Notary Public
Notary Public State of Florida
My Commission Expires:



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**CERTIFICATE OF DESIGNATION OF
REGISTERED AGENT/REGISTERED OFFICE**

PURSUANT TO THE PROVISIONS OF SECTION 607.0501 OR 617.0501, FLORIDA STATUTES, THE UNDERSIGNED CORPORATION, ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA, SUBMITS THE FOLLOWING STATEMENT IN DESIGNATING THE REGISTERED OFFICE/ REGISTERED AGENT, IN THE STATE OF FLORIDA.

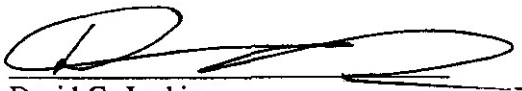
1. The name of the corporation is:

CANARY ISLES HOMEOWNERS ASSOCIATION, INC.

2. The name and address of the registered agent and office is:

FALLACE & ASSOCIATES, P.A.
David G. Larkin
1900 So. Hickory Street, Suite A
Melbourne, Florida 32901

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.



David G. Larkin

Dated: January 12, 2001



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Exhibit "A"

LEGAL DESCRIPTION

PART OF THE PLAT OF CLUB MANOR NO. 1, AS RECORDED IN PLAT BOOK 5, PAGE 17, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE SOUTHEAST CORNER OF THE AFORESAID PLAT OF CLUB MANOR NO. 1, RUN N1°05'31"E ALONG THE EAST SIDE OF SAID PLAT A DISTANCE OF 149.90 FT. TO THE NORTHEAST CORNER OF LOT 11, BLOCK 3, IN SAID PLAT AND BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE N89°44'44"W A DISTANCE OF 334.41 FT. TO THE NORTHWEST CORNER OF LOT 11, BLOCK 4, IN AFORESAID PLAT OF CLUB MANOR NO. 1; THENCE N1°03'05"E ALONG THE WEST LINE OF CLUB MANOR NO. 1 A DISTANCE OF 935.00 FT.; THENCE S89°44'44"E A DISTANCE OF 142.53 FT.; THENCE N1°04'18"E A DISTANCE OF 202.05 FT. TO THE SOUTH RIGHT-OF-WAY LINE OF EDGEWOOD DRIVE AS ESTABLISHED BY O.R.B. 771, PAGE 184; THENCE EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 192.62 FT. TO THE EAST LINE OF AFORESAID CLUB MANOR NO. 1; THENCE S1°05'31"W ALONG SAID EAST LINE A DISTANCE OF 1137.92 FT. TO THE POINT OF BEGINNING

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