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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
COLONY TRACE**

95

**PREPARED BY AND RETURN TO:**

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF COLONY TRACE

### TABLE OF CONTENTS

|                                              |          |
|----------------------------------------------|----------|
| <b>ARTICLE I DEFINITIONS .....</b>           | <b>1</b> |
| 1.1 "ARTICLES" .....                         | 1        |
| 1.2 "ASSOCIATION" .....                      | 1        |
| 1.3 "BOARD" .....                            | 2        |
| 1.4 "BYLAWS" .....                           | 2        |
| 1.5 "COMMON AREA" .....                      | 2        |
| 1.6 "COMMON ASSESSMENTS" .....               | 2        |
| 1.7 "COMMON EXPENSES" .....                  | 2        |
| 1.8 "COMMON MAINTENANCE AREA" .....          | 2        |
| 1.9 "CONSERVATION AREA(S)" .....             | 2        |
| 1.10 "COUNTY" .....                          | 2        |
| 1.11 "DECLARANT" .....                       | 2        |
| 1.12 "DECLARATION" .....                     | 3        |
| 1.13 "GOVERNING DOCUMENTS" .....             | 3        |
| 1.14 "INSTITUTIONAL LENDER" .....            | 3        |
| 1.15 "LAKEFRONT LOT" .....                   | 3        |
| 1.16 "LOT" .....                             | 3        |
| 1.17 "MEMBER" .....                          | 3        |
| 1.18 "OWNER" .....                           | 3        |
| 1.19 "PERSON" .....                          | 3        |
| 1.20 "PLAT" OR "PLATS" .....                 | 3        |
| 1.21 "PROPERTY" .....                        | 4        |
| 1.22 "RESIDENCE" .....                       | 4        |
| 1.23 "SFWMD" .....                           | 4        |
| 1.24 "STREET(S)" .....                       | 4        |
| 1.25 "SURFACE WATER MANAGEMENT SYSTEM" ..... | 4        |
| 1.26 "TURNOVER" .....                        | 4        |
| 1.27 "WATER AREAS" .....                     | 4        |
| <b>ARTICLE II PROPERTY RIGHTS.....</b>       | <b>5</b> |
| 2.1 OWNERS' EASEMENTS OF ENJOYMENT .....     | 5        |
| 2.2 DELEGATION OF USE .....                  | 5        |
| 2.3 UTILITY EASEMENTS .....                  | 5        |
| 2.4 EMERGENCY DRAINAGE EASEMENT .....        | 6        |
| 2.5 EASEMENT FOR ACCESS AND DRAINAGE .....   | 6        |
| 2.6 SWALE MAINTENANCE .....                  | 7        |



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|                                                                                            |                                                                   |           |
|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-----------|
| 2.7                                                                                        | CONSTRUCTION AND SALES EASEMENT.....                              | 7         |
| 2.8                                                                                        | PUBLIC EASEMENTS.....                                             | 7         |
| 2.9                                                                                        | ASSOCIATION'S ACCESS EASEMENT .....                               | 7         |
| 2.10                                                                                       | ACCESS.....                                                       | 8         |
| 2.11                                                                                       | FUTURE EASEMENTS.....                                             | 8         |
| 2.12                                                                                       | SURVIVAL.....                                                     | 9         |
| <b>ARTICLE III MEMBERSHIP AND VOTING RIGHTS .....</b>                                      |                                                                   | <b>9</b>  |
| 3.1                                                                                        | MEMBERSHIP APPURTENANT .....                                      | 9         |
| 3.2                                                                                        | VOTING RIGHTS .....                                               | 9         |
| <b>ARTICLE IV PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS TO THE PROPERTY .....</b> |                                                                   | <b>10</b> |
| 4.1                                                                                        | PROPERTY SUBJECT TO DECLARATION .....                             | 10        |
| 4.2                                                                                        | ADDITIONS TO THE PROPERTY .....                                   | 10        |
| 4.3                                                                                        | ANNEXATION OF PROPERTY.....                                       | 10        |
| 4.4                                                                                        | PLATTING.....                                                     | 10        |
| 4.5                                                                                        | MERGER.....                                                       | 10        |
| 4.6                                                                                        | WITHDRAWAL OF PROPERTY .....                                      | 11        |
| 4.7                                                                                        | SPECIAL TAXING DISTRICTS .....                                    | 11        |
| <b>ARTICLE V FUNCTIONS OF THE ASSOCIATION.....</b>                                         |                                                                   | <b>11</b> |
| 5.1                                                                                        | THROUGH BOARD ACTION.....                                         | 11        |
| 5.2                                                                                        | REQUIRED SERVICES.....                                            | 12        |
| 5.3                                                                                        | AUTHORIZED SERVICES .....                                         | 13        |
| <b>ARTICLE VI RIGHTS AND OBLIGATIONS OF THE ASSOCIATION .....</b>                          |                                                                   | <b>13</b> |
| 6.1                                                                                        | COMMON AREA .....                                                 | 13        |
| <b>ARTICLE VII COMMUNITY WALLS .....</b>                                                   |                                                                   | <b>14</b> |
| 7.1                                                                                        | COMMUNITY WALLS.....                                              | 14        |
| 7.2                                                                                        | MAINTENANCE OF COMMUNITY WALLS .....                              | 15        |
| 7.3                                                                                        | EASEMENT FOR COMMUNITY WALLS .....                                | 15        |
| <b>ARTICLE VIII COVENANT FOR ASSESSMENTS.....</b>                                          |                                                                   | <b>15</b> |
| 8.1                                                                                        | CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS ..... | 15        |
| 8.2                                                                                        | PURPOSE OF ASSESSMENTS.....                                       | 15        |
| 8.3                                                                                        | COMMON ASSESSMENTS .....                                          | 16        |
| 8.4                                                                                        | RATE OF COMMON ASSESSMENTS.....                                   | 16        |
| 8.5                                                                                        | INSUFFICIENT COMMON ASSESSMENTS.....                              | 16        |
| 8.6                                                                                        | COMMENCEMENT ASSESSMENT .....                                     | 17        |
| 8.7                                                                                        | SPECIAL ASSESSMENTS.....                                          | 17        |
| 8.8                                                                                        | SPECIFIC ASSESSMENTS .....                                        | 17        |
| 8.9                                                                                        | UNIFORM RATE OF ASSESSMENT .....                                  | 17        |
| 8.10                                                                                       | RESERVES .....                                                    | 17        |

|                                               |                                                                        |           |
|-----------------------------------------------|------------------------------------------------------------------------|-----------|
| 8.11                                          | DATE OF COMMENCEMENT OF COMMON ASSESSMENTS: DUE DATES .....            | 18        |
| 8.12                                          | DECLARANT'S OBLIGATION FOR ASSESSMENTS .....                           | 18        |
| 8.13                                          | EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION ..... | 18        |
| 8.14                                          | ASSUMPTION OF DELINQUENT ASSESSMENTS BY SUCCESSORS.....                | 19        |
| 8.15                                          | SUBORDINATION OF THE LIEN TO MORTGAGES .....                           | 19        |
| 8.16                                          | EXEMPT PROPERTY .....                                                  | 19        |
| <b>ARTICLE IX ARCHITECTURAL CONTROL .....</b> |                                                                        | <b>20</b> |
| <b>ARTICLE X USE RESTRICTIONS .....</b>       |                                                                        | <b>20</b> |
| 10.1                                          | RESIDENTIAL LOTS .....                                                 | 20        |
| 10.2                                          | MINING OR DRILLING .....                                               | 20        |
| 10.3                                          | CLOTHES DRYING AREA .....                                              | 21        |
| 10.4                                          | ANTENNAS, AERIALS, SATELLITE DISHES AND FLAGPOLES.....                 | 21        |
| 10.5                                          | SHUTTERS AND WINDOW AND DOOR COVERINGS .....                           | 21        |
| 10.6                                          | OUTSIDE LIGHTING .....                                                 | 21        |
| 10.7                                          | TREES .....                                                            | 21        |
| 10.8                                          | WALLS AND FENCES .....                                                 | 22        |
| 10.9                                          | SUBDIVISION OR PARTITION.....                                          | 22        |
| 10.10                                         | CASUALTY DESTRUCTION TO IMPROVEMENTS.....                              | 22        |
| 10.11                                         | INSURANCE .....                                                        | 22        |
| 10.12                                         | SURFACE WATER MANAGEMENT SYSTEM.....                                   | 22        |
| 10.13                                         | WATER LEVEL FLUCTUATIONS.....                                          | 24        |
| 10.14                                         | LAKES, PONDS, RETENTION, AND OTHER WATER AREAS.....                    | 25        |
| 10.15                                         | EMBANKMENT AREA MAINTENANCE.....                                       | 25        |
| 10.16                                         | PETS, LIVESTOCK AND POULTRY .....                                      | 25        |
| 10.17                                         | SIGNS .....                                                            | 26        |
| 10.18                                         | GARBAGE CONTAINERS, OIL AND GAS TANKS, OUTDOOR EQUIPMENT .....         | 26        |
| 10.19                                         | CABLE TELEVISION.....                                                  | 26        |
| 10.20                                         | VEHICLES AND RECREATIONAL EQUIPMENT.....                               | 26        |
| 10.21                                         | PARKING.....                                                           | 27        |
| 10.22                                         | GARAGES.....                                                           | 28        |
| 10.23                                         | GARAGE SALES OR YARD SALES .....                                       | 28        |
| 10.24                                         | REPAIRS .....                                                          | 28        |
| 10.25                                         | PROHIBITED STRUCTURES.....                                             | 28        |
| 10.26                                         | NUISANCES .....                                                        | 28        |
| 10.27                                         | WINDOW TREATMENT .....                                                 | 28        |
| 10.28                                         | GAMES AND PLAY STRUCTURES .....                                        | 28        |
| 10.29                                         | SWIMMING POOLS.....                                                    | 29        |
| 10.30                                         | COMMON AREA .....                                                      | 29        |
| 10.31                                         | OTHER RESTRICTIONS ESTABLISHED BY THE BOARD.....                       | 29        |
| 10.32                                         | NO IMPLIED WAIVER .....                                                | 29        |
| 10.33                                         | IMPOSITION OF FINES FOR VIOLATIONS.....                                | 30        |
| 10.34                                         | COMPLIANCE WITH DOCUMENTS .....                                        | 30        |
| 10.35                                         | PROPERTY MAINTENANCE .....                                             | 30        |

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|                                                              |                                                                                                     |           |
|--------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------|
| 10.36                                                        | SALES, MARKETING AND PROMOTIONAL ACTIVITIES .....                                                   | 31        |
| 10.37                                                        | ASSOCIATION WAIVER.....                                                                             | 31        |
| <b>ARTICLE XI SHORT TERM RENTALS.....</b>                    |                                                                                                     | <b>31</b> |
| 11.1                                                         | NO SHORT TERM RENTALS .....                                                                         | 31        |
| 11.2                                                         | TIME-SHARE PROHIBITION.....                                                                         | 32        |
| 11.3                                                         | AMENDMENT .....                                                                                     | 32        |
| <b>ARTICLE XII ENFORCEMENT OF NON-MONETARY DEFAULTS.....</b> |                                                                                                     | <b>32</b> |
| 12.1                                                         | NON-MONETARY DEFAULTS .....                                                                         | 32        |
| 12.2                                                         | EXPENSES .....                                                                                      | 33        |
| 12.3                                                         | LATE FEES .....                                                                                     | 33        |
| 12.4                                                         | NO WAIVER .....                                                                                     | 33        |
| 12.5                                                         | RIGHTS CUMULATIVE .....                                                                             | 33        |
| 12.6                                                         | ENFORCEMENT BY OR AGAINST THE PERSONS .....                                                         | 33        |
| 12.7                                                         | CERTIFICATE AS TO DEFAULT .....                                                                     | 34        |
| <b>ARTICLE XIII INDEMNIFICATION .....</b>                    |                                                                                                     | <b>34</b> |
| 13.1                                                         | INDEMNIFICATION OF OFFICERS, DIRECTORS OR AGENTS.....                                               | 34        |
| <b>ARTICLE XIV AMENDMENTS.....</b>                           |                                                                                                     | <b>35</b> |
| 14.1                                                         | AMENDMENT BY THE ASSOCIATION.....                                                                   | 35        |
| 14.2                                                         | AMENDMENT TO COMPLY WITH GOVERNMENTAL AUTHORITY .....                                               | 35        |
| 14.3                                                         | AMENDMENT TO MAKE NON-MATERIAL CHANGES, CORRECT SCRIVENER'S<br>ERRORS AND CLARIFY AMBIGUITIES ..... | 36        |
| 14.4                                                         | LIMITATION ON AMENDMENTS .....                                                                      | 36        |
| <b>ARTICLE XV GENERAL PROVISIONS.....</b>                    |                                                                                                     | <b>36</b> |
| 15.1                                                         | ASSIGNMENT OF RIGHTS AND DUTIES TO THE ASSOCIATION .....                                            | 36        |
| 15.2                                                         | COVENANTS TO RUN WITH THE TITLE TO THE LAND.....                                                    | 37        |
| 15.3                                                         | ENFORCEMENT.....                                                                                    | 37        |
| 15.4                                                         | SEVERABILITY .....                                                                                  | 37        |
| 15.5                                                         | DURATION .....                                                                                      | 37        |
| 15.6                                                         | COMMUNICATION .....                                                                                 | 38        |
| 15.7                                                         | NOTICE .....                                                                                        | 38        |
| 15.8                                                         | CONFLICT .....                                                                                      | 38        |
| 15.9                                                         | USAGE .....                                                                                         | 38        |
| 15.10                                                        | GOVERNING LAW.....                                                                                  | 38        |
| 15.11                                                        | SECURITY.....                                                                                       | 38        |

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF COLONY TRACE

THIS DECLARATION is made and entered into this 8<sup>th</sup> day of November 2005, by Beazer Homes Corp., a Tennessee corporation, the "Declarant".

### RECITALS:

- A. Declarant is the owner of certain real property located in Lee County, Florida, described on Exhibit A attached hereto and made a part hereof (the "Property").
- B. Declarant intends to develop the Property into a community to be known as Colony Trace.
- C. The Property shall be held, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration.

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

### ARTICLE I DEFINITIONS

- 1.1 "Articles" shall mean the articles of incorporation of the Association which have been filed in the office of the Secretary of the State of Florida, as same may be amended from time to time, a copy of which is attached hereto as Exhibit B.
- 1.2 "Association" shall mean Colony Trace Homeowners Association, Inc., its successors and assigns.
- 1.3 "Board" shall mean the board of directors of the Association.
- 1.4 "Bylaws" shall mean the bylaws of the Association, as same may be amended from time to time, a copy of which is attached hereto as Exhibit C.
- 1.5 "Common Area" shall mean all real property (including the improvements thereon) owned by the Association or easement areas in favor of the Association, for the common use and enjoyment of the Owners. The Common Area includes the Streets (as hereinafter defined) and Conservation Areas (as hereinafter defined), excluding Lots.

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

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

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

1.9 “Conservation Area(s)” shall mean all conservation areas and/or conservation easement areas, if any, designated by Declarant or its successors and assigns upon the Plats (as hereinafter defined), or in any easements, dedications, or restrictions made or imposed pursuant to conservation ordinances, laws, rules, or regulations of governmental authorities.

1.10 “County” shall mean and be defined as Lee County, Florida, a political subdivision of the State of Florida, specifically including each and all of its departments and agencies.

1.11 “Declarant” shall mean Beazer Homes Corp., a Tennessee corporation, and its successors and assigns. Declarant may assign all or a portion of its rights hereunder. In the event of a partial assignment, the assignee shall be deemed Declarant and may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

1.12 “Declaration” shall mean this Declaration of Covenants, Conditions, and Restrictions of Colony Trace.

1.13 “Governing Documents” shall mean and collectively refer to this Declaration, the Articles, and Bylaws.

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

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

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

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

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

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

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

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

1.22 "Residence" shall mean any residential dwelling unit constructed or to be constructed on or within any Lot together with any appurtenant improvements.

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

1.24 "Street(s)" shall mean the right(s)-of-way of and for all streets, roads, drives, courts, ways and cul de sacs within the Property as the same are described in and depicted on the Plats, together with all paving, curbing, gutters, sidewalks and other improvements, facilities and appurtenances from time to time located therein, including street lights and utility lines but, specifically excluding, however, such utility lines, facilities and appurtenances as are located within such right(s)-of-way as may be owned by private or public utility companies or governmental agencies from time to time providing utility services to the Property.

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

1.26 "Turnover" shall mean that date following conversion of Class B Membership to Class A Membership upon which Declarant transfers majority control of the Board as provided in this Declaration.

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

## **ARTICLE II** **PROPERTY RIGHTS**

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

2.1.1 The right of the Association to suspend the voting rights and right to use Common Area facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

2.1.2 The right of the Association to mortgage or convey the Common Area to any homeowner association, public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such mortgage or conveyance shall be effective unless such mortgage, dedication, or transfer is approved by the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the total votes of the Association and an instrument agreeing to such mortgage, dedication, or transfer is recorded in the public records of the County. If any Owner's ingress or egress to his Residence is through the Common Area, any conveyance or encumbrance of such section of the Common Area is subject to that Owner's easement.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Governing Documents, his right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on his Lot, but not otherwise.

2.3 Utility Easements. There are hereby created, declared, granted to and reserved for the benefit of Declarant, the County, the Association, all Owners, all Lots, and all public or private providers of utility services to the Property and their respective successors and assigns a non-exclusive perpetual easement for utility purposes over, under, upon and within the Streets and all utility easements and utility easement areas shown on the Plats or otherwise reserved, declared, or created pursuant to this Declaration for the purposes of constructing, installing, inspecting, operating, maintaining, repairing, and replacing, from time to time, any and all utility and service lines, mains, systems, equipment, and facilities from time to time located therein or thereon. The utilities contemplated to be served by such utility easements may include, without limitation, those providing reuse and potable water, sewer, drainage, irrigation systems, telephone, security systems, electricity, gas, cable television or other communication lines and services.

2.4 Emergency Drainage Easement. There is hereby created, declared and granted to and for the benefit of the County and SFWMD, a non-exclusive perpetual easement over, under, upon and

within the Streets and all drainage easements and drainage easement areas comprising and appurtenant to the Surface Water Management System for the purpose of undertaking emergency maintenance and repairs to the Surface Water Management System in the event that inadequate maintenance or repair of the Surface Water Management System by the Association shall create a hazard to the public health, safety or general welfare. To the extent that the County and/or SFWMD shall, in fact, undertake any such emergency maintenance and repairs to the Surface Water Management System because of the inadequate maintenance and repair thereof by the Association, the County and/or SFWMD as the case may be, shall have a lien upon the Common Area comprising the Surface Water Management System as security for the payment by the Association of those costs and expenses reasonably so incurred by the County and/or SFWMD in connection therewith. It is expressly provided, however, that the creation, declaration, grant and reservation of such Emergency Drainage Easement shall not be deemed to impose upon the County and/or SFWMD any obligation, burden, responsibility or liability to enter upon the Property or any portion thereof to take any action to maintain or to repair the Surface Water Management System or any portion or portions thereof for any reason or reasons whatsoever.

**2.5 Easement for Access and Drainage.** The Association shall have a perpetual non-exclusive easement over all areas of the Surface Water Management System for access to operate, maintain or repair the Surface Water Management System. By this easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the Surface Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water Management System as required by the Permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water Management System. No Person shall alter the drainage flow of the Surface Water Management System, including buffer areas or swales, without the prior written approval of SFWMD.

**2.6 Swale Maintenance.** Declarant may construct a drainage swale upon the Lots for the purpose of managing and containing the flow of excess surface water, if any, found upon such Lot(s) from time to time. Each Owner, including builders, shall be responsible for the maintenance, operation and repair of the swales on their 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 SFWMD. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swales 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 of the Lot upon which the drainage swale is located.

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



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

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

2.9 Association's Access Easement. 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 Property for the purpose 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. Furthermore, a non-exclusive easement is hereby created over all utility easements and drainage easements located on any Lot, whether now existing or hereafter created, including, but not limited to, all utility easements and drainage easements contained on the Plat, which easement is in favor of the Association, including its agents and designees, in perpetuity, to utilize for all proper purposes of the Association, as determined by the Board.

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

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

hereafter created, granted, or reserved by Declarant without the necessity for the consent or joinder of the owner of the particular portion of the Property over which any such further or additional easement is granted or required.

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

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

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

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

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

3.2.2 Class B Membership. "Class B Member" or "Class B Membership" shall be Declarant. The Class B Member shall be entitled to five (5) votes for each Lot owned. The Class B Membership shall cease and convert to Class A Membership on the happening of any of the following events, whichever occurs earlier:

3.2.2.1 The total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership.

3.2.2.2 The date exactly ten (10) years after the recording of this Declaration.

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

### **ARTICLE IV** **PROPERTY SUBJECT TO THIS DECLARATION** **AND ADDITIONS TO THE PROPERTY**

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

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

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

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

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

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

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

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

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

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

5.2.1 All maintenance of the Common Area and repair and replacement of all improvements thereon as and when deemed appropriate by the Board.

5.2.2 Payment of ad valorem taxes, non-ad valorem assessments and personal property taxes, if applicable, with respect to the Common Area.

5.2.3 Operation of the Common Area in accordance with the rules and other standards adopted by the Board from time to time.

5.2.4 Taking any and all actions necessary to enforce all covenants, restrictions, and easements affecting the Property and performing any of the functions or services delegated to the Association in the Governing Documents.

5.2.5 Conducting business of the Association, including arranging for administrative services such as management services, legal, accounting, financial, and communication services such as informing Owners of activities, meetings, and other important events.

5.2.6 Purchasing insurance to the extent necessary to insure Association property, liability of the Association, its officers and the Board, and any other insurance to the extent deemed necessary or desirable by the Board.

5.2.7 Acceptance of any instrument of conveyance with respect to the Common Area delivered to the Association.

5.2.8 The maintenance, operation, and repair of the Surface Water Management System. Maintenance of the Surface Water Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by SFWMD or the County. Any repair or reconstruction of the Surface Water Management System shall be as permitted or, if modified, as approved in writing by SFWMD or the County, if applicable.

5.2.9 Monitoring and maintenance of mitigation areas, if any, described in the Permit shall be the responsibility of the Association. The Association must successfully complete the mitigation and satisfy Permit conditions.

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

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

5.3.2 Cleanup, landscaping, maintenance, dredging, water treatment or other care of lakes, ponds, canals, roads, or other property (public or private), adjacent to or near the Property, or other property designated Common Maintenance Area by Declarant or the Association to the extent such care would be beneficial to the Property and to the extent that the Association has been granted the right to so care for the affected property by the owner thereof or other Person authorized to grant such right, including, but not limited to, any appropriate governmental authority.

## **ARTICLE VI** **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

6.1 Common Area. On or before Turnover, Declarant shall convey its interest in the Common Area to the Association. The Association shall accept title to any interest in real or personal property transferred to it by Declarant. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interest and licenses to use. Any fee simple interest in property transferred to the Association by Declarant shall be transferred to the Association by quit-claim deed, free and clear of all liens (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration and any and all easements, rights-of-way, reservations, covenants, conditions, restrictions, equitable servitudes and other encumbrances of record or reserved by Declarant in the instrument of conveyance. The property or interest in property transferred to the Association by Declarant may impose special restrictions governing the uses of such property and special obligations on the

Association with respect to the maintenance of such property. No title insurance or title opinion shall be provided to the Association by Declarant.

THE ASSOCIATION SHALL ACCEPT "AS IS" THE CONVEYANCE OF SUCH PROPERTY WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT THERETO, OR WITH RESPECT TO THE IMPROVEMENTS AND REPAIRS TO BE COMPLETED AFTER THE CONVEYANCE, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES REGARDING FUTURE REPAIRS OR REGARDING THE CONDITION, CONSTRUCTION, ACCURACY, COMPLETENESS, DESIGN, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS OR FURNITURE WHICH HAS BEEN OR WILL BE USED IN SUCH PROPERTY OR REPAIRS. BY ACCEPTANCE OF AN INTEREST IN ANY SUCH PROPERTY OR THE DEED TO ANY LOT, THE ASSOCIATION AND ALL OWNERS RELEASE DECLARANT FROM ANY CLAIMS AND WARRANT THAT NO CLAIM SHALL BE MADE BY THE ASSOCIATION OR ANY OWNER RELATING TO THE CONDITION, OR COMPLETENESS OF SUCH PROPERTY OR REPAIRS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM.

#### **ARTICLE VII** **COMMUNITY WALLS**

7.1 Community Walls. Declarant or the Association may construct walls or fences (the "Community Wall(s)") in the Common Area, easements, or elsewhere on the Property as a visual barrier, decorative, architectural, or safety feature, retaining wall, or for any other reason at the sole discretion of Declarant or the Association, or as a requirement of any municipality or governing authority for the benefit of the Association. Such walls or fences cannot alter the drainage flow of the Surface Water Management System unless prior written approval is received from SFWMD.

7.2 Maintenance of Community Walls. Community Wall maintenance and repair shall be performed by the Association, as determined by the Board. Should the Board determine that maintenance and/or repair is a result of negligence or abuse by an Owner, charges for said maintenance and/or repair will be assessed to such Owner. Owners shall not remove, alter, improve, paint, repair, maintain or otherwise modify Community Walls without the express written permission of the Board.

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

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**ARTICLE VIII**  
**COVENANT FOR ASSESSMENTS**

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

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

8.2 Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement, maintenance and repair of the Common Area, Common Maintenance Area, and Surface Water Management System including but not limited to: work within retention areas, drainage structures and drainage easements, easement areas benefiting the Property, right-of-way areas adjacent to the Property which the Association chooses to maintain, or for any other purpose set forth in this Declaration that the Board deems appropriate.

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

8.4 Rate of Common Assessments. The amount of the Common Assessment for each calendar year, subsequent to the year in which this Declaration is recorded in the Public Records of the County, shall be established and determined by the Board not later than thirty (30) days prior to the beginning of the next succeeding calendar year. The Board shall establish the Common Assessment for each calendar year based upon a pro forma operating statement or estimated budget for such calendar year which, in turn, shall be based, among other things, upon an estimate of the total Common Expenses likely to be incurred by the Association during such calendar year, taking into account the previous operating history of and any surplus funds, not including reserves, held by the Association, and the establishment of reasonable reserves for the maintenance, repair and replacement of the Common Area, including the Surface Water Management System. The Association shall, not less than thirty (30) days prior to the establishment of a Common Assessment, provide to each Owner a copy of the pro forma operating statement or estimated budget to be used by the Association in the establishment of such Common Assessment. The total amount of the Common Expenses so estimated shall be divided by the total number of platted Lots within the

Property which are then subject to and encumbered by this Declaration in order to determine the amount of the Common Assessment for each Lot for such calendar year.

8.5 Insufficient Common Assessments. In the event that the Association shall determine during any calendar year that the Common Assessment established for such calendar year is or will become inadequate or insufficient to meet all anticipated Common Expenses for such calendar year, for whatever reason, the Board of shall be entitled to immediately determine the approximate amount of the deficiency or inadequacy of the Common Assessment for such calendar year, issue a supplemental estimate of Common Expenses to all members of the Association and within thirty (30) days thereafter levy and collect a supplemental or revised Common Assessment for such calendar year.

8.6 Commencement Assessment. A commencement assessment of Two Hundred Fifty Dollars (\$250) per Lot (the "Commencement Assessment") shall be paid directly to the Association at the time of closing by the Person first purchasing a Lot from Declarant or its successor. The Association may use the Commencement Assessment for any of the purposes and services set forth in this Declaration.

8.7 Special Assessments. In addition to other authorized assessments, the Association may levy assessments or charges from time to time to cover unbudgeted expenses or expenses in excess of those budgeted ("Special Assessments"), provided that any such Special Assessment shall require the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than fifty one percent (51%) of the votes of the Association present at a meeting duly called for that purpose.

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

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

8.10 Reserves. The Common Assessments shall include reasonable amounts, as determined by the Board, to be collected and held as reserves against and for the future periodic maintenance, repair or replacement of all or any portion or portions of the Common Area, including, without limitation, the Surface Water Management System, or for such other purpose or purposes as shall be determined by the Board, in its reasonable discretion. Such portion of Common Assessments representing amounts collected as reserves, whether established pursuant to this Section or otherwise, shall be deposited by the Association in one or more separate interest bearing bank account(s), certificate(s) of deposit or in United States Treasury Bonds of appropriate maturity, to be held in trust by the Association until used for the purpose or purposes for which the same are established and shall be segregated from and not commingled with the general funds or any other



funds of the Association. Reserves established and held for purposes of maintaining, repairing and/or replacing the Surface Water Management System shall be deposited to and held in accounts separate and apart from any other funds (reserve or otherwise) of the Association. The amount and manner of collection of Reserves for replacement of Common Area improvements shall be as determined by the Board, in its sole discretion.

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

**8.12 Declarant's Obligation for Assessments.** Notwithstanding anything herein to the contrary, as long as the Class B Membership exists, Declarant may elect not to pay any assessments on unoccupied Lots owned by Declarant. Should Declarant elect not to pay the assessments, Declarant shall pay all costs incurred by the Association in accomplishment of the purposes set forth in Section 8.2 of this Article, in excess of the total amount collected by the Association through all assessments. Irrespective of any election on the part of Declarant, any Residence located on any Lot owned by Declarant which is occupied as a residence shall be subject to one hundred percent (100%) of any and all applicable assessments. Declarant may at any time revoke this election and place himself in the position of being obligated to pay the full impact of all assessments for each Lot owned by Declarant at the time said revocation is presented to the Association.

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

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

**8.15 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an Institutional Lender. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this

Section shall be deemed to be an assessment divided equally among, payable by and a lien against all Lots subject to assessment by the Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Notwithstanding any contrary provision hereof, no Institutional Lender acquiring title to a Lot through foreclosure or conveyance in lieu of foreclosure, and no purchaser at a foreclosure sale, and no persons claiming by, through or under such Institutional Lender or purchaser, shall be personally obligated to pay assessments that accrue prior to the Institutional Lender's or the foreclosure purchaser's acquiring title.

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

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

8.16.1 All Property deeded to and accepted by the Association, a Taxing District, or a public authority devoted to public use.

8.16.2 All Common Area.

8.16.3 Any Property not designated as a Lot.

#### **ARTICLE IX** **ARCHITECTURAL CONTROL**

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

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

#### **ARTICLE X** **USE RESTRICTIONS**

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

10.1 Residential Lots. Except as specifically provided in this Declaration, no use shall be made of Lots other than for residential purposes.

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

10.3 Clothes Drying Area. No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on a Lot if viewable from other Lots, Common Area or Streets.

10.4 Antennas, Aerials, Satellite Dishes and Flagpoles. Outside antennas, antenna poles, antenna masts, satellite television reception devices larger than forty inches (40") in diameter, electronic devices, antenna towers or citizen band (CB) or amateur band (ham) antennas shall not be permitted except as approved in writing by the Board. Satellite television reception devices no larger than forty inches (40") in diameter are permitted without Board approval if the devices are affixed to the rear portion of a Residence. Owners shall use their best efforts to locate the satellite television reception devices so they are not visible from any Street fronting the Residence. No antennae shall extend more than ten feet (10') above a Residence. The American flag and a flagpole for display of the American flag shall be permitted if displayed in a respectful way.

10.5 Shutters and Window and Door Coverings. No exterior windows or doors of any building or other improvements on a Lot shall be covered by any shutters (including hurricane or storm shutters), boards, or similar type window coverings; except such as may be required for protection from severe storms and only then during the actual period of any such severe storm and the period within seventy-two (72) hours before and seventy-two (72) hours after an anticipated severe tropical storm or hurricane; nor shall any such windows or doors be covered by or coated with any foil or other reflecting or mirrored materials. The foregoing restriction shall not be construed as a prohibition against decorative exterior shutters located to the side of or over window or door openings; provided the same are first approved by the Board taking into account the architectural style and character of the residential dwelling or other improvement on which the same are proposed to be installed and such other factors as may be deemed relevant to such approval by the Board.

10.6 Outside Lighting. Except as may be installed initially by Declarant, no spotlights, flood lights, or similar high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Residence or upon the Common Area or any part thereof, without the written authorization of the Board.

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

10.8 Walls and Fences. Except for walls or fences constructed by Declarant or the Association, no walls, fences, hedge, or similar structures, dog runs or animal pens of any kind shall be placed or erected on the Property, without the express written permission of the Board.

10.9 Subdivision or Partition. No portion of the Property shall be subdivided except with the Board's or Declarant's prior written consent.

10.10 Casualty Destruction to Improvements. 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, as determined by the Board, the Owner thereof shall either commence to rebuild or repair the damaged improvement and diligently continue such rebuilding or repairing activities to completion or clear the damaged improvement and grass over and landscape such Lot. A destroyed improvement shall only be replaced with an improvement of a similar size, type, construction, and elevation as that destroyed unless the prior written consent of the Board is obtained.

10.11 Insurance. Nothing shall be done or kept on the Common Area or the Property which shall increase the insurance rates of the Association without the prior written consent of the Board. Owners, at their own expense, should obtain coverage upon their Residence, their personal property, and improvements within their Residence, and for their personal liability, and such insurance shall not be the responsibility of the Association.

10.12 Surface Water Management System.

10.12.1 No structure of any kind shall be constructed or erected within, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of any drainage areas or the Surface Water Management System, nor shall any grading, alteration, or other modifications to these areas be made without the prior written permission of the Board and SFWMD.

10.12.2 No Owner shall remove native vegetation that becomes established within the Surface Water Management System without prior written approval from SFWMD and the Board. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Owners should address any questions regarding authorized activities within the Surface Water Management System to SFWMD Permitting Department.

10.12.3 No Owner shall in any way deny or prevent ingress and egress by Declarant, the Association, the County, or SFWMD to any drainage areas or the Surface Water Management System for maintenance or landscape or enforcement purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of Declarant, the Association, SFWMD, the County, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

10.12.4 No Lot shall be increased in size by filling in any drainage areas or other portion of the Surface Water Management System. No Owner shall fill, dike, rip-rap, block, divert,

or change the established drainage areas or the Surface Water Management System without the prior written consent of the Board and SFWMD.

10.12.5 No sidewalk, driveway, impervious surface, paving, patio, deck, pool, air-conditioner, structure, utility shed, pole, fence, wall, irrigation system, tree, shrub, hedge, planting, landscaping plants other than grass, or other improvement shall be placed by an Owner within a drainage area, drainage easement, or the Surface Water Management System, except for landscaping of stormwater detention and retention ponds as required by governmental land development code.

10.12.6 In addition to the Association, SFWMD and the County shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation, and repair of the Surface Water Management System.

10.12.7 Declarant shall convey its interest in the Surface Water Management System to the Association (excluding that portion of the Surface Water Management System located on Lots). After said conveyance, the Association shall, subject to the terms and provisions of this Declaration, have sole and exclusive jurisdiction over and responsibility for the administration, monitoring, management, regulation, care, maintenance, repair, restoration, replacement, improvement, preservation and protection of the Surface Water Management System. Accordingly, each Owner, by acceptance of a deed to his Lot, shall be deemed to have agreed that Declarant, the County, nor any other governmental agency shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the Surface Water Management System and each Owner shall be deemed to have agreed to look solely and exclusively to the Association with respect to any such liability or responsibility.

10.12.8 Copies of the Permit and any future Permit actions of SFWMD shall be maintained by the officers of the Association for the benefit of the Association. The Permit shall be owned by the Association and the Association has the obligation to assure that all terms and conditions thereof are enforced. If the Permit is issued in Declarant's name, then upon conversion of the rights of the Class B Membership to Class A Membership, pursuant to Section 3.2 of Article III hereof, Declarant shall transfer and the Association shall accept and assume all rights and obligations of Declarant under the Permit.

10.12.9 Each Owner shall use and maintain the portion of their Lot located in the Surface Water Management System or within drainage easements, if any, in compliance with the Permit, County approvals, and all other applicable rules and regulations. Owner, at its sole expense, shall immediately correct or abate all violations of or non-compliance with the Permit, County approvals, and all other applicable rules and regulations.

10.12.10 The Association management and maintenance of the Surface Water Management System shall comply with the SFWMD Urban Stormwater Management Program as described in Exhibit E attached hereto.

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

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

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

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

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

10.16 Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept within the Property, other than household pets provided they are not kept, bred, or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any other Owner. No pet shall be allowed outside a Lot except on a leash. No pets shall be permitted to place or have excretions on any portion of the Property unless the owner of the pet physically removes any such excretions from that portion of the Property. For purposes hereof, "household pets" shall mean dogs, cats, domestic birds, and fish. Commercial activities involving pets shall not be allowed. The Board or Declarant may establish limits on the number and kind of pets that may be kept or permitted to be kept on any Lot.

10.17 Signs. No signs, except a "For Sale or Lease" sign not exceeding two (2) square feet in surface area, shall be erected or displayed to the public view on any Lot. "For Sale or Lease" signs must be displayed from within a window in the Residence. Notwithstanding the foregoing, Declarant specifically reserves the right for itself, its successors, nominees, assigns, and the Association, to place and maintain any and all signs they may deem necessary, regardless of whether or not the sign complies with the mandates of the Association and its Members, in connection with construction, marketing, sales, and rental of Residences and Lots, and identifying or informational signs, anywhere on the Property.

10.18 Garbage Containers, Oil and Gas Tanks, Outdoor Equipment. All garbage and trash containers must be placed in landscaped areas so that they are not visible from any adjoining Lot or any Street, except on those days designated as scheduled collection days for the Property by the agency responsible for collecting garbage and trash. No oil tanks or bottled gas tanks shall be allowed on any Lot without the express written consent of the Board. Adequate landscaping shall be installed and maintained by the Owner to conceal oil tanks or bottled gas tanks if approved by the Board. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or other waste. There shall be no burning of trash or other waste material. Trash or other waste shall be kept only in closed containers and all equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

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

10.20 Vehicles and Recreational Equipment. No truck or commercial vehicle, limousine, mobile home, motor home, house trailer, utility trailer, camper, boat, boat trailer or other recreational vehicle or equipment, horse trailer, bus, passenger vehicle without current registration, van (other than a passenger van), or the like shall be permitted to be parked or stored on any portion of the Property unless they are parked within a garage, or are located on a Lot so they cannot be seen from any Street and are shielded from view from any adjoining Lot (as viewed from ground level). For the purposes of this rule the following definitions shall apply:

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

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

This prohibition of parking shall not apply to temporary parking of Trucks and Commercial Vehicles used for pickup, delivery, and repair and maintenance of a Lot, nor to any vehicles of Declarant.

Any such vehicle or recreational equipment parked in violation of these or other regulations contained herein or in the rules and regulations adopted by the Association may be towed by the Association at the sole expense of the owner of such vehicle or recreational equipment if it remains in violation for a period of twelve (12) consecutive hours or for twenty-four (24) non-consecutive hours in any seven (7) day period. The Association shall not be liable to the owner of such vehicle or recreational equipment for trespass, conversion, damages, or otherwise, nor guilty of any criminal act by reason of such towing, and neither its removal nor failure of the owner of such vehicle or recreational equipment to receive any notice of said violation shall be grounds for relief of any kind.

10.21 Parking. Owners shall park their vehicles within the Owner's garage, in the driveway of Owner's Residence, or in other areas on the Property designated by Declarant or the Association. All parking within the Property shall be in accordance with the rules and regulations adopted from time to time by the Association. No on-street parking will be permitted unless for special events approved in writing by Declarant or the Association.

10.22 Garages. Garage doors shall be closed except when reasonably necessary for use of garage. No Owner shall cause any garage on his Lot to be permanently enclosed, screened, converted, or remodeled to allow for occupancy by occupants of the Residence.

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

10.24 Repairs. No maintenance or repairs shall be performed on any vehicles upon any portion of the Property for longer than a six (6) hour period except in an emergency situation. Notwithstanding the foregoing, all repairs to disabled vehicles within the Property must be completed within twelve (12) hours from its immobilization or the vehicle must be removed.

10.25 Prohibited Structures. No structure of a temporary character including, but not limited to, trailers, tents, shacks, sheds, barns, tree-houses, garages, tool sheds, guest quarters, carports, storage buildings or other outbuildings shall be placed or erected on the Property at any time without the express written permission of the Board.

10.26 Nuisances. No obnoxious, unpleasant, unsightly, or offensive activity shall be carried on, nor may anything be done, which can be reasonably construed to constitute a nuisance, public or



private in nature. Any questions with regard to the interpretation of this Section shall be decided by the Board, whose decision shall be final.

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

10.28 Games and Play Structures. No basketball courts or basketball standards or backboards (whether permanent or moveable) shall be installed, placed, or affixed to any structure on any portion of the Property. All play sets, playground equipment, and other outdoor recreational equipment must be approved by the Board prior to installation. All moveable basketball standards or backboards, bicycles, toys, and outdoor recreational equipment must be taken inside the Residence at night.

10.29 Swimming Pools. Swimming pools shall not be located within any of the drainage or utility easements shown on the Plat.

10.30 Common Area. Other than improvements and landscaping constructed or installed by Declarant, no improvements or landscaping shall be constructed or installed upon any portion of the Common Area nor shall any alterations or additions be made to said improvements or landscaping without the approval of the Board. The following shall apply to the Common Area:

10.30.1 No activities constituting a nuisance shall be conducted upon the Common Area.

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

10.30.3 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.

10.30.4 Nothing shall be stored, constructed within or removed from the Common Area other than by Declarant or the Association, except with the prior written approval of the Board.

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

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

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

**10.34 Compliance with Documents.** Each Owner and his family members, guests, invitees, lessees and their family members, guests, and invitees; and his or its tenants, licensees, guests, invitees and sub-tenants shall be bound and abide by this Declaration. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within the Property. Such Owner shall be liable to the Association for the cost of any maintenance, repair or replacement of any real or personal property rendered necessary by his act, neglect or carelessness, or by that of any other of the foregoing parties which shall be immediately paid for by the Owner as a Specific Assessment. Failure of an Owner to notify any Person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right to enforcement of these provisions against the Owner or such other Person.

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

**10.36 Sales, Marketing and Promotional Activities.** Notwithstanding anything to the contrary set forth in this Article or elsewhere in this Declaration, Declarant and its affiliate(s) may use any portion of the Property, including Lots (other than Lots owned by others), for sales, marketing and promotional activities and related or supportive administrative activities pertaining to and/or in connection with the sale and/or resale of lots or houses constructed by Declarant and/or its

affiliates, in its or their sole and absolute discretion, including without limitation, the construction, maintenance and operation of a sales and administrative center and one (1) or more model homes on Lots. The location of such sales and administrative center within the Property may be changed from time to time by Declarant and/or its affiliates in its or their sole and absolute discretion. It is expressly provided, however, that the location and operation of such sales and administrative center on Lots shall be subject to such approvals of the County as may be required for the same.

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

#### **ARTICLE XI** **SHORT TERM RENTALS**

11.1 No Short Term Rentals. Owners shall be allowed to lease their Residences, provided that any such lease shall require the tenant thereunder to comply with the terms and conditions of the Governing Documents, and provided that such lease and tenancy is otherwise in compliance with any rules and regulations promulgated by the Board. No lease of a Residence shall be for a term of less than seven (7) months, and any such lease shall be in writing and shall be enforceable by the Association, whether or not so stated in its terms. No Owner may lease his Residence more than twice during any calendar year unless approved by the Board. During the term of any lease, Owner shall not be relieved of any obligations under the terms of the Governing Documents, and Owner shall be liable for the actions of his tenants which may be in violation of the terms and conditions of the Governing Documents, any rules and regulations promulgated by the Board, and any other documents set forth above, notwithstanding the fact that the tenants are also fully liable for any violation of the Governing Documents and regulations. In the event a tenant, occupant, or person living with the tenant violates the Governing Documents or the rules and regulations promulgated by the Board, the Association shall have the power to bring an action or suit against the tenant or occupant and the Owner, or any combination of the foregoing, to recover sums due for damages or injunctive relief or for any other remedy available at law or in equity.

11.2 Time-Share Prohibition. No time sharing plan as the term is defined in Chapter 721, Florida Statutes (2003), as amended, or any similar plan of fragmented or interval ownership of Residences shall be permitted on the Property, and no attempt to create same by lease or otherwise shall be allowed.

11.3 Amendment. This Article shall not be amended without the written consent of Declarant, unless Declarant no longer owns any land which is subject to this Declaration or subject to annexation to the Declaration.

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

12.1 Non-monetary Defaults. In the event of a violation by any Member or Owner (other than the nonpayment of any assessments or other monies) of any of the provisions of the Governing

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

12.1.1 Specific Performance. Commence an action to enforce the performance on the part of the Member or Owner, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

12.1.2 Damages. Commence an action to recover damages; and/or

12.1.3 Corrective Action. Take any and all action reasonably necessary to correct such violation, which action may include, but is not limited to, removing any building or improvement for which architectural approval has not been obtained, or perform any maintenance required to be performed by this Declaration, including the right to enter upon a Lot to make such corrections or modifications as are necessary, or remove anything in violation of the provisions of the Governing Documents or any restrictions set forth by the Board.

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

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

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

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

12.6 Enforcement By or Against the Persons. In addition to the foregoing, this Declaration may be enforced by Declarant, the Association, or any Owner by any procedure at law or in equity against any Person violating or attempting to violate any provision herein, to restrain any violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any

lien created herein. The expense of any litigation to enforce this Declaration shall be borne by the Person against whom enforcement is sought, provided such proceeding results in a finding that such Person was in violation of this Declaration. The prevailing party in any such action shall be entitled to recover its reasonable attorney fees and disbursements through the appellate level.

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

### **ARTICLE XIII** **INDEMNIFICATION**

13.1 Indemnification of Officers, Directors or Agents. The Association shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that they are or were a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by them in connection with such action, suit or proceeding if they acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interest of the Association. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Person did not act in good faith and in a manner which they reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that they had no reasonable cause to believe that their conduct was unlawful.

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

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

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

Association would have the power to indemnify them against such liability under the provisions of this Article.

#### **ARTICLE XIV** **AMENDMENTS**

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

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

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

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

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

14.4.1 To the extent that particular rights or interests are expressly conferred upon or granted to the County pursuant to this Declaration, the particular terms and provisions of this Declaration pursuant to which any such rights and interests are conferred upon and granted to the County shall not be changed, amended or modified without the prior written consent and joinder of the County.

14.4.2 This Declaration may not be changed, amended or modified in such manner as to terminate or eliminate any easements granted or reserved herein to Declarant, the

Association, the County, SFWMD or utility company, respectively, without the prior written approval of Declarant, the Association, the County, SFWMD or utility company, as the case may be, and any attempt to do so shall be void and of no force and effect.

14.4.3 No amendment to this Declaration shall be approved which conflicts with any land use approval or permits granted by the County, or which conflicts with the Code of Ordinances or Uniform Land Development Regulations of the County.

#### **ARTICLE XV** **GENERAL PROVISIONS**

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

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

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

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

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

above, the association shall re-record this Declaration or other notice of its terms at intervals necessary under Florida law to preserve its effect.

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

15.7 Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the Person who appears as Member or Owner on the records of the Association at the time of such mailing.

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

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

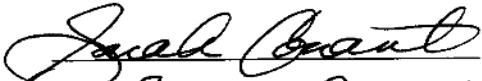
15.10 Governing Law. The construction, validity, and enforcement of this Declaration shall be determined according to the laws of the State of Florida. Any action or suit brought in connection with this Declaration shall be in the County.

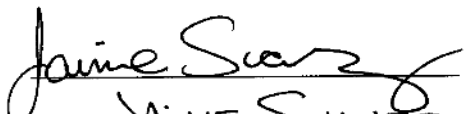
15.11 Security. Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make them safer than they otherwise might be. Neither Declarant nor the Association shall in any way be considered insurers or guarantors of security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

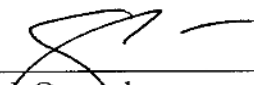
IN WITNESS WHEREOF, the undersigned, being Declarant, has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered  
in our presence:

**BEAZER HOMES CORP.,**  
a Tennessee corporation

  
Print: Sarah Conant

  
Print: JAIME SUAREZ

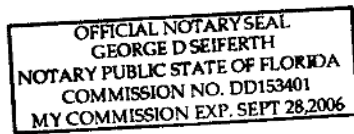
By:   
Scott J. Osmond  
Title: Division President – Ft. Myers Division  
13100 Westlinks Terrace  
Fort Myers, Florida 33931

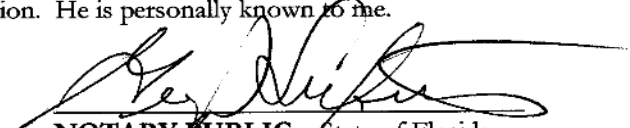


**STATE OF FLORIDA  
COUNTY OF LEE**

The foregoing instrument was acknowledged before me this 8 day of November 2005, by Scott J. Osmond as Division President – Fort Myers Division of Beazer Homes Corp., a Tennessee corporation, on behalf of the corporation. He is personally known to me.

(seal)



  
**NOTARY PUBLIC** – State of Florida  
My Commission Expires:

**SCHEDULE OF EXHIBITS**

- EXHIBIT A .....Legal Description of Property
- EXHIBIT B .....Articles of Incorporation
- EXHIBIT C .....Bylaws
- EXHIBIT D.....Surface Water Management Permit
- EXHIBIT E .....SFWMD Urban Stormwater Management Program

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**EXHIBIT A****LEGAL DESCRIPTION OF PROPERTY**

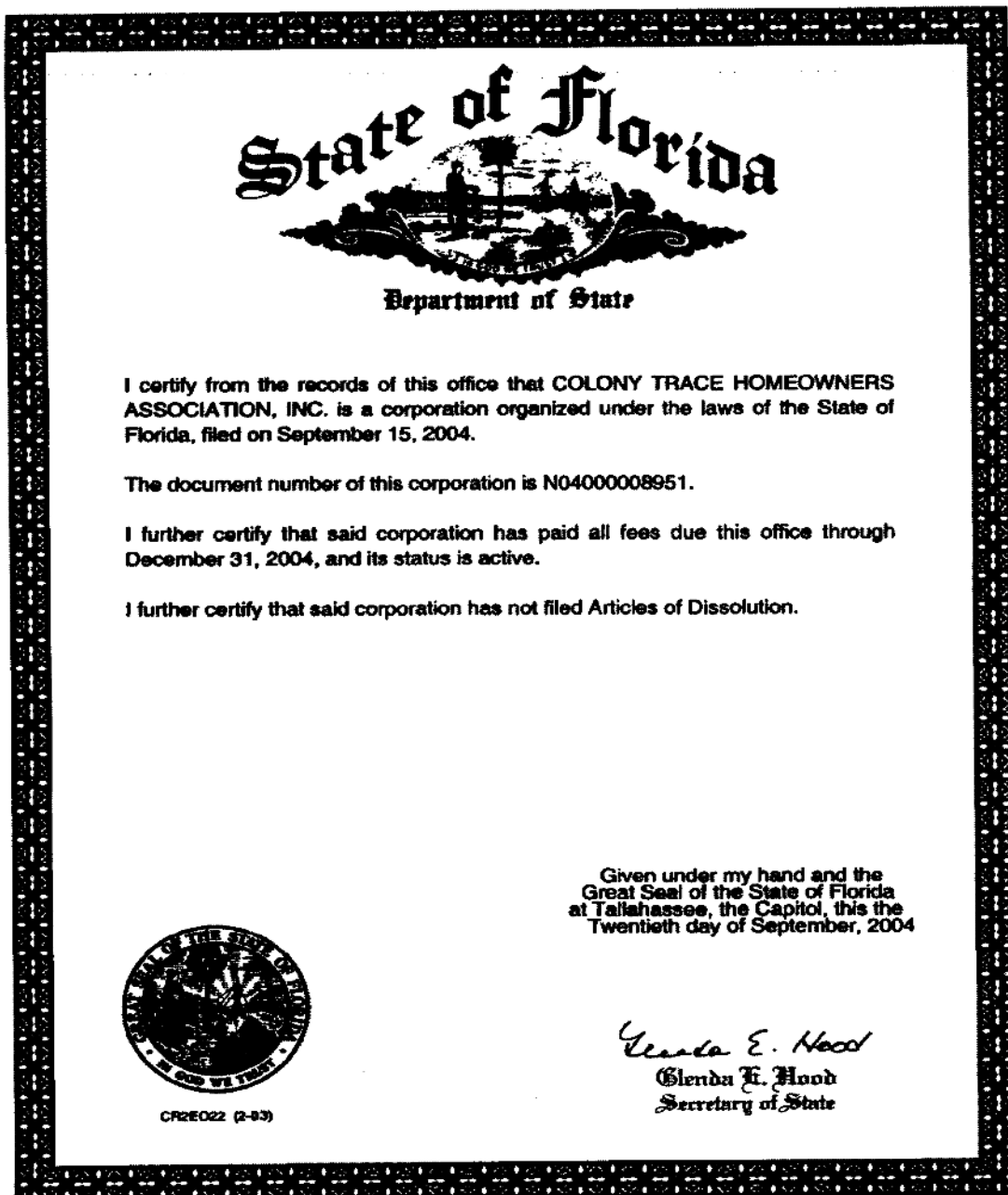
**A PARCEL OF LAND BEING A PART OF THE NORTH 1/2 OF THE  
NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 3, TOWNSHIP 46  
SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, DESCRIBED AS  
FOLLOWS:**

**COMMENCE AT THE SOUTHEAST CORNER OF THE PLAT OF STONEBRIDGE  
SOUTH, AS RECORDED IN PLAT BOOK 41, PAGES 93 AND 94 OF THE  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID POINT BEING ON THE  
WEST LINE OF CROWN COLONY SUBDIVISION, AS RECORDED IN PLAT  
BOOK 68, PAGES 23 THRU 38; THENCE SOUTH 00°59'57"EAST ALONG  
THE WEST LINE OF SAID CROWN COLONY SUBDIVISION, A DISTANCE OF  
50.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH  
00°59'57"EAST ALONG SAID WEST LINE, A DISTANCE OF 678.38 FEET TO  
A POINT ON THE NORTH LINE OF PROPOSED CROWN COLONY, UNIT 4;  
THENCE SOUTH 88°53'19"WEST ALONG SAID NORTH LINE, A DISTANCE  
OF 1271.88 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE  
OF WINKLER ROAD, (BEING 50 FEET FROM THE CENTERLINE); THENCE  
NORTH 01°04'12"WEST ALONG SAID EASTERLY LINE, A DISTANCE OF  
676.20 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST  
1/4 OF SECTION 3; THENCE NORTH 88°47'26"EAST ALONG SAID NORTH  
LINE, A DISTANCE OF 1272.72 FEET TO THE POINT OF BEGINNING.  
CONTAINING 19.78 ACRES, MORE OR LESS.**

**EXHIBIT B**

**ARTICLES OF INCORPORATION**

BEAZER - Colony Trace 10-04-05



**ARTICLES OF INCORPORATION  
OF  
COLONY TRACE HOMEOWNERS ASSOCIATION, INC.**

In compliance with the requirements of Florida Statute, Chapter 617, the undersigned, a resident of Florida and of full age, for the purpose of forming a corporation not for profit does hereby certify:

**ARTICLE I  
NAME OF CORPORATION**

The name of the corporation shall be Colony Trace Homeowners Association, Inc. (hereinafter referred to as the "Association").

**ARTICLE II  
PRINCIPAL OFFICE**

The principal office of the Association is located at 11934 Fairway Lakes Drive, Fort Myers, FL 33913.

**ARTICLE III  
PURPOSE 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 architectural control of the residence lots and common area within that certain tract of property (the "Property") described in the Declaration of Covenants, Conditions and Restrictions of Colony Trace, recorded or to be recorded in the Office of the Clerk of the Circuit Court, Lee County, Florida (the "Declaration") and as the same may be amended from time to time as therein provided, and to promote the health 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.

**ARTICLE IV  
BOARD OF DIRECTORS**

The affairs of the Association shall be managed by a board of not less than three (3) directors nor more than seven (7), who need not be members of the Association (the "Board"). The manner in which the directors are elected or appointed is as stated in the bylaws of the Association ("Bylaws"). The initial number of directors shall be three (3) and

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may be changed by amendment of the Bylaws. The names and addresses of the persons who are to act in the capacity of directors until the election of their successors are:

Scott Osmond - 11934 Fairway Lakes Drive, Fort Myers, FL 33913

Rodney Benson - 11934 Fairway Lakes Drive, Fort Myers, FL 33913

Michael Sferes - 11934 Fairway Lakes Drive, Fort Myers, FL 33913

**ARTICLE V**  
**INITIAL REGISTERED OFFICE AND AGENT**

The initial registered office of the Association shall be located at 11934 Fairway Lakes Drive, Fort Myers, FL 33913, and the initial registered agent of the Association shall be Rodney Benson.

**ARTICLE VI**  
**POWERS OF THE ASSOCIATION**

The general powers that the Association shall have include all proper acts, necessary or incidental, for the benefit and protection of the Association, to transact any lawful business, and to exercise all powers granted to Associations by the laws of Florida.

The Association shall operate, maintain and manage the surface water or stormwater management system for the Property in a manner consistent with the South Florida Water Management District ("SFWMD") permit requirements and applicable SFWMD rules and shall assist in the enforcement of the covenants and restrictions in the Declaration which relate to the surface water or stormwater management system.

The Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water or stormwater management system.

**ARTICLE VII**  
**MEMBERSHIP**

Every person or entity who is a record owner of 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 herein. The foregoing shall not include persons or entities who hold an interest merely as security for the performance of an 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 VIII** **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 of any lot shown upon any recorded plat of the Property (the "Lot" or "Lots"), excluding Declarant. Each Class A Member shall be entitled to one (1) 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 such a 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 any 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. Ten (10) years from the date of the original recording of the Declaration in the public records of Lee County, Florida; or
- C. At the election of the Declarant (whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association).

## **ARTICLE IX** **DISSOLUTION**

The Association may be dissolved upon the affirmative vote (in person or by proxy) or written consent or any combination thereof, of members holding not less than two-thirds (2/3) of the total votes of the Association. 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 or to any non-profit corporation, association, or other organization to be used for purposes similar to those for which this Association was created.

In the event of termination, dissolution, or final liquidation of the Association, the responsibility of the Association, if any, for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with Section 40, Florida Administrative Code, and be approved in writing by SFWMD prior to such termination, dissolution, or liquidation.



**ARTICLE X**  
**DURATION**

The existence of the Association shall commence with the filing of these Articles of Incorporation with the Secretary of State, Tallahassee, Florida. The Association shall exist perpetually.

**ARTICLE XI**  
**AMENDMENTS**

The Association shall have the right to amend these Articles of Incorporation at any time upon the affirmative vote (in person or by proxy) or written consent or any combination thereof, of members holding not less than two-thirds (2/3) of the total votes of the Association. 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 shall be adopted by the Board at the first meeting of directors, and may be altered, amended or rescinded thereafter in the manner provided therein.

**ARTICLE XIII**  
**INDEMNIFICATION**

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

**ARTICLE XIV**  
**INCORPORATOR**

The name and address of the incorporator for these Articles of Incorporation is:

Rodney Benson  
11934 Fairway Lakes Drive, Fort Myers, FL 33913

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of Florida, the undersigned, constituting the sole incorporator of this Association, has executed these Articles of Incorporation this 7th day of July 2004.

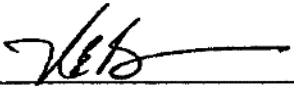
  
\_\_\_\_\_  
Incorporator  
Rodney E. Benson

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**CONSENT OF REGISTERED AGENT**

Having been named as Registered Agent for this corporation at the office designated in the foregoing Articles of Incorporation, I am familiar with the duties and obligations of Registered Agents and I hereby agree to act in this capacity and to comply with all statutes relative to the proper and complete performance of my duties.

Dated this 7th day of July 2004.

  
\_\_\_\_\_  
Registered Agent  
Rodney E. Benson

**EXHIBIT C**

**BYLAWS**

BEAZER - Colony Trace 10-04-05

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**BYLAWS**  
**OF**  
**COLONY TRACE**  
**HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**  
**NAME AND LOCATION**

The name of the corporation is Colony Trace Homeowners Association, Inc. The principal office of the Association shall be located at 13100 Westlinks Terrace, Fort Myers, Florida 33931, but meetings of members or directors may be held at such places within Florida designated by the board of directors.

**ARTICLE II**  
**DEFINITIONS**

1. "Articles" shall mean the Articles of Incorporation of Colony Trace Homeowners Association, Inc.
2. "Association" shall mean the Colony Trace Homeowners Association, Inc., its successors and assigns.
3. "Board" shall mean the board of directors of the Association.
4. "Common Area" shall mean all real property owned by the Association.
5. "Declarant" shall mean Beazer Homes Corp., a Tennessee corporation and its successors and assigns. Declarant may assign all or a portion of its rights hereunder. In the event of a partial assignment, the assignee shall be deemed Declarant and may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis.
6. "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of Colony Trace recorded or to be recorded in the Public Records of Lee County, Florida.
7. "Governing Documents" shall mean these Bylaws, the Articles, and the Declaration.
8. "Lot" shall mean any plot of land shown as a lot upon any recorded subdivision map or plat of the Property (as hereinafter defined) with the exception of the Common Area.
9. "Member" shall mean those persons entitled to membership as provided in the Declaration.

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

11. "Property" shall mean that certain real property described in the Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

### **ARTICLE III**

#### **MEMBERS**

1. Qualifications. The qualification of Members, the manner of their admission to membership, changes in membership and the termination of such membership, shall be as set forth in the Declaration and the Articles.

2. Member Roster. The Secretary of the Association shall maintain a roster in the office of the Association showing the names and addresses of the Members. Each Member shall at all times advise the Secretary of any change of address of the Member or any change of ownership of the Member's Lot. The Association shall not be responsible for reflecting any changes until notified of such change in writing.

### **ARTICLE IV**

#### **MEETING OF MEMBERS**

1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held in the fourth quarter of the fiscal year at a time is established by the Board. The Board shall not hold the annual meeting on a legal holiday.

2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board, or upon written request of one-fourth (1/4) of the Class A Members who are entitled to vote.

3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

4. Attendance at Meetings. Any person entitled to cast the vote of a Member, and in the event a Lot is owned by more than one (1) person, all co-Owners of such Lot, may attend any meeting of the Members. Any person not expressly authorized to attend a meeting of the Members as set forth above may be excluded from any meeting of the Members by the presiding officer of such meeting.

5. **Organization.** At each meeting of the Members, the President, or in his absence, the Vice President, or their designee, shall act as Chairman of the Meeting. The Secretary or, in his absence, any person appointed by the Chairman of the Meeting shall act as Secretary of the meeting.

6. **Minutes.** The minutes of all meetings of the Members shall be kept in a book available for inspection by the Members, their authorized representatives, and the Board, at any reasonable time.

7. **Quorum.** At meetings of Members, the presence of Members, in person or by proxy, entitled to cast one-tenth (1/10) of the votes of each class of Membership shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting of the time, date, and place that the meeting will be reconvened, provided that a quorum is obtained.

8. **Proxies.** At all meetings of Members, each Member may vote in person or by proxy duly appointed in writing which bears a date not more than three (3) months prior to such meeting. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

9. **Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the meetings of Members when not in conflict with the Governing Documents.

#### **ARTICLE V** **BOARD OF DIRECTORS: SELECTION AND TERM OF OFFICE**

1. **Number.** The affairs of this Association shall be managed by a board of a minimum of three (3) and a maximum of seven (7) directors, who need not be Members of the Association. The number of directors shall always consist of an odd number.

2. **Term of Office.** At the annual meetings of the Members, the Members, when entitled, shall elect directors for a term of one (1) year or until the next annual meeting of the Members whichever is later. The term of each director's services shall extend until the next annual Members meeting and until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.

3. **Removal.** Any director may be removed from the Board, with or without cause, by the vote or agreement in writing of a majority of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

4. **Compensation.** No director shall receive compensation for any service he may render to the Association. However, a director may be reimbursed for expenses incurred in the performance of his duties.

5. Nomination. Nomination for election to the Board shall be made from the floor at the annual meeting.

6. Election. Election to the Board shall be by written ballot (unless dispensed with by majority consent of the Lots represented at the meeting). At the election Members may cast, in respect to each position to be filled on the Board, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### **ARTICLE VI** **MEETINGS OF DIRECTORS**

1. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Meetings of the directors shall be open to all Members and notices of such meetings shall be posted in a conspicuous place on the Association property at least forty-eight (48) hours in advance of a meeting, except in emergency. Notice of any meeting in which assessments against Lots are to be established shall specifically contain a statement that assessments shall be considered and a statement of the nature of such assessments.

2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

3. Quorum. A majority of the directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting, at which a quorum is present, shall be regarded as the act of the Board.

4. Minutes of Meetings. The minutes of all meetings of the Board shall be kept in a book available for inspection by the Members or the directors, at any reasonable time.

#### **ARTICLE VII** **POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

1. Powers. The Board shall have power to:

- A. Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for any infraction thereof.
- B. Suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing for infraction of published rules and regulations.

- C. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of the Governing Documents.
  - D. Employ a manager, an independent contractor, and such other employees as they deem necessary, and to prescribe their duties.
  - E. Appoint by resolution, committees as from time to time may be deemed necessary which may exercise such powers, duties and functions as may be determined by the Board, which may include any powers which may be exercised by the Board.
2. Duties. It shall be the duty of the Board to:
- A. Cause to be kept minutes of all meetings of the Members and Board.
  - B. Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.
  - C. As more fully provided in the Declaration, to:
  - D. Fix the amount of the annual assessment against each Lot.
  - E. Send written notice of each assessment to every Owner in advance of each annual assessment period.
  - F. Foreclose the lien against any property for which assessments are not paid or to bring an action at law against the owner personally obligated to pay the same.
  - G. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
  - H. Procure and maintain adequate liability and hazard insurance on property owned by the Association.
  - I. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
  - J. Cause the Common Area to be maintained.
  - K. Supervise and ensure the making of necessary repairs, additions and improvements to, or alterations of the Property.



- L. Maintain bank accounts on behalf of the Association and designate signatories required therefor.
- M. Enter into and upon any portion of the Property, including any Lot(s), when necessary to maintain, care and preserve any real or personal property in the event the respective Owner fails to do so.
- N. Perform all duties and obligations of the Association as set forth in the Governing Documents and as otherwise provided by statute or law, and all powers incidental thereto or implied therefrom.

#### **ARTICLE VIII** **OFFICERS AND THEIR DUTIES**

1. Enumeration of Offices. The officers of this Association shall be a President and Vice-President, who shall at all times be Members of the Board, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.
2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.
3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless the officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.
4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.
5. Resignation and Removal. Any Officer may be removed from office, with or without cause, by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice, or at any later time as specified, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.
6. Vacancies. A vacancy in any office shall be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.
7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special appointments created pursuant to Section 4 of this Article.

8. Duties. The duties of the officers are as follows:

- A. President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.
- B. Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
- C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.
- D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures and deliver a copy of each to each of the Members.

#### **ARTICLE IX** **INDEMNIFICATION**

The directors and officers of the Association shall be indemnified by the Association to the fullest extent now or hereinafter permitted by law and shall not be personally liable for any act, debt, liability or other obligation of the Association. Similarly, Members are not personally liable for any act, debt, liability or obligation of the Association. A Member may become liable to the Association for dues, assessments or fee as provided by law.

#### **ARTICLE X** **COMMITTEES**

The Board may appoint a committee or committees as deemed appropriate in carrying out its purpose.

#### **ARTICLE XI** **BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times be subject to inspection by any Member. The Declaration, Articles and Bylaws of the Association shall be available for inspection

by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

#### **ARTICLE XII** **CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words: Colony Trace Homeowners Association, Inc., the year "2004" and the words "Corporation Not-For-Profit". The seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or otherwise reproduced upon any instrument or document executed in the name of the Association.

#### **ARTICLE XIII** **AMENDMENTS**

These Bylaws may be amended at a regular or special meeting of the Members by a vote of a majority of the Owners. Notwithstanding the foregoing, the Declarant specifically reserves the right to amend these Bylaws in order to comply with the requirements of the South Florida Water Management District or any other governmental agency.

#### **ARTICLE XIV** **MISCELLANEOUS**

1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.
2. Partial Invalidity. If any of the provisions of these Bylaws shall be or become unenforceable at law or in equity, the remaining provisions shall, nevertheless, be and remain in full force and effect.
3. Conflicts. In the event of any conflict, any applicable Florida statute, the Declaration, Articles, Bylaws and the rules and regulations of the Association shall govern, in that order.
4. Captions. Captions are utilized only as a matter of convenience and for reference, and in no way are intended to or shall define, limit or describe the scope of these Bylaws or the intent of any provision.

**CERTIFICATION**

I, the undersigned, do hereby certify:

**THAT** I am the duly elected and acting Secretary of Colony Trace Homeowners Association, Inc., a Florida corporation not for profit; and

**THAT** the foregoing Bylaws constitute the original Bylaws of the Association, as duly adopted by consent of the Board.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed the seal of the Association this \_\_\_\_ day of \_\_\_\_\_ 200\_\_.

\_\_\_\_\_  
Secretary

**EXHIBIT D**

**SURFACE WATER MANAGEMENT SYSTEM PERMIT**

BEAZER - Colony Trace 10-04-05



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE  
STANDARD GENERAL PERMIT NO. 36-05128-P  
DATE ISSUED: December 3, 2004**

Form #0941  
08/95

**PERMITTEE:** BEAZER HOMES CORP  
11934 FAIRWAY LAKES DRIVE UNIT 1  
FORT MYERS, FL 33913

**PROJECT DESCRIPTION:** Construction and operation of a surface water management system to serve a 19.78 acre residential project known as Colony Trace, with drainage into the Iona Drainage District Canal System.

**PROJECT LOCATION:** LEE COUNTY, SEC 3 TWP 46S RGE 24E

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

This is to notify you of the District's agency action concerning Notice of Intent for Permit Application No. 040719-19, dated July 19, 2004. This action is taken pursuant to Rule 40E-1.603 and Chapter 40E-40, Florida Administrative Code (F.A.C.).

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

1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 19 General Conditions (See Pages : 2 - 4 of 6 ),
3. the attached 18 Special Conditions (See Pages : 5 - 6 of 6 ) and
4. the attached 4 Exhibit(s).

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

**CERTIFICATE OF SERVICE**

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

BY: \_\_\_\_\_

Jacqueline Rippe, P.E.  
Director  
Lower West Coast Service Center

Certified mail number 70040750000416517997

Page 1 of 6

**GENERAL CONDITIONS**

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

**GENERAL CONDITIONS**

maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.
9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.
10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..
12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(3), F.A.C., also known as the "No Notice" Rule.
14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding, unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of



**GENERAL CONDITIONS**

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

17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.
18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

**SPECIAL CONDITIONS**

1. The construction phase of this permit shall expire on December 3, 2009.
2. Operation of the surface water management system shall be the responsibility of COLONY TRACE HOMEOWNERS ASSOCIATION, INC. Within one year of permit issuance or concurrent with the engineering certification of construction completion, whichever comes first, the permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association.
3. Discharge Facilities:  
  
1-.83' W X .54' H RECTANGULAR ORIFICE weir with crest at elev. 3.9' NGVD.  
1-.25' dia. CIRCULAR ORIFICE with invert at elev. 3' NGVD.  
  
Receiving body : Iona Drainage District Canal.  
Control elev : 3 feet NGVD. /3 FEET NGVD DRY SEASON.
4. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
5. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.
6. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
7. Lake side slopes shall be no steeper than 4:1 (horizontal:vertical) to a depth of two feet below the control elevation. Side slopes shall be nurtured or planted from 2 feet below to 1 foot above control elevation to insure vegetative growth, unless shown on the plans.
8. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.
9. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
10. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.
11. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur, the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.
12. Minimum building floor elevation: BASIN: Colony Trace - 10.10 feet NGVD.
13. Minimum road crown elevation: Basin: Colony Trace - 6.60 feet NGVD.
14. The permittee shall utilize the criteria contained in the Construction Pollution Prevention Plan (Exhibit Nos. 3.0-3.9) and on the applicable approved construction drawings for the duration of the projects construction activities.
15. The Permittee shall utilize the criteria contained in the Urban Stormwater Management Program (Exhibits

Application No. 040719-19  
Page 6 of 6

**SPECIAL CONDITIONS**

- 4.0-4.5) for post-construction activities.
16. Plan sheet Nos. 3-12 signed and sealed and dated on September 24, 2004 by Ryan M. Shute, P.E. of Morris-Depew Associates, Inc. have been included in this permit by reference (please see permit file).
  17. The following exhibits for the permit are incorporated by reference herein and are located in the permit file;  
Exhibit No. 3.0-3.9: Construction Pollution Prevention Plan  
Exhibit No. 4.0-4.5: Urban Stormwater Management Program
  18. Application No. 041007-7 must be completed and a Permit for short term dewatering issued by the District prior to any dewatering activities.

### NOTICE OF RIGHTS

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

#### **Petition for Administrative Proceedings**

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

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

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

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

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

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

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

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

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

Revised August, 2000

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

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

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

#### CIRCUIT COURT

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

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

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

#### DISTRICT COURT OF APPEAL

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

#### LAND AND WATER ADJUDICATORY COMMISSION

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

#### PRIVATE PROPERTY RIGHTS PROTECTION ACT

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

#### LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

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

#### MEDIATION

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

Revised August, 2000

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

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

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

(2) a statement of the preliminary agency action;

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

(4) a statement of relief sought.

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

#### VARIANCES AND WAIVERS

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

(a) the caption shall read:

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

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

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

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

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

(f) the type of action requested;

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

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

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

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

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

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

#### WAIVER OF RIGHTS

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

#### 28-106.201

#### INITIATION OF PROCEEDINGS

(INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

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

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

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

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

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

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

(f) A demand for relief.

Revised August, 2000

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

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

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

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

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

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

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

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

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

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

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

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

**28-107.005 EMERGENCY ACTION**

- (1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license
- (2) The 14-day notice requirement of Section 120.569(2)(b), F.S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.

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

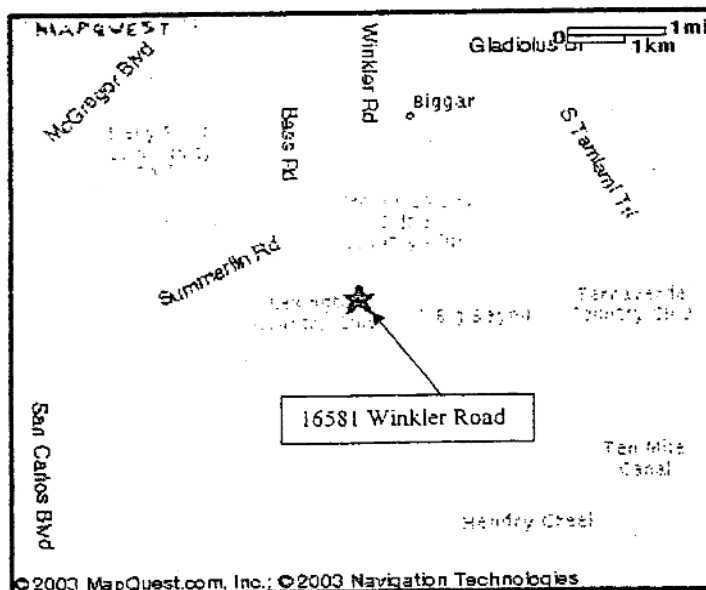
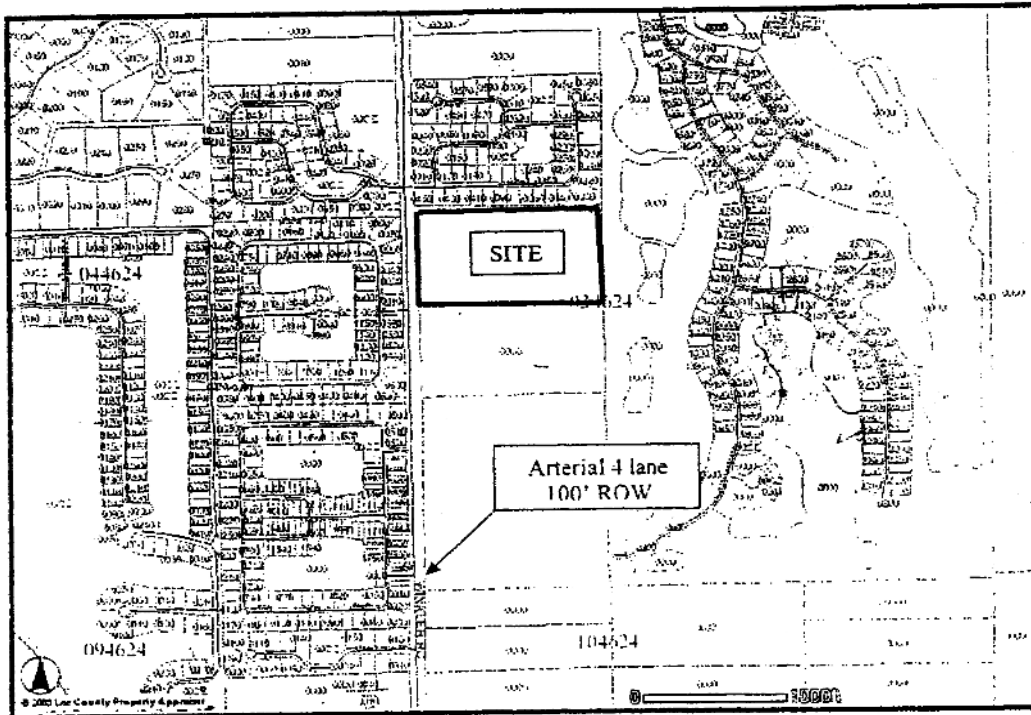
**40E-1.611 EMERGENCY ACTION**

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

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

Revised August, 2000

**MD** **MORRIS-DEPEW ASSOCIATES, INC.**  
ENGINEERS • PLANNERS • SURVEYORS & MAPPERS  
2216 Alhambra Avenue • Fort Myers, Florida 33901 • (941) 337-3993 • FAX (941) 337-3994



**Location Map**  
**S-03 R-46 T-24**

**Lee County,**  
**Florida**

**Vicinity Map**

**EXHIBIT I**



Last Date For Agency Action: 05-DEC-2004

**GENERAL ENVIRONMENTAL RESOURCE PERMIT STAFF REPORT**

**Project Name:** Colony Trace

**Permit No.:** 36-05128-P

**Application No.:** 040719-19

**Associated File:** 041007-7 WU

**Application Type:** Environmental Resource (New General Permit)

**Location:** Lee County, S3/T46S/R24E

**Permittee :** Beazer Homes Corp

**Operating Entity :** Colony Trace Homeowners Association, Inc.

**Project Area:** 19.78 acres

**Project Land Use:** Residential

**Drainage Basin:** ESTERO BAY

**Sub Basin:** Hendry Creek

**Receiving Body:** Iona Drainage District Canal

**Class:** CLASS III

**Special Drainage District:** Iona McGregor Services District

**Conservation Easement To District :** No

**Sovereign Submerged Lands:** No

**PROJECT PURPOSE:**

This application is a request for an Environmental Resource Permit to authorize Construction and Operation of a surface water management system to serve a 19.78-acre residential development known as Colony Trace, with drainage into Iona Drainage District Canal system.

**EXHIBIT 2.0**

**PROJECT EVALUATION:****PROJECT SITE DESCRIPTION:**

The 19.78 acre site is located at 16581 Winkler Road, Ft. Myers. A location map is attached as Exhibit No. 1.

There are no permitted surface water management facilities within the project area. The project site is comprised of land previously cleared for development.

There are no wetlands or other surface waters located within or affected by the proposed project.

**PROPOSED PROJECT:**

The proposed surface water management serving the project will consist of stormwater inlets and culvert which will direct all runoff to a wet detention area for water quality treatment and attenuation of the peak runoff rate. A control structure will convey the runoff from the wet detention area to the adjacent canal that is operated and maintained by the Iona Drainage district.

**LAND USE:****Construction:****Project:**

|                    | This Phase   | Total Project |       |
|--------------------|--------------|---------------|-------|
| Building Coverage  | 5.22         | 5.22          | acres |
| Other              | .88          | .88           | acres |
| Pavement           | 2.25         | 2.25          | acres |
| Pervious           | 8.94         | 8.94          | acres |
| Water Mgmt Acreage | 2.49         | 2.49          | acres |
| <b>Total:</b>      | <b>19.78</b> | <b>19.78</b>  |       |

**WATER QUANTITY :****Discharge Rate :**

As shown in the table below, the proposed project discharge is within the allowable limit for the area.

Discharge Storm Frequency : 25 YEAR-3 DAY

Design Rainfall : 10.9 inches

| Basin        | Allow Disch<br>(cfs) | Method Of<br>Determination | Peak Disch<br>(cfs) | Peak Stage<br>(ft, NGVD) |
|--------------|----------------------|----------------------------|---------------------|--------------------------|
| Colony Trace | 3.87                 | Discharge Formula          | 3.87                | 6.67                     |

**Finished Floors :**

Building Storm Frequency : 100 YEAR-3 DAY

Design Rainfall : 14.5 inches

| Basin | Peak Stage<br>(ft, NGVD) | Proposed Min. Finished Floors<br>(ft, NGVD) | FEMA Elevation<br>(ft, NGVD) |
|-------|--------------------------|---------------------------------------------|------------------------------|
|-------|--------------------------|---------------------------------------------|------------------------------|

| Basin        | Peak Stage | Proposed Min. Finished Floors | FEMA Elevation |
|--------------|------------|-------------------------------|----------------|
| Colony Trace | 7.84       | 10.1                          | 10             |

**Road Design :**

Road Storm Frequency : 5 YEAR-1 DAY

Design Rainfall: 5.5 inches

| Basin        | Peak Stage<br>(ft, NGVD) | Proposed Min. Road Crown<br>(ft, NGVD) |
|--------------|--------------------------|----------------------------------------|
| Colony Trace | 4.62                     | 6.6                                    |

**Control Elevation :**

| Basin        | Area<br>(Acres) | Ctrl Elev<br>(ft, NGVD) | WSWT Ctrl Elev<br>(ft, NGVD) | Method Of<br>Determination |
|--------------|-----------------|-------------------------|------------------------------|----------------------------|
| Colony Trace | 19.78           | 3/3                     | 3.00                         | Surrounding Projects       |

**Receiving Body :**

| Basin        | Str.# | Receiving Body               |
|--------------|-------|------------------------------|
| Colony Trace | S-123 | Iona Drainage District Canal |

**Major Structures:** Note: The units for all the elevation values of structures are (ft, NGVD)**Bleeders:**

| Basin        | Str#  | Count | Type             | Width | Height | Length | Dia. | Invert<br>Angle | Invert Ele |
|--------------|-------|-------|------------------|-------|--------|--------|------|-----------------|------------|
| Colony Trace | S-123 | 1     | Circular Orifice |       |        |        | .25' |                 | 3          |

**Weirs:**

| Basin        | Str#  | Count | Type                | Width | Height | Length | Dia. | Elev.       |
|--------------|-------|-------|---------------------|-------|--------|--------|------|-------------|
| Colony Trace | S-123 | 1     | Rectangular Orifice | .83'  | .54'   |        |      | 3.9 (crest) |

**WATER QUALITY :**

No adverse water quality impacts are anticipated as a result of the proposed project. The surface water management system will provide an additional 50% water quality treatment.

| Basin        | Treatment Method |               |            | Vol Req'd<br>(ac-ft) | Vol Prov'd<br>(ac-ft) |
|--------------|------------------|---------------|------------|----------------------|-----------------------|
| Colony Trace | Treatment        | Wet Detention | 2.49 acres | 2.36                 | 2.36                  |

**Endangered Species:**

The project site does not contain preferred habitat for wetland-dependent endangered or threatened wildlife species or species of special concern. No wetland-dependent endangered/threatened species or species of special concern were observed onsite, and submitted information indicates that potential use of the site by such species is minimal. This permit does not relieve the applicant from complying with all applicable rules and any other agencies' requirements if, in the future, endangered/threatened species or species of special concern are discovered on the site.

**EXHIBIT 2.2**

**CERTIFICATION AND MAINTENANCE OF THE WATER MANAGEMENT SYSTEM:**

It is suggested that the permittee retain the services of a Professional Engineer registered in the State of Florida for periodic observation of construction of the surface water management (SWM) system. This will facilitate the completion of construction completion certification Form #0881 which is required pursuant to Section 10 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, and Rule 40E-4361(2), Florida Administrative Code (F.A.C.).

Pursuant to Chapter 40E-4 F.A.C., this permit may not be converted from the construction phase to the operation phase until certification of the SWM system is submitted to and accepted by this District. Rule 40E-4.321(7) F.A.C. states that failure to complete construction of the SWM system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization unless a permit extension is granted.

For SWM systems permitted with an operating entity who is different from the permittee, it should be noted that until the permit is transferred to the operating entity pursuant to Rule 40E-1.6107, F.A.C., the permittee is liable for compliance with the terms of this permit.

The permittee is advised that the efficiency of a SWM system will normally decrease over time unless the system is periodically maintained. A significant reduction in flow capacity can usually be attributed to partial blockages of the conveyance system. Once flow capacity is compromised, flooding of the project may result. Maintenance of the SWM system is required to protect the public health, safety and the natural resources of the state. Therefore, the permittee must have periodic inspections of the SWM system performed to ensure performance for flood protection and water quality purposes. If deficiencies are found, it is the responsibility of the permittee to correct these deficiencies in a timely manner.

**RELATED CONCERNS:****Water Use Permit Status:**

The applicant has indicated that potable water will be used as a source of irrigation water for the project. The applicant has further indicated that dewatering is required for construction of this project. Water Use application number 041007-7 has been submitted requesting a short term dewatering permit.

This permit does not release the permittee from obtaining all necessary Water Use authorization(s) prior to the commencement of activities which will require such authorization, including construction dewatering and irrigation, unless the work qualifies for a No-Notice Short-Term Dewatering permit pursuant to Chapter 40E-20.302(3) or is exempt pursuant to Section 40E-2.051, FAC.

**Historical/Archeological Resources:**

No information has been received that indicates the presence of archaeological or historical resources or that the proposed activities could cause adverse impacts to archaeological or historical resources.

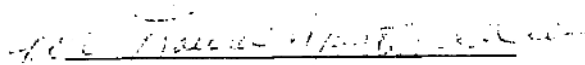
**DCA/CZM Consistency Review:**

The District has not received a finding of inconsistency from the Florida Department of Environmental Protection or other commenting agencies regarding the provisions of the federal Coastal Zone Management Plan.

**Enforcement:**

There has been no enforcement activity associated with this application.

**STAFF REVIEW:****DIVISION APPROVAL:****NATURAL RESOURCE MANAGEMENT:**

  
Ross T. Morton, P.W.S.

DATE: 12-3-04

**SURFACE WATER MANAGEMENT:**

  
Carlos A. DeRojas, P.E.

DATE: 12-1-04

EXHIBIT 2-4

## CONSTRUCTION POLLUTION PREVENTION PLAN for

| SITE DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Project Name and Location: (Latitude, Longitude, or Address)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Owner Name and Address:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Description: (Purpose and Types of Soil Disturbing Activities)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>Construction in this project will generally consist of site clearing, lake excavation, and construction of roadways, utility infrastructure, golf course, and multi-use vertical construction.</p> <p>Soil disturbing activities will include: clearing and grubbing, installing a stabilized construction entrance, perimeter berming and other erosion and sediment controls; grading; excavation for the storm water management lake, storm sewer, utilities, and building foundations; construction of curb and gutter, road, and parking areas; and preparation for final planting, sodding, seeding and mulching.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Runoff Coefficient:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Site Area:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Sequence of Major Activities:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>The order of activities will be as follows:</p> <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <ol style="list-style-type: none"> <li>1. Installation of stabilized construction entrance.</li> <li>1. Partial clearing and grubbing.</li> <li>1. Install perimeter berm(s) or silt fences with straw bale barrier(s) adjacent to wetland areas.</li> <li>1. Continue clearing and grading.</li> <li>1. Construction storm water management lakes</li> <li>1. Stockpile excavated soil.</li> <li>1. Stabilize denuded areas and stockpiles within 21 days of last construction activity in that area.</li> <li>1. Install utilities, storm sewer, curb and gutter.</li> </ol> </td> <td style="width: 50%; vertical-align: top;"> <ol style="list-style-type: none"> <li>9. Complete grading, subgrade and base course construction.</li> <li>9. Complete final paving.</li> <li>9. Complete landscape grading and install permanent seeding and plantings.</li> <li>9. When all construction activity is complete and the site is stabilized, remove temporary earth berms, straw bale barriers and filter fences and re-seed any areas disturbed by their removal.</li> </ol> </td> </tr> </table>                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <ol style="list-style-type: none"> <li>1. Installation of stabilized construction entrance.</li> <li>1. Partial clearing and grubbing.</li> <li>1. Install perimeter berm(s) or silt fences with straw bale barrier(s) adjacent to wetland areas.</li> <li>1. Continue clearing and grading.</li> <li>1. Construction storm water management lakes</li> <li>1. Stockpile excavated soil.</li> <li>1. Stabilize denuded areas and stockpiles within 21 days of last construction activity in that area.</li> <li>1. Install utilities, storm sewer, curb and gutter.</li> </ol> | <ol style="list-style-type: none"> <li>9. Complete grading, subgrade and base course construction.</li> <li>9. Complete final paving.</li> <li>9. Complete landscape grading and install permanent seeding and plantings.</li> <li>9. When all construction activity is complete and the site is stabilized, remove temporary earth berms, straw bale barriers and filter fences and re-seed any areas disturbed by their removal.</li> </ol> |
| <ol style="list-style-type: none"> <li>1. Installation of stabilized construction entrance.</li> <li>1. Partial clearing and grubbing.</li> <li>1. Install perimeter berm(s) or silt fences with straw bale barrier(s) adjacent to wetland areas.</li> <li>1. Continue clearing and grading.</li> <li>1. Construction storm water management lakes</li> <li>1. Stockpile excavated soil.</li> <li>1. Stabilize denuded areas and stockpiles within 21 days of last construction activity in that area.</li> <li>1. Install utilities, storm sewer, curb and gutter.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <ol style="list-style-type: none"> <li>9. Complete grading, subgrade and base course construction.</li> <li>9. Complete final paving.</li> <li>9. Complete landscape grading and install permanent seeding and plantings.</li> <li>9. When all construction activity is complete and the site is stabilized, remove temporary earth berms, straw bale barriers and filter fences and re-seed any areas disturbed by their removal.</li> </ol>                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Name of Receiving Waters:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>CONTROLS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Erosion and Sediment Controls                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Stabilization Practices                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p><b>Temporary Stabilization:</b> Top soil stock piles and disturbed portions of the site where construction activity temporarily cease for at least 21 days will be stabilized with temporary seed and mulch no later than 14 days from the last construction activity in that area. The seed shall be Bahia, millet, rye, or other fast-growing grasses. Prior to seeding, fertilizer or agricultural limestone shall be applied to each area to be temporarily stabilized. After seeding, each area shall be mulched with the mulch disked into place. Areas of the site which will be paved will be temporarily stabilized by applying limerock subgrade until bituminous pavement can be applied.</p> <p><b>Permanent Stabilization:</b> Disturbed portions of the site, where construction activities permanently cease, shall be stabilized with sod, seed and mulch, landscaping, and/or other equivalent stabilization measures (e.g., rip-rap, geotextiles) no later than 14 days after the date of the last construction activity. The sod shall typically be Floratam or Bahia sod. Prior to seeding, fertilizer or agricultural limestone shall be applied to each area to be temporarily stabilized. After seeding, each area shall be mulched with the mulch disked into place.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                               |

# EXHIBIT 3.0

| CONTROLS (Continued)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| <b>Structural Practices</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |
| <p>Silt Fence / Straw Bale Barrier - will be constructed along those areas of the project that border adjacent wetlands. At a minimum, the silt fence and/or straw bale barrier will be placed along all wetland buffers and all Corps of Engineers jurisdictional wetland boundaries.</p> <p>Straw Bale Drop Inlet Sediment Filter - will be placed around all constructed storm drain inlets immediately upon completion of construction and shall remain in-place until the contributing drainage area is stabilized. Alternatively, grate inlets can be covered with filter fabric material until stabilization.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |         |
| <b>Storm Water Management</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |         |
| <p>The project will utilize a system of lakes to provide the required water quality treatment and attenuation. Discharges from the water management system will be regulated by a series of water control structures. These control structures will be used to maintain water levels in the detention facilities that will maintain or restore the hydroperiod in the wetlands and flowways. The water control structures will also be used to restrict the discharges from the project as described above. Dry pre-treatment will be provided for the golf course maintenance facilities and commercial parking lot runoff prior to discharge into the lake system.</p> <p>Spreader swales will be used at appropriate locations to disperse flow and dissipate energy of runoff into wetlands. Spreader swales will also be used at appropriate locations to disperse flows discharged from the water management system into receiving flowways. Spreader swales will be heavily planted with native vegetation to help buffer the transition from the manmade lakes to the natural systems.</p>                                         |         |
| DISCHARGE RATES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |         |
| <b>OTHER CONTROLS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |         |
| <p><b>Waste disposal:</b></p> <p><b>Waste Materials:</b></p> <p>All waste materials will be collected and stored in a trash dumpster which will meet all local and State solid waste management regulations. All trash and construction debris from the site will be deposited in this dumpster. The dumpster will be emptied as required due to use and/or State and local regulations, with the trash disposed of at the appropriate landfill operation. No construction waste materials will be buried onsite. All personnel will be instructed regarding the correct procedure for waste disposal. Notices stating these practices will be posted in the construction office trailer.</p> <p><b>Hazardous Waste:</b></p> <p>All hazardous waste materials will be disposed of in the manner specified by local or State regulation or by the manufacturer. Site personnel will be instructed in these practices.</p> <p><b>Sanitary Waste:</b></p> <p>All sanitary waste will be collected from the portable units by a local, licensed, City of Fort Myers sanitary waste management contractor, as required by local regulation.</p> |         |
| Offsite                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Vehicle |
| Tracking                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |         |
| <p>A stabilized construction entrance has been provided to help reduce vehicle tracking of sediments. As they are completed, paved streets will be swept as needed to remove any excess muck, dirt, or rock tracked from the site. Dump trucks hauling material from the construction site will be covered with a tarpaulin.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |         |
| <b>TIMING OF CONTROLS/MEASURES</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |
| <p>Installation of hay bail / silt fence barriers (around wetlands) and stabilized construction entrance will be constructed prior to extensive clearing or grading of any other portions of the site. Areas where construction activity temporarily ceases for more than 21 days will be stabilized with a temporary seed and mulch within 14 days of the last disturbance. Once construction activity ceases permanently in an area, that area will be stabilized with permanent sod, seed and mulch, landscaping, and/or other equivalent stabilization measures (e.g., rip-rap, geotextiles). After the entire site is stabilized, the silt fence / straw bale barriers can be removed.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                            |         |
| <b>CERTIFICATION OF COMPLIANCE WITH FEDERAL, STATE, AND LOCAL REGULATIONS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |         |
| <p>The storm water pollution prevention plan reflects the United States Environmental Protection Agency and the South Florida Water Management District (SFWWD) requirements for storm water management and erosion and sediment control, as established in the Chapter 40E-4 FAC and Chapter 373 FS.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |         |

EXHIBIT 3.1

| MAINTENANCE/INSPECTION PROCEDURES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Erosion and Sediment Control Inspection and Maintenance Practices</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                       |
| These are the inspection and maintenance practices that will be used to maintain erosion and sediment controls.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                       |
| <ul style="list-style-type: none"><li>• All control measures will be inspected at least once each week and following any storm event of 0.5 inches or greater.</li><li>• All measures will be maintained in good working order; if a repair is necessary, it shall be corrected as soon as possible, but in no case later than 7 days after the inspection.</li><li>• Built up sediment will be removed from silt fence when it has reached one-half the height of the fence.</li><li>• Silt fence will be inspected for depth of sediment, tears, to see if the fabric is securely attached to the fence posts, and to see that the fence posts are firmly in the ground.</li><li>• Temporary seeding and permanent sodding and planting will be inspected for bare spots, washouts, and healthy growth.</li><li>• A maintenance inspection report will be made after each inspection. A copy of the report form to be completed by the inspector is attached:___</li><li>• The Owner will appoint one individual who will be responsible for inspections, maintenance and repair activities, and for completing the inspection and maintenance reports.</li><li>• Personnel selected for inspection and maintenance responsibilities will receive training from the site superintendent. They will be trained in all the inspection and maintenance practices necessary for keeping the erosion and sediment controls used onsite in good working order.</li></ul> |                                                                                                                                                                                                       |
| <b>Non-Storm Water Discharge</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                       |
| It is expected that the following non-storm water discharges will occur from the site during the construction period:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                       |
| <ul style="list-style-type: none"><li>• Water from water line flushings.</li><li>• Pavement wash waters (when no spills or leaks of toxic or hazardous materials have occurred)</li><li>• Uncontaminated groundwater (from dewatering excavation).</li><li>• All non-storm water discharges will be directed to the storm water management facilities prior to discharge.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                       |
| <b>INVENTORY FOR POLLUTION PREVENTION PLAN</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                       |
| The materials or substances listed below are expected to be present onsite during construction:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                       |
| <ul style="list-style-type: none"><li>• Concrete</li><li>• Detergents</li><li>• Paints (enamel and latex)</li><li>• Metal Studs</li><li>• Asphalt</li><li>• Roofing Shingles</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <ul style="list-style-type: none"><li>• Fertilizers</li><li>• Petroleum Based Products</li><li>• Cleaning Solvents</li><li>• Wood</li><li>• Masonry Block</li><li>• Clay or concrete bricks</li></ul> |

EXHIBIT 3.2



| SPILL PREVENTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Material Management Practices</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
| The following are the materials management practices that will be used to reduce the risk of spills or other accidental exposure of materials and substances to storm water runoff.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |
| <b>Good Housekeeping:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |
| The following good housekeeping practices will be followed onsite during the construction project:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
| <ul style="list-style-type: none"> <li>• An effort will be made to store only enough product required to do the job.</li> <li>• All materials stored onsite will be stored in a neat, orderly manner in their appropriate containers, and if possible, under a roof or other enclosure.</li> <li>• Products will be kept in their original containers with the original manufacturer's label.</li> <li>• Substances will not be mixed with one another unless recommended by the manufacturer.</li> <li>• Whenever possible, all of a product will be used up before disposing of the container.</li> <li>• Manufacturers' recommendations for proper use and disposal will be followed.</li> <li>• The site superintendent will inspect to ensure proper use and disposal of materials onsite.</li> </ul> |  |
| <b>Hazardous Products:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |
| These practices are used to reduce the risks associated with hazardous materials:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
| <ul style="list-style-type: none"> <li>• Products will be kept in original containers unless they are not resealable.</li> <li>• Original labels and material safety data will be retained; they contain important product information.</li> <li>• If surplus product must be disposed of, manufacturers' or local and State recommended methods for proper disposal will be followed.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                          |  |
| <b>Product Specific Practices</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
| The following product specific practices will be followed onsite:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
| <b>Petroleum Products:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |
| All onsite vehicles will be monitored for leaks and receive regular preventive maintenance to reduce the chance of leakage. Petroleum products will be stored in tightly sealed containers which will be clearly labeled. Any asphalt substances used onsite will be applied in accordance with the manufacturer's recommendations and standard construction practices.                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
| <b>Fertilizers:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |
| Fertilizers will be applied only in the minimum amounts recommended by the manufacturer. Once applied, fertilizer will be worked into the soil to limit exposure to storm water. Storage will be in a covered shed. The contents of any partially used bags of fertilizer will be transferred to a sealable plastic bin to avoid spills.                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |
| <b>Paints:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |
| All containers will be tightly sealed and stored when not required for use. Excess paint will not be discharged to the storm sewer system but will be properly disposed of according to manufacturers' instructions and/or state and local regulations.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |

EXHIBIT 3.3

**SPILL PREVENTION (Continued)****Spill Control Practices**

In addition to the good housekeeping and material management practices discussed in the previous sections of this plan, the following practices will be followed for spill prevention and cleanup.

- Manufacturers' recommended methods for spill cleanup will be clearly posted and site personnel will be made aware of the procedures and the location of the information and cleanup supplies.
- Materials and equipment necessary for spill cleanup will be kept in the material storage area onsite. Equipment and materials will include—but not be limited to—rags, gloves, goggles, kitty litter, sand, and plastic and metal trash containers specifically for this purpose.
- All spills will be cleaned up as soon as possible after discovery.
- The spill area will be kept well ventilated and personnel will wear appropriate protective clothing to prevent injury from contact with a hazardous substance.
- Spills of toxic or hazardous material will be reported to the appropriate state or local government agency, regardless of the size.
- The spill prevention plan will be adjusted to include measures to prevent this type of spill from reoccurring and how to clean up the spill if there is another one. A description of the spill, what caused it, and the cleanup measures will also be included.
- The Contractor's site superintendent will be responsible for the day-to-day site operations and will be the spill prevention and cleanup coordinator. He will designate at least two other site personnel who will receive spill prevention and cleanup training. These individuals will each become responsible for a particular phase of prevention and cleanup. The names of responsible spill personnel will be posted in the material storage area and in the office trailer onsite.

EXHIBIT 3.4

| POLLUTION PREVENTION PLAN CERTIFICATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |     |                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------------|
| <p>I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.</p> |     |                 |
| Signed: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |     |                 |
| Print Name: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |     |                 |
| Title: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |     |                 |
| Date: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |     |                 |
| CONTRACTOR'S CERTIFICATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |     |                 |
| <p>I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.</p>                                                                                                                                                                                                                                                                                                                                                        |     |                 |
| Signature                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | For | Responsible for |
| _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |     |                 |
| Date: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |     |                 |
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| Date: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |     |                 |
| _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |     |                 |
| Date: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |     |                 |
| _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |     |                 |
| Date: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |     |                 |

EXHIBIT

3.5

**CONSTRUCTION POLLUTION PREVENTION PLAN**  
for

**Inspection And Maintenance Report Form**

(To be completed every 7 days and within 24 hours of a rainfall event of 0.5 inches or more)

INSPECTOR: \_\_\_\_\_ DATE: \_\_\_\_\_

INSPECTOR'S QUALIFICATIONS: \_\_\_\_\_

Days since last rainfall: \_\_\_\_\_ Amount of last rainfall \_\_\_\_\_ inches

**STABILIZATION MEASURES**

| Area | Date Since<br>Last Disturbed | Date of Next<br>Disturbance | Stabilized?<br>(yes / no) | Stabilized<br>With | Condition |
|------|------------------------------|-----------------------------|---------------------------|--------------------|-----------|
|      |                              |                             |                           |                    |           |
|      |                              |                             |                           |                    |           |
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|      |                              |                             |                           |                    |           |
|      |                              |                             |                           |                    |           |
|      |                              |                             |                           |                    |           |

Stabilized required: \_\_\_\_\_

To be performed by: \_\_\_\_\_ on or before: \_\_\_\_\_

EXHIBIT 3-6

CONSTRUCTION POLLUTION PREVENTION PLAN  
for

## Inspection And Maintenance Report Form

DATE: \_\_\_\_\_

### SILT FENCE / STRAW BALE BARRIER

[illegible]

Maintenance required for silt fence / straw bale barrier:

To be performed by: \_\_\_\_\_ on or before: \_\_\_\_\_

2-19-2004, 2:19:11 Ver 011- JEVANS  
C444]  
32914.00/2.000, 3.000, 7508

EXHIBIT 3.7

CONSTRUCTION POLLUTION PREVENTION PLAN  
for

## Inspection And Maintenance Report Form

### Structural Controls

DATE: \_\_\_\_\_

### EARTHEN PERIMETER BERM

[illegible]

Maintenance required for perimeter berm:

---

To be performed by: \_\_\_\_\_ on or before: \_\_\_\_\_

3/15/2004 - 3/971 Ver 01: JEVANS  
JAMS  
03914-002-000-200P-750a

EXHIBIT 3.8

CONSTRUCTION POLLUTION PREVENTION PLAN  
for

Inspection And Maintenance Report Form

CHANGES REQUIRED TO THE POLLUTION PREVENTION PLAN:

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REASONS FOR CHANGES:

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I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature

Date

EXHIBIT 3.9

April 21, 2004

## URBAN STORMWATER MANAGEMENT PROGRAM

### 1.0 Introduction

This document provides details of the Urban Stormwater Management Program for the (Project Name) in (location). This Plan discusses non-structural controls, intended to improve the quality of stormwater runoff by reducing the generation and accumulation of potential stormwater runoff contaminants at or near the respective sources for each constituent, along with significant structural components of the primary stormwater treatment system. Although many of the methodologies and procedures outlined in this document are general Best Management Practices (BMP's) which can be useful in attenuating pollutants in many types of urbanized settings, the implementation of these practices has been optimized, to the maximum extent possible, to reflect the unique character of the (Project name) and the surrounding hydrologic features.

Pollution prevention guidelines are provided for the areas of (1) nutrient and pesticide management; (2) street sweeping; (3) solid waste management; (4) operation and maintenance of the stormwater management and treatment system; (5) routine water quality testing; and (6) construction activities. A discussion of each of these activities is given in the following sections.

### 2.0 Nutrient and Pesticide Management

Nutrient and pesticide management consists of a series of practices designed to manage the use of fertilizers and pesticides so as to minimize loss of these compounds into stormwater runoff and the resulting water quality impacts on adjacent waterbodies. Implementation of a management plan will also maximize the effectiveness of the nutrients and pesticides that are applied.

Each homeowner must commit themselves to the practice of responsible and careful landscape design and maintenance of each lot to prevent contamination of surface waters. The guidelines included in this section are intended to help homeowners make educated environmental choices regarding the maintenance of individual yards within the community. These maintenance and management guidelines are meant to promote an attractive neighborhood that preserves the health of adjacent waterways and environmental features.

#### 2.1 General Requirements

A landscape plan must be developed for each residence. The plan must be comprehensive in nature and follow the landscape design guidelines established by the Homeowners Association and must promote revegetation of each lot as quickly as possible.

Commercial applicators of chemical lawn products must register with the Homeowners Association annually and provide a copy of their current occupational license, proof of business liability insurance, and proof of compliance with applicable education and licensing requirements. Individual employees working under the direction of a licensed commercial applicator are exempt from the educational requirements.

**EXHIBIT 4.0**



Only registered commercial applicators and individual lot owners are permitted to apply chemicals within the property on a private lot. All chemical products must be used in accordance with the manufacturer's recommendations. The application of any chemical product within five (5) feet of any surface water including but not limited to ponds, lakes, drainage ditches or canals, is prohibited. The use of any chemical product in a manner that will allow airborne or waterborne entry of such products into surface water is prohibited. This rule shall not apply to the use of chemical agents, by certified lake management specialists, for the control of algae and vegetation within the stormwater lakes or ponds.

## **2.2 Nutrient Management Program**

Management and application of nutrients and fertilizers in the (Project Name) will adhere to the following guidelines:

- A. All fertilizers shall be stored in a dry storage area protected from rainfall and ponding.
- B. No fertilizer containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label (as defined by Chapter 576, Florida Statutes) shall be applied to turf grass unless justified by a soil test.
- C. Fertilizer containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label shall not be applied within 5 feet of the edge of water or within 5 feet of a drainage facility.
- D. All fertilizer shall be applied such that spreading of fertilizer on all impervious surfaces is minimized.
- E. Liquid fertilizers containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label shall not be applied through an irrigation system within 10 feet of the edge of water or within 10 feet of a drainage facility.
- F. Liquid fertilizers containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label shall not be applied through high or medium mist application or directed spray application within 10 feet of the edge of water or within 10 feet of a drainage facility.

## **2.3 Pest Management Program**

Proper maintenance of plants and turf areas will minimize the ability of pests to successfully attack landscaping. Several general guidelines follow:

- A. Apply fertilizer and water only when needed and in moderate amounts. Excessive amounts of either can cause rapid growth that is attractive to insects and disease.
- B. Mow St. Augustine grass to a height of 3-4 inches. If cut shorter, the plants may become stressed and more vulnerable to pest infestation. Each mowing should remove no more than one-third of the leaf blade, and those cuttings should remain on the lawn to decompose.
- C. It is recommended that pesticides, fungicides, and herbicides be used only in response to a specific problem and in the manner and amount recommended by the manufacturer to address the specific problem. Broad application of pesticides, fungicides and herbicides as a preventative measure is strongly discouraged.

**EXHIBIT 4-1**

The use of pesticides, fungicides, or herbicides is limited to products that meet the following criteria:

- A. Must be consistent with the USDA-NRCS Soil Rating for Selecting Pesticides
- B. Must have the minimum potential for leaching into groundwater or loss from runoff
- C. Products must be EPA-approved
- D. The half-life of products used shall not exceed seventy (70) days

### **3.0 Street Sweeping**

This practice involves sweeping and vacuuming the primary streets to remove dry weather accumulation of pollutants, especially particulate matter, before wash-off of these pollutants can occur during a storm event. This practice reduces the potential for pollution impacts on receiving waterbodies by removing particulate matter and associated chemical constituents. Although street cleaning operations are frequently conducted primarily for aesthetic purposes, the primary objective of the street sweeping program for the (Project Name) is to improve the quality of stormwater runoff generated from impervious traffic areas. Street sweeping activities can be particularly effective during periods of high leaf fall by removing solid leaf material and the associated nutrient loadings from roadside areas where they could easily become transported within stormwater flow.

Street sweeping operations will be performed in the (Project Name) at a minimum frequency of one event every other month. A licensed vendor using a vacuum-type sweeping device will perform all street sweeping activities. Sweeping activities during each event will include all primary street surfaces. Disposal of the collected solid residual will be the responsibility of the street sweeping vendor.

### **4.0 Solid Waste Management**

In general, solid waste management involves issues related to the management and handling of urban refuse, litter and leaves that will minimize the impact of these constituents as water pollutants.

Maintenance of adequate sanitary facilities for temporarily storing refuse on private premises prior to collection is considered the responsibility of the individual homeowner. Local requirements for refuse collection will be brought to the attention of every homeowner at closing for the sale of the property. Information will be distributed as necessary stating specifications for containers, separation of waste by type, where to place containers prior to collection, and established collection schedules.

Fallen tree leaves and other vegetation, along with grass clippings, may become direct water pollutants when they are allowed to accumulate in swales and street gutters. All homeowners will receive periodic educational materials that address proper disposal of leaves and other vegetation to minimize water quality impacts.

**EXHIBIT 4.2**

## **5.0 Stormwater Management and Treatment System**

The stormwater management system for the (Project Name) is designed to maximize the attenuation of stormwater generated pollutants prior to discharge to the off-site wetland systems. Operational details and maintenance requirements of the various system components are given in the following sections.

### **5.1 Wet Detention Lakes and Lake Interconnect Pipes**

The basic element of the stormwater management system consists of a series of interconnected wet detention ponds that provide stormwater treatment through a variety of physical, biological, and chemical processes. A wet detention pond acts similar to a natural lake by temporarily detaining stormwater runoff, allowing opportunities for treatment processes to occur, prior to slow controlled discharge of the treated water through the outfall structure. Pollutant removal processes in wet detention systems occur during the quiescent period between storm events. Significant removal processes include gravity settling of particulate matter; biological uptake of nutrients and other ions by aquatic plants, algae and microorganisms; along with natural chemical flocculation and complexation processes.

Maintenance of the wet detention ponds will consist of an annual inspection. During each annual inspection, the following items will be reviewed and corrected as necessary:

- A. Inspect the outfall structure and orifices to ensure free-flowing conditions and overall engineering stability of the outfall system.
- B. Review the banks of the lakes and canals to ensure proper side slope stabilization and inspect for signs of excessive seepage that may indicate areas of excessive groundwater flow and possible subsurface channeling.
- C. Physically evaluate each of the lakes and canals for evidence of excessive sediment accumulation or erosion.
- D. Inspect the planted aquatic vegetation in the littoral zone to ensure that the desired vegetation species, percent coverage, and density are maintained.

At the completion of the inspections, a written inspection report will be prepared, listing any deficiencies that need to be addressed or corrected by the Homeowners Association.

### **5.2 Stormwater Inlets, Pipes and Culverts**

The grates should be unobstructed and the bottom, inside the inlet, should be clean. Check for any accumulation of sediment, trash such as garbage bags, or debris in the culverts connecting these inlets. Flushing out with a high-pressure hose may clean some sediment. Any noted blockage (due to a possible obstruction, or broken pipe, etc.) should prompt further investigation. Crushed or corroded culverts should be replaced with new ones of the same size.

EXHIBIT 4.3

### 5.3 Swales and Grassed Water Storage Areas

These provide for conveyance and/or above-ground (or surface) storage of stormwater. With age, these areas usually fill in with vegetation and sediment. Swales may need to be regraded and/or revegetated. It is a good idea to compare the existing slope and dimensions of the swale with the permitted design plans prior to the removal of excess sediment or regrading. Areas that show erosion should be stabilized with appropriate material such as sod, planting, rock, sand bags, or other synthetic geotextile material.

Regular mowing of grass swales is essential. These areas also improve water quality by catching sediment and assimilating nutrients, and recharge the underground water table. Remove any undesirable exotic vegetation. Culverts underneath driveways should be checked for blockage, and, if necessary, flushed with a high-pressure hose. After a storm, swales may remain wet for an extended period of time. This is normal and the water will recede gradually.

### 5.4 Ditches or Canals

Fill material, yard waste, clippings and vegetation, sediment, trash, appliances, garbage bags, shopping carts, tires, cars, etc. should be completely removed. Also check to make sure there are no dead trees or any type of obstructions which could block the drainage flow way.

Maintenance cleaning/excavation must be limited to the same depth, width and side slope as approved in the current permit. Making a ditch deeper or wider may trigger a need for a permit modification. Provisions must also be made to prevent any downstream silting or turbidity (*Contact the SFWMD Resource Compliance staff if you are unsure or need clarification.*) Be sure to dispose of all removed material properly so it won't affect any other water storage or conveyance system, environmental area, or another owner's property.

### 5.5 Outfall Structure (also called the Discharged Control Structure or Weir)

The outfall structure should be routinely inspected to determine if any obstructions are present or repairs are needed. Trash or vegetation impeding water flow through the structure should be removed. The structure should have a "baffle" or trash collector to prevent flow blockage and also hold back any floating oils from moving downstream. Elevations and dimensions should be verified annually with all current permit information. Periodic inspections should then be regularly conducted to make sure these structures maintain the proper water levels and the ability to discharge.

### 5.6 Earthen Embankments (Dikes and Berms)

Check for proper elevations, width and stabilization. Worn down berms - especially if used by all-terrain vehicles or equestrian traffic - and rainfall - created washouts should be immediately repaired, compacted and re-vegetated.

EXHIBIT 4.4

**6.0 Water Quality Testing**

To ensure proper operation of the overall treatment system, monitoring will be performed at one outfall (SW-1) from the (Project Name) if there is a flow over the weirs. According to the proposed Water Quality Monitoring Plan, monitoring may occur 3 times a year, once during the dry season (February/March) and twice during the wet season (August/September). A manual grab sample will be collected at the SW-1 outfall location and analyzed for various constituents and parameters as described in the Surface Water Quality Monitoring Plan. Trained and certified personnel will perform sample collection and laboratory analysis. The results of the laboratory analyses will be submitted to South Florida Water Management District as part of an annual water quality monitoring report by December 31 of each year.

**7.0 Construction Activities**

A Stormwater Pollution Prevention Plan (SWPPP) has been prepared for construction activities to minimize activities contamination that may be caused by erosion and sedimentation during the construction process. The plan includes provisions related to soil stabilization, structural erosion controls, waste collection disposal, offsite vehicle tracking, spill prevention and maintenance and inspection procedures. A copy of the SWPPP is attached hereto and made a part of hereof.

EXHIBIT 4.5

COPY

RECEIVED

DEC 06 2004

BY: \_\_\_\_\_

## STAFF REPORT DISTRIBUTION LIST

## COLONY TRACE

Application No: 040719-19

Permit No:

INTERNAL DISTRIBUTION

- X Catherine Hawkins - 7420
- X Kevin G. Dickson, P.E. - 4220
- X Carlos A. DeRojas, P.E. - 4220
- X ERC Engineering - 7420
- X ERC Environmental - 7420
- X Fort Myers Backup File - 7420
- X M. Soto-4240
- X Permit File

*Will 174 J. Focht, P.E. 7420*EXTERNAL DISTRIBUTION

- X Permittee - Beazer Homes Corp
- X Agent - Morris-Depew Associates Inc
- X Owner - Faith Fellowship World Outreach Ministries Inc

GOVERNMENT AGENCIES

- X City Engineer, City of Fort Myers
- X Div of Recreation and Park - District 8 - FDEP
- X FDEP
- X Florida Fish & Wildlife Conservation Commission - Imperiled Species Mgmt Section
- X Lee County - Development Services Director
- X Lee County Engineer

OTHER INTERESTED PARTIES

- X Audubon of Florida - Charles Lee
- X League of Women Voters of Lee County - Clara Anne Graham Elliott
- X S.W.F.R.P.C. Marisa Morr
- X Water Management Institute - Michael N. Vanatta

---

**STAFF REPORT DISTRIBUTION LIST****ADDRESSES**

Morris-Depew Associates Inc  
2216 Altamont Ave  
Fort Myers FL 33901

Beazer Homes Corp  
11934 Fairway Lakes Drive Unit 1  
Fort Myers FL 33913

Faith Fellowship World Outreach Ministries Inc  
11421 Longwater Chase Ct  
Fort Myers FL 33908

City Engineer, City of Fort Myers  
Po Drawer 2217  
Ft Myers  
Fort Myers FL 33902-2217

Div of Recreation and Park - District 8 - FDEP  
1843 South Tamiami Trail  
Osprey FL 34229

FDEP  
2295 Victoria Avenue  
Fort Myers FL 33901

Florida Fish & Wildlife Conservation Commission -  
Imperiled Species Mgmt Section  
620 South Meridian Street  
Tallahassee FL 32399-6000

Lee County - Development Services Director  
1500 Monroe Street  
Ft Myers FL 33901

Lee County Engineer  
P.O.Box 398  
Fort Myers FL 33902-0398

Audubon of Florida - Charles Lee  
1101 Audubon Way  
Maitland FL 32751

League of Women Voters of Lee County - Clara Anne  
Graham Elliott  
25201 Divot Drive  
Bonita Springs FL 333923

S.W.F.R.P.C. Marisa Morr  
1926 Victoria Avenue  
Fort Myers FL 33901

Water Management Institute - Michael N. Vanatta  
Po Box 6446  
Vero Beach FL 32961

**EXHIBIT E****SFWMD URBAN STORMWATER MANAGEMENT PROGRAM****April 21, 2004****1.0 Introduction**

This document provides details of the Urban Stormwater Management Program for Colony Trace in Lee County, Florida. This Plan discusses non-structural controls, intended to improve the quality of stormwater runoff by reducing the generation and accumulation of potential stormwater runoff contaminants at or near the respective sources for each constituent, along with significant structural components of the primary stormwater treatment system. Although many of the methodologies and procedures outlined in this document are general Best Management Practices (BMP's) which can be useful in attenuating pollutants in many types of urbanized settings, the implementation of these practices has been optimized, to the maximum extent possible, to reflect the unique character of Colony Trace and the surrounding hydrologic features.

Pollution prevention guidelines are provided for the areas of (1) nutrient and pesticide management; (2) street sweeping; (3) solid waste management; (4) operation and maintenance of the stormwater management and treatment system; (5) routine water quality testing; and (6) construction activities. A discussion of each of these activities is given in the following sections.

**2.0 Nutrient and Pesticide Management**

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**2.1 General Requirements**

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## **2.2 Nutrient Management Program**

Management and application of nutrients and fertilizers in Colony Trace will adhere to the following guidelines:

- A. All fertilizers shall be stored in a dry storage area protected from rainfall and ponding.
- B. No fertilizer containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label (as defined by Chapter 576, Florida Statutes) shall be applied to turf grass unless justified by a soil test.
- C. Fertilizer containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label shall not be applied within 5 feet of the edge of water or within 5 feet of a drainage facility.
- D. All fertilizer shall be applied such that spreading of fertilizer on all impervious surfaces is minimized.
- E. Liquid fertilizers containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label shall not be applied thorough an irrigation system within 10 feet of the edge of water or within 10 feet of a drainage facility.
- F. Liquid fertilizers containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label shall not be applied through high or medium mist application or directed spray application within 10 feet of the edge of water or within 10 feet of a drainage facility.

## **2.3 Pest Management Program**

Proper maintenance of plants and turf areas will minimize the ability of pests to successfully attack landscaping. Several general guidelines follow:

- A. Apply fertilizer and water only when needed and in moderate amounts. Excessive amounts of either can cause rapid growth that is attractive to insects and disease.

- B. Mow St. Augustine grass to a height of 3-4 inches. If cut shorter, the plants may become stressed and more vulnerable to pest infestation. Each mowing should remove no more than one-third of the leaf blade, and those cuttings should remain on the lawn to decompose.
- C. It is recommended that pesticides, fungicides, and herbicides be used only in response to a specific problem and in the manner and amount recommended by the manufacturer to address the specific problem. Broad application of pesticides, fungicides and herbicides as a preventative measure is strongly discouraged.

The use of pesticides, fungicides, or herbicides is limited to products that meet the following criteria:

- A. Must be consistent with the USDA-NRCS Soil Rating for Selecting Pesticides
- B. Must have the minimum potential for leaching into groundwater or loss from runoff
- C. Products must be EPA-approved
- D. The half-life of products used shall not exceed seventy (70) days

### **3.0 Street Sweeping**

This practice involves sweeping and vacuuming the primary streets to remove dry weather accumulation of pollutants, especially particulate matter, before wash-off of these pollutants can occur during a storm event. This practice reduces the potential for pollution impacts on receiving waterbodies by removing particulate matter and associated chemical constituents. Although street cleaning operations are frequently conducted primarily for aesthetic purposes, the primary objective of the street sweeping program for Colony Trace is to improve the quality of stormwater runoff generated from impervious traffic areas. Street sweeping activities can be particularly effective during periods of high leaf fall by removing solid leaf material and the associated nutrient loadings from roadside areas where they could easily become transported within stormwater flow.

Street sweeping operations will be performed in Colony Trace at a minimum frequency of one event every other month. A licensed vendor using a vacuum-type sweeping device will perform all street sweeping activities. Sweeping activities during each event will include all primary street surfaces. Disposal of the collected solid residual will be the responsibility of the street sweeping vendor.

### **4.0 Solid Waste Management**

In general, solid waste management involves issues related to the management and handling of urban refuse, litter and leaves that will minimize the impact of these constituents as water pollutants.

Maintenance of adequate sanitary facilities for temporarily storing refuse on private premises prior to collection is considered the responsibility of the individual homeowner. Local requirements for refuse collection will be brought to the attention of every homeowner at closing for the sale of the property. Information will be distributed as necessary stating specifications for containers,

separation of waste by type, where to place containers prior to collection, and established collection schedules.

Fallen tree leaves and other vegetation, along with grass clippings, may become direct water pollutants when they are allowed to accumulate in swales and street gutters. All homeowners will receive periodic educational materials that address proper disposal of leaves and other vegetation to minimize water quality impacts.

## **5.0 Stormwater Management and Treatment System**

The stormwater management system for Colony Trace is designed to maximize the attenuation of stormwater generated pollutants prior to discharge to the off-site wetland systems. Operational details and maintenance requirements of the various system components are given in the following sections.

### **5.1 Wet Detention Lakes and Lake Interconnect Pipes**

The basic element of the stormwater management system consists of a series of interconnected wet detention ponds that provide stormwater treatment through a variety of physical, biological, and chemical processes. A wet detention pond acts similar to a natural lake by temporarily detaining stormwater runoff, allowing opportunities for treatment processes to occur, prior to slow controlled discharge of the treated water through the outfall structure. Pollutant removal processes in wet detention systems occur during the quiescent period between storm events. Significant removal processes include gravity settling of particulate matter; biological uptake of nutrients and other ions by aquatic plants, algae and microorganisms; along with natural chemical flocculation and complexation processes.

Maintenance of the wet detention ponds will consist of an annual inspection. During each annual inspection, the following items will be reviewed and corrected as necessary:

- A. Inspect the outfall structure and orifices to ensure free-flowing conditions and overall engineering stability of the outfall system.
- B. Review the banks of the lakes and canals to ensure proper side slope stabilization and inspect for signs of excessive seepage that may indicate areas of excessive groundwater flow and possible subsurface channeling.
- C. Physically evaluate each of the lakes and canals for evidence of excessive sediment accumulation or erosion.
- D. Inspect the planted aquatic vegetation in the littoral zone to ensure that the desired vegetation species, percent coverage, and density are maintained.

At the completion of the inspections, a written inspection report will be prepared, listing any deficiencies that need to be addressed or corrected by the Homeowners Association.

## **5.2 Stormwater Inlets, Pipes and Culverts**

The grates should be unobstructed and the bottom, inside the inlet, should be clean. Check for any accumulation of sediment, trash such as garbage bags, or debris in the culverts connecting these inlets. Flushing out with a high-pressure hose may clean some sediment. Any noted blockage (due to a possible obstruction, or broken pipe, etc.) should prompt further investigation. Crushed or corroded culverts should be replaced with new ones of the same size.

## **5.3 Swales and Grassed Water Storage Areas**

These provide for conveyance and/or above-ground (or surface) storage of stormwater. With age, these areas usually fill in with vegetation and sediment. Swales may need to be regraded and/or revegetated. It is a good idea to compare the existing slope and dimensions of the swale with the permitted design plans prior to the removal of excess sediment or regrading. Areas that show erosion should be stabilized with appropriate material such as sod, planting, rock, sand bags, or other synthetic geotextile material.

Regular mowing of grass swales is essential. These areas also improve water quality by catching sediment and assimilating nutrients, and recharge the underground water table. Remove any undesirable exotic vegetation. Culverts underneath driveways should be checked for blockage, and, if necessary, flushed with a high-pressure hose. After a storm, swales may remain wet for an extended period of time. This is normal and the water will recede gradually.

## **5.4 Ditches or Canals**

Fill material, yard waste, clippings and vegetation, sediment, trash, appliances, garbage bags, shopping carts, tires, cars, etc. should be completely removed. Also check to make sure there are no dead trees or any type of obstructions which could block the drainage flow way.

Maintenance cleaning/excavation must be limited to the same depth, width and side slope as approved in the current permit. Making a ditch deeper or wider may trigger a need for a permit modification. Provisions must also be made to prevent any downstream silting or turbidity (*Contact the SFWMD Resource Compliance staff if you are unsure or need clarification.*) Be sure to dispose of all removed material properly so it won't affect any other water storage or conveyance system, environmental area, or another owner's property.

## **5.5 Outfall Structure (also called the Discharged Control Structure or Weir)**

The outfall structure should be routinely inspected to determine if any obstructions are present or repairs are needed. Trash or vegetation impeding water flow through the structure should be removed. The structure should have a "baffle" or trash collector to prevent flow blockage and also hold back any floating oils from moving downstream. Elevations and dimensions should be verified annually with all current permit information.

Periodic inspections should then be regularly conducted to make sure these structures maintain the proper water levels and the ability to discharge.

#### **5.6 Earthen Embankments (Dikes and Berms)**

Check for proper elevations, width and stabilization. Worn down berms - especially if used by all-terrain vehicles or equestrian traffic – and rainfall – created washouts should be immediately repaired, compacted and re-vegetated.

#### **6.0 Water Quality Testing**

To ensure proper operation of the overall treatment system, monitoring will be performed at one outfall (SW-1) from Colony Trace if there is a flow over the weirs. According to the proposed Water Quality Monitoring Plan, monitoring may occur 3 times a year, once during the dry season (February/March) and twice during the wet season (August/September). A manual grab sample will be collected at the SW-1 outfall location and analyzed for various constituents and parameters as described in the Surface Water Quality Monitoring Plan. Trained and certified personnel will perform sample collection and laboratory analysis. The results of the laboratory analyses will be submitted to South Florida Water Management District as part of an annual water quality monitoring report by December 31 of each year.

#### **7.0 Construction Activities**

A Stormwater Pollution Prevention Plan (SWPPP) has been prepared for construction activities to minimize activities contamination that may be caused by erosion and sedimentation during the construction process. The plan includes provisions related to soil stabilization, structural erosion controls, waste collection disposal, offsite vehicle tracking, spill prevention and maintenance and inspection procedures. A copy of the SWPPP is attached hereto and made a part of hereof.