

This instrument prepared by:
Robert Cuff, Esq.
Rogers, Towers, P.A.
170 Malaga St., Suite A
St. Augustine, Florida 32084

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF RIVERGATE AT PALM COAST**

THIS DECLARATION is made and entered into this 26 day of April, 2004
by SeaGate Homes, Inc., a Florida corporation, (the "Declarant").

RECITALS:

- A. Declarant is the owner of certain real property located in Flagler County, Florida, which is more particularly 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 RiverGate at Palm Coast.
- C. Upon recording of a plat for the Property, Declarant shall record this Declaration in the Public Records of Flagler County, Florida so as to encumber the Property with the covenants and restrictions contained herein.
- D. From and after the recording of the Declaration, 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 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

Section 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.

Section 2. "Association" shall mean and refer to RiverGate at Palm Coast Homeowners Association, Inc., its successors and assigns.

Section 3. "Board" shall mean the Board of Directors of the Association elected or appointed in accordance with the Bylaws.

Section 4. "Bylaws" shall mean the Bylaws of the Association which have been or will be adopted by the Board, as same may be amended from time to time, a copy of which is attached hereto as Exhibit C.

Section 5. "Commencement Assessment" shall mean and refer to the initial assessment or charge levied against all Lots set forth in Article VII of this Declaration, which shall be due and payable to the Association at the time of closing by the original purchaser of a Lot purchasing from Declarant or its successor.

Section 6. "Common Area" shall mean all real property (including the improvements thereto) owned by, leased to or dedicated to the Association for the common use and enjoyment of the Owners. The Common Area may include, without limitation, roads, parking areas, paths, entryways, signage, retention areas, pool, cabana, and open areas in the Common Area.

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

Section 7. "Common Assessment(s)" shall mean and refer to the recurring annual-assessments or charges levied against all Lots to fund Common Expenses, in accordance with Article VII of this Declaration.

Section 8. "Common Expense(s)" shall mean and include the actual and estimated expenses incurred by the Association for the maintenance, repair, and operation of the Common Area and all improvements thereon and the Common Maintenance Area (as hereinafter defined), or for the general benefit of all Owners, including if so determined by the Board, reasonable reserves, all as may be found necessary or appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles.

Section 9. "Common Maintenance Area" means all 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 Owners, together with all improvements, fixtures, and tangible personal property now or hereafter situated thereon.

Section 10. "Conservation Easement Areas" shall mean and refer to all areas designated as Conservation Easement Areas upon any recorded subdivision plat or plats of the Property.

Section 11. "Declarant" shall mean and refer to SeaGate Homes, Inc. 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.

Section 12. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of RiverGate at Palm Coast and shall include any amendments or supplements to the original Declaration.

Section 13. "Governing Documents" shall mean and collectively refer to the Declaration, Articles, and Bylaws.

Section 14. "Institutional lender" shall mean a bank, savings and loan association, Federal National Mortgage Association, Declarant or other lender generally recognized as an institution type lender, which holds a mortgage on one or more of the Lots.

Section 15. "Lakefront Lots" shall mean all Lots containing, within the Lot lines, a portion of a lake or pond, or having frontage on or common boundaries with a lake or pond or waterway.

Section 16. "Lot" shall mean and refer to any portion of the Property which is intended for use as a site for a Residence and which is shown as a lot upon any recorded Plat of the Property.

Section 17. "Homeowners Association" shall mean and refer to RiverGate at Palm Coast Homeowners Association, Inc. a Florida not-for-profit corporation formed to carry out the intent of the Master Declaration (as hereinafter defined).

Section 18. "Homeowners Association Assessments" shall mean and refer to those charges made by the RiverGate at Palm Coast Homeowners Association from time to time against the Property for the purposes set forth in the Master Declaration.

Section 19. "Master Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for RiverGate and any amendment or supplement thereto.

Section 20. "Member" shall mean and refer to every person, or entity, who is an Owner, as defined herein, and, in being such an Owner, comprises the Membership of the Association.

Section 21. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 22. "Person" shall mean and include 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.

Section 23. "Plat" or "Plats" shall mean the plat or plats subdividing the Property, as may be recorded from time to time in the Public Records of Flagler County, Florida.

Section 24. "Property" or "Properties" shall mean and refer to that certain 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.

Section 25. "PUD Agreement" shall mean and refer to that certain WaterGate Planned Unit Development (PUD) Agreement between the Declarant and the City of Palm Coast recorded at Official Records Book 0902, Page 0521 et seq. of the Public Records of Flagler County, Florida as the same may be, from time to time, amended.

Section 26. "Residence" means any single family residential dwelling constructed or to be constructed on or within any Lot together with any appurtenant improvements, including, without limitation, driveways, patios, sidewalks.

Section 27. "SJRWMD" shall mean and refer to the St. Johns River Water Management District.

Section 28. "Special Assessment" shall mean and refer to the assessments or charges levied against all Lots in addition to the Common Assessment and in accordance with Article VII of this Declaration for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto.

Section 29. "Specific Assessment" shall mean and refer to assessments or charges levied against a specific Owner's Lot to recover any indebtedness of such Owner to the Association arising under any provision of the Governing Documents, including, without limitation, any indemnity, or by contract express or implied, or because of any act or omission of the Owner or any occupant of such Owner's Lot, or arising by reason of such Owner's failure to properly maintain his Lot and Residence as herein provided.

Section 30. "Surface Water or Stormwater Management System" shall mean a system operated, maintained and managed by the Association which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water

to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges, from the system, as permitted pursuant to Chapters 40C-4 or 40C-40, Florida Administrative Code and operated, maintained and managed in a manner consistent with any applicable SJRWMD permit (the "Permit"). The Surface Water or Stormwater Management System shall include all environmental conservation areas and other water management areas within the Property.

Section 31. "Water Areas" shall mean and include any lakes, ponds, retention areas and other water areas within the Property.

ARTICLE II **PROPERTY RIGHTS**

Section 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:

A. 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;

B. The right of the Association to mortgage or convey the Common Area to another homeowners association, public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members and so long as any such conveyance is subject to conditions which protect the access and other rights of the Owners over and through any Common Area so conveyed. No such mortgage or conveyance shall be effective unless 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 Class A Membership of the Association and, so long as Class B Membership exists, with the express consent of the Declarant.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, 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.

Section 3. Utility Easements. Public utilities serving the Property and the Lots, have been, or will be, installed in the Common Area and within or upon the Property for the use, benefit, and service of the Property, the Lots, and all improvements on the Property. A permanent, perpetual, mutual and non-exclusive easement shall exist over, across and into the Property, Lots, and all improvements upon the Property for installation, maintenance, and repair of all utilities, for lines, wires, pipes, equipment, and other items necessary for supplying light, heat, air conditioning, water, sewer, power, telephone, any cable television and other utilities or means of communication to the Property, Lots, and the improvements upon the Property. Any and all use of the said utility easements shall

be in accordance with the applicable provisions of this Declaration and all utilities shall be installed underground as required by the PUD Agreement.

Section 4. Surface Water or Stormwater Management and Drainage Easement. An easement is hereby created over the Property in favor of the Association and SJRWMD, including their agents or other designees, for surface water drainage and for the installation and maintenance of the Surface Water or Stormwater Management System for the Property. The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any real property which is a part of or adjacent to the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water, or stormwater management system. No person shall alter the drainage flow of the surface water, or stormwater management system, including buffer areas, or swales, without the prior written approval of the St. Johns River Water Management District.

Section 5. 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 and the Property.

Section 6. Easements for Unintentional Encroachments. If any structure or improvement originally constructed on the Property by the Declarant shall encroach on any Lot or Common Area by reason of such original construction, an easement shall exist for such encroachment for so long as the encroachment exists.

Section 7. Association's Right of Entry. The Association's duly authorized representatives or agents shall, at all reasonable times, have and possess a reasonable right of entry and inspection upon the 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.

Section 8. 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 the Lot(s) to and from dedicated rights of way.

Section 9. 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

Section 1. 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.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one 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 vote be cast with respect to any Lot.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to four (4) 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:

- A. The total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership; or
- B. The date exactly ten (10) years after the recording of this Declaration; or
- C. The date that is three months after ninety (90%) percent of the Lots in all phases of the community that will ultimately be operated by the Association have been conveyed to Class A Members.
- D. Declarant may elect to convert some or all of its Class B Membership to Class A Membership upon sixty (60) 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**

Section 1. No Implied Extension of Covenants. Each Owner and each tenant of any improvements constructed on any Lot, by becoming an Owner or tenant, shall be deemed to have agreed that (a) the Property described on Exhibit A and such additional property

as may be annexed pursuant to this Declaration shall be the only Property subject to this Declaration, (b) that nothing contained in this Declaration or in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development, shall be construed as subjecting, or requiring the Developer to subject any other property now or hereafter owned by the Developer to this Declaration, and (c) that the only manner in which additional land may be subjected to this Declaration is by the procedures set forth in Article IV, Section 2 of this Declaration.

Section 2. Additional Lands. Developer may, but shall not be obligated to, subject additional land to this Declaration (or to the assessment provisions of this Declaration) from time to time provided only that (a) any additional land subjected to this Declaration (or its assessment provisions) shall be contiguous to the Property then subject to this Declaration (for purposes of this Section, property separated only by public or private roads, water bodies, golf courses, or open space shall be deemed contiguous), and (b) the Owners of property within additional lands made subject to this Declaration (or its assessment provisions) shall be and become subject to this Declaration (or its assessment provisions), and shall be responsible for their pro rata share of common expenses for which assessments may be levied pursuant to the terms of Article VII of the Declaration. Addition of lands to this Declaration shall be made and evidenced by filing in the public records of Flagler County, Florida, a Supplementary Declaration executed by the Developer with respect to the lands to be added. Developer reserves the right to supplement this Declaration to add land to the scheme of this Declaration (or its assessment provisions) pursuant to the foregoing provisions without the consent or joinder of any Owner or mortgagee of land within the Property.

ARTICLE V
FUNCTIONS OF THE ASSOCIATION

Section 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 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.

Section 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:

A. Maintenance and repair of the Common Area and improvements and landscaping thereon, as and when deemed appropriate by the Board.

B. Mowing of the front, rear and side yard lawns of each Lot. Maintenance of trees, shrubs, hedges, plantings, and irrigation system on each Lot is the respective Lot Owner's responsibility unless otherwise mandated by the Board. This responsibility shall include

the replacement on a Lot of any Street Trees as defined in and required by the PUD Agreement.

C. Payment of ad valorem taxes with respect to the Common Area, both prior to and after conveyance of same by Declarant to the Association.

D. Operation of the Common Area in accordance with the rules and other standards adopted by the Board from time to time, both prior to and after conveyance of same by Declarant to the Association.

E. 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 any covenants, conditions or restrictions applicable to the Property. or in the Articles or Bylaws.

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

G. Purchasing insurance as may be required hereby or by the Bylaws and any other insurance to the extent deemed necessary or desirable by the Board.

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

I. The Association shall be responsible for the maintenance, operation and repair of the Surface Water or Stormwater Management System. Maintenance of the Surface Water or Stormwater Management System(s) 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 the SJRWMD. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted or, if modified, as approved by the SJRWMD.

Section 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:

A. Such other services as are authorized in the Articles or Bylaws or which the Board deems appropriate to promote the recreation, health, safety, and welfare of the residents in the Property.

B. Cleanup, landscaping, maintenance, dredging, water treatment or other care of canals, roads or other property (public or private) adjacent to or near the Property to the extent such care would, in the reasonable determination of the Board, be beneficial to the Property and to the extent that the Association has been granted the right to so care for

the affected property by the owner thereof or other person authorized to grant such right, including, but not limited to, any appropriate governmental authority.

Section 4. Actions by The Association. Anything herein to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating or otherwise abetting any legal action, claim or extra-judicial action except for:

- A. Actions brought by the Association to enforce the provisions of this Declaration, including imposition, enforcement and collection of assessments, including lien rights, pursuant to Article VII hereof;
- B. Collecting of debts owed to the Association;
- C. Bringing any contest or appeal of tax assessments relating to any property owned by the Association;
- D. Counterclaims brought by the Association in proceedings instituted against it; unless such legal action, claim or extra-judicial action shall be specifically approved for such purposes by the Board of Directors.

ARTICLE VI
COMMUNITY WALLS

Section 1. Community Wall. Declarant may construct walls or fences within the Property, ("Community Wall(s)"). A Community Wall shall hereinafter be defined as any wall or fence built by Declarant or the Association, in any Common Area, easement, or elsewhere on the Property as a visual barrier, decorative, architectural, or safety feature, or for any other reason at the sole discretion of Declarant or the Board, or as a requirement of any municipality or governing authority for the benefit of the Association. To the extent that any Community Wall, as actually constructed or maintained by the Declarant or the Association, encroaches on any Lot, such encroachment shall be allowed to continue and shall be deemed to be an easement in favor of the Association for the maintenance and reconstruction of such portion of any Community Wall.

Section 2. Maintenance of Community Walls. The Association shall be responsible for the maintenance of Community Walls.

ARTICLE VII
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned; hereby covenants and each Owner of any Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, 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, Stormwater Management System, including, but not limited to work within retention areas, drainage structures and drainage easements.

All such assessments, together with late fees, interest, costs, and reasonable attorneys' fees for collection thereof, shall be a charge on the Lot assessed and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees for collection thereof, shall also be the personal obligation of each Person who was an Owner of such Lot at the time the assessment fell due until the assessment is paid. No Person may escape such personal liability for any assessments by the transfer of title to any Lot once personal liability for such assessments has been incurred.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement and maintenance of the Common Area, Common Maintenance Area, easement areas benefiting the Property, or right-of-way area adjacent to the Property the Association chooses to maintain, or for any other purpose set forth in the Declaration that the Board deems appropriate. Assessments shall also be used for the maintenance and repair of the surface water or storm water management systems including but not limited to work within retention areas, drainage structures and easements.

Section 3. Maximum Annual Common Assessment. The Initial Assessment Year shall begin on the date on which this Declaration is recorded in the Public Records of Flagler County, Florida and end on the next December 31. During the Initial Assessment Year, the maximum monthly Common Assessment shall be \$125.00 per Lot.

A. For all years after the Initial Assessment Year, the Board, by affirmative vote, may increase the maximum annual Common Assessment to an amount that does not exceed one hundred fifteen (115%) percent of the previous year's annual Common Assessment. Such increase shall not require any vote of the Members.

B. For all years after the Initial Assessment Year, any proposed increase in the annual Common Assessment which exceeds one hundred fifteen (115%) percent of the previous year's annual Common Assessment 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 votes of the Association present at a special meeting duly called for that purpose or at the regular annual meeting of the Members if such proposed increase is clearly disclosed as an agenda item for such regular annual meeting.

C. Notwithstanding anything contained in this Declaration to the contrary, charges for Lot maintenance described in Article V Section 2(B) (the "Lot Maintenance") shall not be included in the Common Assessment for a Lot until a certificate of occupancy is issued for the house on said Lot and the Association begins performing the Lot Maintenance.

The Association budget shall list the Lot Maintenance portion of the Common Assessment as a separate line item.

Section 4. Special Assessments. The Association may levy, in any assessment year, a Special Assessment applicable to that year, provided that any such Special Assessment shall require the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the votes of the Association present at a meeting duly called for this purpose.

Section 5. Specific Assessments. The Association may levy a Specific Assessment against an Owner's Lot to recover any indebtedness of Owner to the Association arising under any provision of the Governing Documents.

Section 6. Uniform Rate of Assessment. Common and Special Assessments must be fixed at a uniform rate for all Lots, except as provided in Section 3.D. of this Article VII.

Section 7. Commencement Assessment. A Commencement Assessment of Two Hundred Dollars (\$200) per Lot shall be paid to the Association at the time of closing by the original purchaser of a Lot purchasing from Declarant or its successor. The Association may use the Commencement Assessment for any of the purposes set forth in this Declaration. The Commencement Assessment shall be paid directly to the Association and shall be utilized in a manner consistent with other assessments.

Section 8. Date of Commencement of Common Assessments: Due Dates. The Common Assessment provided for in this Article shall commence as to all Owners other than Declarant on the first day of the month following the date this Declaration is recorded in the Public Records of Flagler County, Florida. Each subsequent Common Assessment shall be imposed for the year beginning January 1 and ending December 31. The Common Assessment shall be payable in advance in monthly installments, or in annual, semi-annual, or quarter- annual installments if so determined by the Board. Assessments for the Initial Assessment Year shall be adjusted according to the number of months remaining in the calendar year to an amount not to exceed the maximum monthly amount set forth in Section 3 of this Article VII. The Board shall fix the amount of the Common Assessment against each Lot for all years following the Initial Assessment year at least thirty (30) days in advance of each Common Assessment period. 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.

Section 9. Declarant's Obligation for Assessments. Notwithstanding anything herein to the contrary, as long as Class B Membership exists, as to unoccupied Lots owned by Declarant, Declarant may elect not to pay the Common Assessment on each such unoccupied Lot. Should Declarant elect not to pay the Common Assessment, Declarant shall pay all costs incurred by the Association in accomplishment of the purposes set

forth in Article VII, Section 2 hereof, in excess of the total amount collected by the Association through all assessments. This obligation of Declarant shall hereinafter be referred to as Declarant's "Deficiency Obligation". 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 as to the Common Assessment and place himself in the position of being obligated to pay the full impact of the Common Assessment for each Lot owned by Declarant at the time said revocation is presented to the Association.

Section 10. 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 eighteen percent (18%) per annum or the highest rate allowed by law. 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.

Section 11. Assumption of Delinquent Assessments by Successors. The personal obligation of an Owner for delinquent assessments shall continue regardless of that Owner's attempt to assign such obligation to a subsequent purchaser of that Owner's interest in any Lot on the Property or any sale or transfer of the delinquent Owner's interest in the Lot, unless the Association expressly agrees to release the personal liability of the delinquent Owner upon the assumption of that liability by the delinquent Owner's successor in interest. Irrespective of the assumption of the personal component of the obligation by any successor in interest; the lien for delinquent assessments shall continue to be a lien upon the Lot until such time as it is fully paid.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Article VII shall be subordinate to the lien of any mortgage to any Institutional Lender which is now or hereafter placed upon any Lot subject to assessment as long as said mortgage lien is a first lien against the Lot encumbered thereby. 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. Nothing contained in this Declaration shall be construed to impose a duty on any mortgagee to collect assessments.

ARTICLE VIII
ARCHITECTURAL CONTROL

Section 1. Architectural Approval of All Improvements Required. Except for those improvements constructed by Declarant, no building, garage, shed, fence, wall, 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 Architectural Review Committee initially appointed by the Declarant.

Section 2. Design Guidelines. The Declarant or the Board may promulgate design and development guidelines, application and review procedures, and building criteria (the "Design Guidelines or Guidelines"). The Guidelines, if any, promulgated on behalf of the Association shall be binding upon all Owners, builders, developers and contractors other than Declarant. Until expiration of the Class B Membership, the Declarant, in its sole discretion, shall have the sole authority to prepare and amend the Guidelines for the Property. Following expiration of the Class B Membership, the Board shall have sole and full authority to prepare and to amend the Guidelines.

Section 3. Architectural Review Committee. No review or approval by the Architectural Review Committee shall be required in the case of structures initially constructed by Declarant on a Common Area or Lot prior to the conveyance of the Common Area to the Association or the sale of that Residence to the initial Owner other than Declarant.

A. All other buildings, walls, fences, or other structures or improvements of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the Design Guidelines and plans and specifications and plot plans approved in writing by the Architectural Review Committee. The Committee may deny approval of plans, specifications or plot plan, or any of them, based on any ground, including purely aesthetic grounds, which, in the sole discretion of said Architectural Review Committee, the Committee deems sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Review Committee may promulgate rules as it deems necessary to administer the Design Guidelines promulgated by the Association and to conduct the review process required by this Declaration and to carry out the provisions and intent of this Section. The Committee may set and collect reasonable fees for review of submissions, subject to approval of such fees by the Declarant or the Board of Directors (depending on which entity has the right to appoint members to the Committee at the time the Committee determines to set such fees), and no submission may be deemed approved until the applicable fee has been paid.

B. The Architectural Review Committee shall review the proposed submission as to the

submission's conformance to the Design Guidelines adopted by the Association, the type and quality of materials, harmony of the exterior design and location of the building or structure with existing buildings or structures, location of the building or structure with respect to topography, trees, vegetation and the finished grade elevation and floor slab, exterior color(s) of any building or structure and any other relevant considerations. Upon completion of the proposed improvements, an "as-built" survey showing the finished floor and grade elevation and location of all improvements shall be filed with the Architectural Review Committee.

C. If the Architectural Review Committee disapproves, in whole or in part, any submission required herein, the Committee shall notify the person, firm or entity making the submission of the reasons for such disapproval. If the Architectural Review Committee fails or refuses to approve or disapprove a submission containing all the requirements as set forth herein within forty-five (45) days after submission is received by the Committee, it shall then be presumed that the submission has been approved by the Architectural Review Committee.

D. The Architectural Review Committee shall be composed of not less than three (3) nor more than seven (7) persons. Declarant shall appoint all of the initial members of the Committee. The membership, rules of procedure and duties of the Committee shall be prescribed by and, from time to time, changed or modified by Declarant. Upon expiration of the Class B Membership in accordance with the provisions of this Declaration, Declarant's right to appoint members to the Committee and to promulgate rules of procedure and duties of the Committee shall become the responsibility of the Board of Directors of the Association. From and after the date of such transfer, Declarant shall be relieved of any further duties or obligations concerning the Committee and the Association shall assume the duties and obligations and perform the functions as set forth herein. Provided, however, that Declarant, so long as Declarant holds any Membership in the Association (including any Class A Membership), shall not be required to obtain approval from the Architectural Review Committee or the Association for any construction activities carried on by Declarant on the Property.

ARTICLE IX **USE RESTRICTIONS**

The Property shall be subject to the following restrictions, reservations and conditions, which shall be binding upon Declarant and upon each and every 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.

Section 1. Residential Lots. Except as specifically provided in this Declaration, no use shall be made of Lots other than for single family residential purposes.

Section 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 the Water Areas, creating land areas from Water Areas, or creating, excavating or maintaining drainage or other facilities or easements, or the installation of wells, pumps or above and below ground propane tanks in compliance with applicable governmental requirements, or for sprinkler systems for any portions of the Property.

Section 3. Antennas, Aerials, Satellite Dishes and Flag Poles. Except as initially constructed by Declarant, no outside antennas, antenna poles, antenna masts, satellite television reception devices larger than eighteen inches (18") in diameter, electronic devices, antenna towers or citizen band (CB) or amateur band (ham) antennas shall be permitted except as approved in writing by the Architectural Review Committee. Satellite television reception devices no larger than eighteen inches (18") in diameter are permitted without Architectural Review Committee approval if the devices are affixed to the rear portion of a Residence or placed in the rear yard. Owners shall use their best efforts to locate the satellite television reception devices so they are not visible from the street fronting the building. A flagpole for display of the American flag or any other flag shall be permitted only if first approved in writing by Architectural Review Committee, as to its design, height, location and type of flag.

Section 4. Outside Lighting. Except as may be installed initially by Declarant, no spotlights, flood lights, or similar high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Residence or the improvements thereon or upon any Common Area or any part thereof, without the prior written consent of the Architectural Review Committee.

Section 5. Walls and Fences. Except as may be installed initially by Declarant, no dog runs, animal pens, walls or fences of any kind shall be placed or erected on the Property at any time without the express written permission of the Architectural Review Committee and City of Palm Coast. Chain link fences are not permitted.

Section 6. Subdivision or Partition. No Lot shall be further subdivided except with the Board's or Declarant's prior written consent and approval of the City of Palm Coast.

Section 7. 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, upon a determination by the Owner that the improvement will not be repaired or replaced promptly, shall clear the damaged improvement and grass over and landscape such Lot. A destroyed improvement shall only be replaced with an improvement of an identical size, type, construction, and elevation as that destroyed unless the prior written consent of the Board is obtained.

Section 8. Insurance Rates. Nothing shall be done or kept on any Lot or Common Area which shall increase the insurance rates of the Association without the prior written consent of the Board.

Section 9. Surface Water or Stormwater Management System.

A. The Association shall operate, maintain and manage the Surface Water or Stormwater Management System(s) in a manner consistent with the SJRWMD Permit requirements and applicable SJRWMD rules, and shall assist in the enforcement of the restrictions and covenants contained herein. Maintenance of the Surface Water or Stormwater Management System(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, treatment, conveyance or other surface water or Stormwater management capabilities as permitted by the SJRWMD. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved by the SJRWMD.

B. 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 or Stormwater Management System, nor shall any grading, alteration, or other modifications to these areas be made without the prior written permission of the Board, City of Palm Coast, and the SJRWMD.

C. No Owner shall remove native vegetation that becomes established within the portions of the Surface Water or Stormwater Management System abutting their Lot, without prior written approval from SJRWMD and City of Palm Coast. 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 or Stormwater Management System to SJRWMD, Permitting Department.

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

E. No Lot shall be increased in size by filling in any drainage areas or other portion of the Surface Water or Stormwater Management System. No Owner shall fill, dike, rip-rap, block, divert or change the established drainage areas or the Surface Water or Stormwater Management System that have been or may be created by easement without the prior written consent of the Board, City of Palm Coast, and SJRWMD.

F. Any wall, fence, paving, planting or other improvement which is placed by an Owner within a drainage area, drainage easement, or the Surface Water or Stormwater Management System including, but not limited to, easements for maintenance or ingress

and egress access, shall be removed, if required by the Association or SJRWMD, the cost of which shall be paid for by such Owner as a Special Assessment.

G. SJRWMD and City of Palm Coast shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which repair to the maintenance, operation and repair of the Surface Water or Stormwater Management System.

H. Owners may not construct or maintain any building, residence, or structure, or perform any activity in the wetlands, buffer areas, and upland conservation areas or easements described in the approved permit and Plat, unless prior approval is received from SJRWMD and City of Palm Coast pursuant to Chapter 40, Florida Administrative Code.

I. The covenants and restrictions regarding the Surface Water or Stormwater Management System are in no way intended to obligate the Association to perform any repairs, maintenance, corrections or modifications to those areas that City of Palm Coast or SJRWMD will maintain as part of their governmental obligation, agreement with Declarant, or as provided in any permits or ordinances.

Section 10. Lake Level Fluctuations. Neither Declarant nor the Association makes any representation concerning the current or future water levels in any Water Areas on the Property, in any water body adjacent to the Property or in the Surface Water or Stormwater Management System, nor shall Declarant or the Association bear any responsibility in attempting to adjust or modify any such water levels since such levels are subject to seasonal groundwater and rainfall fluctuations that are beyond the control of Declarant and the Association.

Each Owner hereby acknowledges that water level fluctuations are a naturally occurring phenomenon and each Owner, by the acceptance of a deed to a Lot, shall be deemed to have agreed that neither Declarant, the Association, City of Palm Coast; nor any other governmental agency shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the water level fluctuations.

Notwithstanding any other provision in this Declaration, each Owner of a Lakefront Lot is responsible for maintaining their Lot to the water's edge, regardless of periodic fluctuations in the water level of such water body.

Section 11. 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, the Association or any governmental entity to provide supervisory personnel

or lifeguards. Except as installed initially by Declarant, docks and other structures or improvements within Water Areas within the Property shall not be permitted unless approved by the Board.

Section 12. Conservation Easement Areas. The Easement Areas shall and are hereby declared to be subject to a deed restriction in favor of Declarant, its successors and assigns, for the purpose of retaining and maintaining the Easement Areas in their predominantly natural condition as a wooded water recharge, detention and percolation and conservation area. In furtherance of this conservation easement, each of the following uses of the Easement Areas are hereby prohibited and restricted without the prior written consent of SJRWMD and City of Palm Coast:

- A. The construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or any other structures and improvements on or above the ground; and
- B. The dumping or placing of soil or other substances or materials as landfill or the dumping or placing of trash, waste or unsightly or offensive materials; and
- C. The removal or destruction of trees, shrubs or other vegetation from the Easement Areas; and
- D. The excavation, dredging or removal of loam, peat, gravel, rock, soil, or other natural substance in such a manner as to affect the surface of the Easement Areas; and
- E. Any use which would be detrimental to the retention of the Easement Areas in their natural condition; and
- F. Any use which would be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife preservation; and
- G. Acts or uses detrimental to such retention of land or Water Areas; and
- H. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

Declarant, its successors and assigns and SJRWMD and City of Palm Coast shall have the right to enter upon the Easement Areas at all reasonable times and in a reasonable manner, to assure compliance with the aforesaid prohibition and restrictions.

Declarant, and all subsequent owners of any land upon which there is located any Easement Area shall be responsible for the periodic removal of trash and other debris which may accumulate on such easement parcel.

The prohibitions and restrictions upon the Easement Areas as set forth herein may be enforced by SJRWMD and City of Palm Coast or the Department of Environmental

Protection by proceedings at law or in equity including, without limitation, actions for injunctive relief.

All rights and obligations arising hereunder are appurtenances and covenants running with the land of the Easement Areas, and shall be binding upon and inure to the benefit of Declarant, and its successors and assigns. Upon conveyance by Declarant to third parties of any land affected hereby, Declarant shall have no further liability or responsibility hereunder, provided the deed restriction including the Easement Areas are property recorded.

THE PROVISIONS IN THIS CONSERVATION EASEMENT AREA RESTRICTION MAY NOT BE AMENDED WITHOUT PRIOR APPROVAL FROM SJRWMD AND CITY OF PALM COAST.

Section 13. 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. Household pets shall mean dogs, cats, domestic birds and fish. Subject to the other requirements of this Section 13 and any regulations adopted by the Board, a maximum of 3 felines or canines over 4 months of age may be kept in a Residence on a Lot. 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 the Property and disposes of same in a sanitary manner. Commercial activities involving pets shall not be allowed. The Board or Declarant may establish or modify existing limits on the number and kind of pets that may be kept or permitted to be kept on any Lot.

Section 14. Signs and Flags. No sign (including brokerage or for sale/lease signs), flag, banner, sculpture, fountain, outdoor play equipment, solar equipment, artificial vegetation, sports equipment, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, or upon any part of a Lot or structure on a Lot that is visible from any other portion of the Property without the prior written approval thereof being first had and obtained from the Architectural Review Committee, as required by this Declaration, except as follows:

A. One (1) discreet, professionally prepared sign, not exceeding four inches (4") high and eighteen inches (18") long, identifying the name of the Owner of a particular Lot.

B. One (1) discreet, professionally prepared sign of not more than one (1) square foot, placed on the street side of a Lot identifying a security protection service.

[C. Not clear from comments if you want to permit or prohibit "for sale" and campaign signs. If you want to prohibit, delete this paragraph. If you want to permit with conditions, I recommend a subparagraph for "for sale" signs limiting to one sign per lot of the standard (small) size and a second paragraph (D.) limiting

campaign signs to one per candidate or cause, not to exceed x" by y" (small, yard-size campaign sign) which must be removed within 48 hours of election.]

Section 15. Holiday Lights and Other Lighting. Holiday lighting and decorations shall be permitted to be placed upon the exterior portions of the Home and upon the Lot in the manner permitted hereunder commencing on Thanksgiving and shall be removed not later than January 15th of the following year. The Architectural Review Committee may establish standards for holiday lights and decorations. The Architectural Review Committee may require the removal of any lighting that creates a nuisance (e.g., unacceptable spillover to adjacent Home).

Section 16. Decorations. No decorative objects including, but not limited to, birdbaths, light fixtures, sculptures, statues, weather vanes, or flagpoles shall be installed or placed within or upon any portion of the Property without prior written approval of the Architectural Review Committee.

Section 17. Garbage Containers, Oil and Gas Tanks, Outdoor Equipment. All garbage and trash containers must be placed in walled-in or 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 Architectural Review Committee. Adequate opaque landscaping shall be installed and maintained by the Owner to conceal any oil tanks or bottled gas tanks permitted by the Architectural Review Committee. 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, garbage 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.

Section 18. Vehicles and Recreational Equipment. No truck or commercial vehicle, (except police or other governmental automobiles), 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 to be stored at any place on any portion of the Property unless they are parked within a garage and the garage door is closed. For the purposes of this rule the following definitions shall apply:

A. "Truck" means a vehicle with any sort of weight capacity, which has a compartment or bed for carrying cargo, as opposed to passengers, regardless of whether such vehicle has a cover or "topper" for the cargo-carrying area. "Pick-up trucks" with a cargo capacity of one ton or less shall be permitted on the Property, so long as they do not also fall under the classification of Commercial Vehicle.

B. "Commercial Vehicle" means any vehicle, which displays any commercial marking, signs, lettering, or other symbols that are visible from the exterior of the vehicle, or otherwise indicates that the vehicle is used for a commercial purpose.

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 twenty-four (24) consecutive hours or for forty-eight (48) nonconsecutive 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 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. In addition, the Association may levy a fine, as provided in this Declaration, against the Owners of any Lot where a vehicle is parked in violation of these regulations for each day such vehicle is parked on a Lot.

Section 19. Repairs. No maintenance or repairs shall be performed on any vehicles upon any portion of the Property unless they are parked within a garage. 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.

Section 20. Prohibited Structures. Except as installed initially by Declarant, no structure, including, but not limited to, privacy fences, trailers, tents, above-ground pools, shacks, sheds, barns, tree houses or out buildings shall be parked or erected on the Property at any time without the express written permission of the Architectural Review Committee and City of Palm Coast.

Section 21. 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.

Section 22. Window Treatment. Window treatments shall consist of drapery, blinds, decorative panels, or other window covering, and no newspaper, aluminum foil, sheets, or other temporary window treatments are permitted, except for periods not exceeding one (1) week after an Owner or tenant first moves into a Home or when permanent window treatments are being cleaned or repaired. No security bars shall be placed on the windows of any Home without prior written approval of the Architectural Review Committee. No awnings, canopies, or shutters shall be affixed to the exterior of a Home without the prior written approval of the Architectural Review Committee. No reflective tinting or mirror finishes on windows shall be permitted unless approved by the Architectural Review Committee. Window treatments facing the street shall be of a neutral color, such as white, off-white, or wood tones.

Section 23. 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 without the express written permission of the Architectural Review Committee. All play sets, playground equipment, skateboard ramps, above ground pools, and other outdoor recreational equipment must be approved by the Architectural Review Committee prior to installation.

Section 24. 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 thirty 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 only upon the filing of a written claim of lien. The form, substance and enforcement of the lien shall be in accordance with the construction lien law of the State of Florida, and the Owner of the Lot shall, by virtue of having acquired the Lot subject to these restrictions, be deemed to have authorized and contracted for such repair, maintenance and restoration. The lien herein provided will be subordinate to a first mortgage lien.

Section 25. Common Area. Other than those improvements constructed by Declarant, no Improvements shall be constructed upon any portion of the Common Area without the approval of the Board. The following shall apply to the Common Area:

- A. No activities constituting a nuisance shall be conducted upon any Common Area.
- B. No rubbish, trash, garbage or other discarded items shall be placed or allowed to remain upon any Common Area.
- C. The Board may from time to time adopt reasonable rules and regulations concerning use of the Common Area which shall be binding upon all Members.
- D. Nothing shall be stored, constructed within or removed from the Common Area other than by Declarant, except with the prior written approval of the Board.
- E. Except for those improvements made to the Common Area by Declarant, all capital improvements to the Common Area, except for replacement or repair of those items installed by Declarant and personal property related to the maintenance of the Common

Area, shall require the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the votes of the Association present at a meeting duly called for this purpose unless such capital improvement is required by any Federal, State or local law or ordinance.

Section 26 Completion and Sale of Units. No person or entity shall interfere with the completion and sale of Homes within the Property.

Section 27. Other Restrictions Established by the Board. The Board shall have the authority, as hereinabove expressed, 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.

Section 28. 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.

Section 29. Imposition of Fines for Violation. 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, not to exceed the maximum amount permitted by Florida law from time to time. 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 twelve percent (12%) per annum, and shall be treated as a Specific Assessment as provided in Article VII.

Section 30. Association Waiver. In the event that a violation of any of these restrictions shall inadvertently 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.

Section 31. 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 as provided in Article VII. 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.

Section 32. Violation. If any Person shall violate or attempt to violate any of the covenants herein, it shall be lawful for Declarant or any Owner to bring any proceeding at law or in equity against the Person(s) violating or attempting to violate any such covenants, including action to enjoin or prevent him or them from so doing, or to cause the violation to be remedied and to recover damages or other dues for such violation. If the party or parties bringing any such action prevail, they shall be entitled to recover from the Person(s) violating these restrictions the costs incurred by such prevailing party, including reasonable attorneys' fees and disbursements incurred through all appellate levels. Invalidation of any of these covenants by judgment of court order shall in no way affect any of the other covenants and provisions, contained herein, which shall remain in full force and effect.

Section 33. Rights of Declarant. Notwithstanding anything in this Article to the contrary, Declarant shall have the right of ingress and egress over the Property, including the use of construction machinery and trucks thereon, and no Person shall in any way impede or interfere with Declarant, its employees or agents, in the exercise of this right herein reserved, or interfere with the completion of the contemplated improvements or sale of Lots and improvements thereon. Declarant may make such use of Property, free from the interference of Owners or contract purchasers, as may be reasonably necessary to facilitate the completion and sale of Lots and improvements thereon, including but not limited to, the maintenance of a sales office and model area, the showing of Property, the display of signs, and the right to construct or place sales and construction offices of a temporary nature on the Property or in Residences constructed on the Property.

ARTICLE X
ENFORCEMENT OF NON-MONETARY DEFAULTS

Section 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 Board, 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 violation is not capable of being cured within the seven (7) day period, or if the Member or Owner fails to commence and diligently proceed to completely cure as soon as practical, the Association may, at its option:

A. 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

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

C. 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.

Section 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, as provided in Article VII, and shall be due upon written demand by the Association.

Section 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 eighteen percent (18%) per annum or the highest rate allowed by law. 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.

Section 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.

Section 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 anyone 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.

Section 6. Enforcement By or Against the Persons. In addition to the foregoing, the 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.

Section 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 XI **INDEMNIFICATION**

Section 1. Indemnification of Officers, Directors or Agents. The Association shall indemnify any Person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a Director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in; or not opposed to, the best interest of the Association. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

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

B. The indemnification provided by this Declaration 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.

C. 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 selling at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Declaration.

ARTICLE XII
AMENDMENTS

Section 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 provided, however, that no such amendment may amend any provision of this Declaration that to the detriment of any rights reserved to the Declarant without the express joinder of the Declarant in such amendment. Any amendment of this Declaration shall be recorded in the Public Records of Flagler County, Florida.

Section 2. Amendment by Declarant. As long as there is a Class B Membership, Declarant specifically reserves the right to amend this Declaration, without the consent or joinder of any party. Any such amendment shall be recorded in the Public Records of Flagler County, Florida and a copy of any such amendment shall be provided to the Board and to all Owners.

Section 3: Amendment to Correct Scrivener's Errors and Clarify Ambiguities. Declarant shall have the right at any time to amend this Declaration to correct scrivener's errors and to clarify ambiguities determined to exist herein or to comply with the requirements of the Department of Housing and Urban Development, Veteran's Administration, SJRWMD, the City of Palm Coast, the Federal National Mortgage Association, or any other governmental agency. No amendment shall impair or prejudice rights or priorities of any Institutional Lender without their written consent..

ANY AMENDMENT TO THE DECLARATION WHICH ALTERS THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM, BEYOND MAINTENANCE IN ITS ORIGINAL CONDITION, INCLUDING THE WATER MANAGEMENT PORTIONS OF THE COMMON AREA, MUST HAVE THE PRIOR APPROVAL OF SJRWMD.

ARTICLE XIII
GENERAL PROVISIONS

Section 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 homeowner's 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 all of its interest in any of the Property, or has terminated its interest in the

Property. 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.

Section 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.

Section 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.

Section 4. SJRWMD Enforcement. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which related to the maintenance, operation and repair of the surface water or stormwater management system.

Section 5. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 6. 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, after which time they 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 Flagler County, Florida. Unless this Declaration is terminated as provided above, the Association shall rerecord this Declaration or other notice of its terms at intervals necessary under Florida law to preserve its effect.

Section 7. Communication. All communication from individual Owners to Declarant, its successors or assigns, the Board, or any officer of the Association shall be in writing.

Section 8. 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.

Section 9. Conflict. This Declaration shall take precedence over conflicting provisions in the Articles and Bylaws, and the Articles shall take precedence over the Bylaws.

Section 10. 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.

Section 11 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 Flagler County, Florida.

Section 12. HUD/VA Approval. As long as there is a Class B Membership and so long as the Department of Housing and Urban Development and the Veteran's Administration is holding, insuring, or guaranteeing any loan secured by property subject to this Declaration, the following actions will require the approval of the Department of Housing and Urban Development or the Veterans Administration: annexation of additional properties, dedication of any additional Common Area; and amendments of this Declaration.

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

WITNESSES:

DECLARANT:

Laura Gazzoli
Witness

Print Name: LAURA GAZZOLI

Robert G. Cuff, Jr.
Witness

Print Name: ROBERT G. CUFF, JR.

SeaGate Homes, Inc.

By: *Robert Gazzoli*
Print: Name: Robert Gazzoli
Its: President
185 Cypress Point Parkway, Suite 7
Palm Coast, FL 32164

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 26 day of
APRIL, 2004 by ROBERT GAZZOLI, as
PRESIDENT of SeaGate Homes, Inc., a Florida corporation.
He is personally known to me.



Robert G. Cuff, Jr.
MY COMMISSION # DD226091 EXPIRES
June 24, 2007
BONDED THRU TROY FAIN INSURANCE, INC.

Robert G. Cuff, Jr.
Print name: ROBERT G. CUFF, JR.
Notary Public State of Florida
My Commission Expires:

Exhibit A - Legal Description

A tract of land being a portion of Reserved Parcel 13-1, Royal Palms - Section 30, Palm Coast as per plat thereof as recorded in Map Book 10, Page 30 of the Public Records of Flagler County, Florida and being more particularly described as follows: Begin at the Northeast corner of the aforesaid Reserved Parcel 13-1 and run along the Easterly line of said Parcel and Westerly Right-of-Way line of Rae Drive for the following courses: South $18^{\circ}57'33''$ East, a distance of 1,075.80 feet to a Point of Curvature of a curve concave Westerly having a radius of 200.00 feet; thence run Southerly along the arc of said curve through a central angle of $18^{\circ}13'22''$ for a distance of 63.61 feet to the Point of Tangency; thence run South $00^{\circ}44'11''$ East, a distance of 134.42 feet; thence run South $89^{\circ}15'49''$ West along the South line of the aforesaid Reserved Parcel 13-1 for a distance of 1,608.58 feet; thence departing said South line and run North $00^{\circ}44'11''$ West, a distance of 75.20 feet; thence North $69^{\circ}14'11''$ West, a distance of 251.68 feet; thence North $20^{\circ}45'49''$ East, a distance of 199.84 feet; thence South $69^{\circ}14'11''$ East, a distance of 110.00 feet; thence North $86^{\circ}50'21''$ East, a distance of 54.10 feet to a point on a curve concave Easterly having a tangent bearing of South $03^{\circ}09'39''$ East and a radius of 110.00 feet; thence run Southerly along the arc of said curve through a central angle of $29^{\circ}13'13''$ for a distance of 56.10 feet; thence North $55^{\circ}00'49''$ East, a distance of 129.81 feet to a point on a curve concave Easterly having a tangent bearing of North $23^{\circ}26'58''$ West and a radius of 25.00 feet; thence run Northerly along the arc of said curve through a central angle of $44^{\circ}12'47''$ for a distance of 19.29 feet to the Point of Tangency; thence run North $20^{\circ}45'49''$ East, a distance of 141.95 feet to a Point of Curvature of a curve concave Westerly having a radius of 450.00 feet; thence run Northerly along the arc of said curve through a central angle of $23^{\circ}42'20''$ for a distance of 186.18 feet to the Point of Tangency; thence run North $02^{\circ}56'31''$ West, a distance of 63.62 feet to a Point of Curvature of a curve concave Southeasterly having a radius of 25.00 feet; thence run Northeasterly along the arc of said curve through a central angle of $93^{\circ}46'19''$ for a distance of 40.92 feet to the Point of Tangency; thence run South $89^{\circ}10'13''$ East, a distance of 88.64 feet to a Point of Curvature of a curve concave Southwesterly having a radius of 15.00 feet; thence run Southeasterly along the arc of said curve through a central angle of $119^{\circ}56'40''$ for a distance of 31.40 feet to a Point of Reverse Curvature of a curve concave Northerly and having a radius of 162.00 feet; thence run along the arc of said curve through a central angle of $246^{\circ}34'40''$ for a distance of 697.18 feet; thence departing said curve and run North $00^{\circ}49'47''$ East, a distance of 23.89 feet to a Point of Curvature of a curve concave Southeasterly having a radius of 25.00 feet; thence run Northeasterly along the arc of said curve through a central angle of $74^{\circ}42'10''$ for a distance of 32.60 feet to the Point of Tangency; thence run North $75^{\circ}31'57''$ East, a distance of 110.39 feet to a Point of Curvature of a curve concave Southerly having a radius of 102.55 feet; thence run Easterly along the arc of said curve through a central angle of $05^{\circ}05'05''$ for a distance of 9.10 feet to the Point of Tangency; thence run North $80^{\circ}37'03''$ East, a distance of 61.15 feet to a Point of Curvature of a curve concave Northerly having a radius of 3,113.02 feet; thence run Easterly along the arc of said curve through a central angle of $04^{\circ}55'32''$ for a distance of 267.62 feet to a Point of Reverse Curvature of a curve concave Southerly and having a radius of 25.00 feet; thence run Easterly along the arc of said curve through a central angle of $66^{\circ}30'12''$ for a distance of 29.02 feet; thence departing said curve and run North $52^{\circ}11'43''$ East radial to the aforesaid curve for a distance of 39.10 feet; thence North $71^{\circ}02'27''$ East, a distance of 74.34 feet; thence North $18^{\circ}57'33''$ West, a distance of 82.41 feet to a Point of Curvature of a curve concave Southwesterly having a radius of 25.00 feet; thence run

Northwesterly along the arc of said curve through a central angle of $87^{\circ}15'56''$ for a distance of 38.08 feet; thence departing said curve and run North $16^{\circ}13'29''$ West radial to the aforesaid curve for a distance of 40.00 feet to a point on a curve concave Southerly having a tangent bearing of North $73^{\circ}46'31''$ East and a radius of 65.00 feet; thence run Easterly along the arc of said curve through a central angle of $07^{\circ}44'03''$ for a distance of 8.77 feet; thence departing said curve and run North $17^{\circ}24'35''$ West, a distance of 120.66 feet to a point on the North line of the aforesaid Reserved Parcel 13-1 and being on a curve concave Northerly having a tangent bearing of North $73^{\circ}39'55''$ East and a radius of 2,845.44 feet; thence run Easterly along the arc of said curve through a central angle of $02^{\circ}37'28''$ for a distance of 130.33 feet to the Point of Tangency; thence run North $71^{\circ}02'27''$ East, a distance of 49.64 feet to the POINT OF BEGINNING.

Containing 27.230 Acres, more or less.

**ARTICLES OF INCORPORATION
OF
RIVERGATE AT PALM COAST HOMEOWNERS ASSOCIATION, INC.
(a corporation not-for-profit)**

I. NAME AND DEFINITIONS.

The name of this corporation shall be RiverGate at Palm Coast Homeowners Association, Inc. All defined terms contained in these Articles shall have the same meanings as such terms are defined by the Declaration of Covenants and Restrictions of RiverGate at Palm Coast to be recorded in the Public Records of Flagler County, Florida (the "Declaration").

II. PRINCIPAL OFFICE AND MAILING ADDRESS.

The location of the corporation's principal office and its mailing address shall be 185 Cypress Point Parkway, Palm Coast, Florida 32164, or at such other place as may be established by resolution of the Association's Board of Directors from time to time.

III. PURPOSES.

The general nature, objects and purposes of the Association are:

A. To promote matters of common interest and concern of the Owners of property within RiverGate at Palm Coast.

B. To own, maintain, repair and replace the Common Area, including without limitation the streets, street lights, landscaping, structures, and other improvements located thereon, for which the obligation to maintain and repair has been delegated to and accepted by the Association.

C. To operate, maintain and manage the Surface Water or Stormwater Management System in a manner consistent with the St. Johns River Water Management Permit No. 40-035-87544-1, and applicable District rules, and to assist in the enforcement of the requirements, restrictions and covenants contained therein.

D. To provide, purchase, acquire, replace, improve, maintain, operate and repair such buildings, structures, landscaping, paving and equipment, and to provide such other services for the benefit of the members of the Association, as the Board of Directors in its discretion determines necessary, appropriate, and/or convenient.

E. To operate without profit for the sole and exclusive benefit of its Members.

F. To perform all of the functions contemplated for the Association and undertaken by the Board of Directors pursuant to the terms and conditions of the Declaration.

IV. GENERAL POWERS.

The general powers that the Association shall have are as follows:

A. To hold funds solely and exclusively for the benefit of the Members for purposes set forth in these Articles of Incorporation.

B. To promulgate and enforce rules, regulations, bylaws, covenants, restrictions and agreements to effectuate the purposes for which the Association is organized.

C. To delegate power or powers where such is deemed in the interest of the Association.

D. To purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of real or personal property, to enter into, make, perform or carry out contracts of every kind with any person, firm, corporation or association; to do any and all acts necessary or expedient for carrying on any and all of the activities and pursuing any and all of the objects and purposes set forth in the Declaration and these Articles of Incorporation and not forbidden by the laws of the State of Florida.

E. To fix assessments to be levied against all or any portion of the Property to defray expenses and costs of effectuating the objects and purposes of the Association and to create reasonable reserves for such expenditures, and to authorize its Board of Directors to enter into agreements with other property owner's associations or maintenance entities for the collection of such assessments. The foregoing shall include the power to levy and collect adequate assessments against the Members for the costs of maintenance and operation of the Surface Water or Stormwater Management System. Such assessments shall be used for the maintenance and repair of the Surface Water or Stormwater Management System, including but not limited to, work within retention areas, drainage structures and drainage easements.

F. To charge recipients for services rendered by the Association and the users of the Association property where such is deemed appropriate by the Board of Directors of the Association and permitted by the Declaration.

G. To pay taxes and other charges, if any, on or against property owned, accepted, or maintained by the Association.

H. To borrow money and, from time to time, to make, accept, endorse, execute and issue debentures, promissory notes or other obligations of the Association for monies borrowed, or in payment for property acquired, or for any of the other purposes of the Association, and to secure the payment of such obligations by mortgage, pledge, or other instrument of trust, or by lien upon, assignment of or agreement in regard to all or any part of the property rights or privileges of the Association wherever situated.

I. To merge with any other association which may perform similar functions located within the same general vicinity of the Property.

J. In general, to have all powers conferred upon a corporation by the laws of the State of Florida, except as prohibited herein and by the terms and conditions set forth in the Declaration.

V. MEMBERS.

The Members ("Members") shall consist of the Declarant and all other Owners of Lots located within the Property. Membership in the Association is appurtenant to and inseparable from ownership of a Lot.

VI. VOTING AND ASSESSMENTS.

A. The Association shall have two classes of voting membership as follows:

1. Class A Membership. The Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned.

2. Class B Membership. The Class B Member shall be the Declarant who shall be entitled to four (4) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(i) when the total votes outstanding in the Class A Membership equals the total votes in the Class B Membership;

(ii) On the tenth (10th) anniversary of the date the Declaration is recorded in the Public Records of Flagler County, Florida; or

(iii) Such earlier date as the Declarant may choose to terminate the Class B Membership upon sixty (60) days written notice to the Association Board of Directors.

B. When one or more persons or entities holds an interest or interests in any Lot or other portion of the Property, all such persons shall be Members, and the vote(s) for such portions of the Property shall be exercised as they among themselves shall determine. The votes for any Lot, or other portion of the Property cannot be divided for any issue and must be voted as a whole, except where otherwise required under the provisions of these Articles, the Declaration, or by law. The affirmative vote of a majority of the votes allocated to the Members cast at any meeting of the Members duly called at which a quorum is present, or cast by written ballot by a quorum of the membership, shall be binding upon the Members and the Association.

C. The Association will obtain funds with which to operate by assessment of its Members in accordance with the provisions of the Declaration, as supplemented by the provisions of the Articles and Bylaws of the Association relating thereto.

VII. BOARD OF DIRECTORS.

A. The affairs of the Association shall be managed by a Board of Directors consisting of three (3) Directors. Directors need not be members of the Association and need not be residents of the State of Florida. For so long as the Class B Membership shall exist, the Declarant shall have the right to appoint all of the Directors. Following termination of the Class B Membership, Directors shall be elected as herein provided.

B. Elections shall be by plurality vote. At the first annual election of the Board of Directors, the terms of office of the elected Director receiving the highest number of votes shall be established at two (2) years. The other Directors shall be elected for terms of one (1) year each. Thereafter, as many Directors shall be elected and appointed, as the case may be, as there are regular terms of office of Directors expiring at such time; and the term of each Director so elected or appointed at each annual election shall be for two (2) years expiring at the second annual election following their election, and thereafter until their successors are duly elected and qualified, or until removed from office with or without cause by the affirmative vote of a majority of the Members which elected or appointed them. In no event can a Board member appointed by the Declarant be removed except by action of the Declarant. Any Director appointed by the Declarant shall serve at the pleasure of the Declarant, and may be removed from office, and a successor Director may be appointed, at any time by the Declarant.

C. The names and addresses of the members of the first Board of Directors who shall hold office until the first annual meeting of the Members and until their successors are elected or appointed and have qualified, are as follows:

Michael Sawdai
185 Cypress Point Parkway
Palm Coast, Florida 32164

Michel Mentzer
185 Cypress Point Parkway
Palm Coast, Florida 32164

Robert Gazzoli
185 Cypress Point Parkway
Palm Coast, Florida 32164

VIII. **OFFICERS.**

A. The Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create. Any two (2) or more offices, may be held by the same person except the offices of President and Secretary. Officers shall be elected for one (1) year terms in accordance with the procedure set forth in the Bylaws. The names of the officers who are to manage the affairs of the Association until the first annual meeting of the Members and until their successors are duly elected and qualified are:

President	Michael Sawdai
Vice President/Treasurer	Michel Mentzer
Secretary	Robert Gazzoli

IX. **CORPORATE EXISTENCE.**

The Association shall have perpetual existence. These Articles shall become effective upon filing as prescribed by law, including without limitation, filing with the Secretary of State, State of Florida.

X. **BYLAWS**.

The Board of Directors shall adopt Bylaws consistent with these Articles. Such Bylaws may be altered, amended, or repealed by resolution of the Board of Directors.

XI. **AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS**.

These Articles may be altered, amended or repealed upon the affirmative vote of Members holding not less than two-thirds (2/3) of the total votes allocated to the Members pursuant to these Articles, and as approved by the St. Johns River Water Management District as to any matters pertaining to the Surface Water or Stormwater Management System.

XII. **INCORPORATOR**.

The name and address of the Incorporator is as follows:

Robert Gazzoli
185 Cypress Point Parkway
Palm Coast, Florida 32164

XIII. **INDEMNIFICATION OF OFFICERS AND DIRECTORS**.

A. To the extent allowed by law, the Association hereby indemnifies any Director or officer made a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding:

1. Whether civil, criminal, administrative, or investigative, other than one by or in the right of the Association to procure a judgment in its favor, brought to impose a liability or penalty on such person for an act alleged to have been committed by such person in his capacity as a Director or officer of the Association or as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred as a result of such action, suit or proceeding or any appeal thereof, if such person acted in good faith in the reasonable belief that such action was in the best interests of the Association, and in criminal actions or proceedings, without reasonable grounds for belief that such action was unlawful. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or a plea of nolo contendere or its equivalent shall not in itself create a presumption that any such Director or officer did not act in good faith in the reasonable belief that such action was in the best interests of the Association or that he had reasonable grounds for belief that such action was unlawful.

2. By or in the right of the Association to procure a judgment in its favor by reason of his being or having been a Director or officer of the Association, or by reason of his being or having been a director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against the reasonable expenses including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein if such person acted in good faith in the reasonable belief that such action was in the best interests of the Association. Such person shall not be entitled to indemnification in relation to matters to which such person has been adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the Association unless, and only to the extent that, the court, administrative agency, or investigative body before which such action, suit or proceeding is held shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such tribunal shall deem proper.

B. The Board of Directors shall determine whether amounts for which a Director or officer seek indemnification were properly incurred and whether such Director or officer acted in good faith in a manner he reasonably believed to be in the best interests of the Association, and whether, with respect to any criminal action or proceeding, he had no reasonable ground for belief that such action was unlawful. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding.

C. The foregoing rights of indemnification shall not be deemed to limit in any way the powers of the Association to indemnify under applicable law.

XIV. TRANSACTION IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED.

A. No contract or transaction between the Association and one or more of its Directors or officers, or between the Association and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are Directors or officers, or in which they have a financial interest, shall be invalid, void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose. All such contracts or transactions shall, however, be fair and reasonable and upon terms reasonably comparable to those which could be obtained in arms-length transactions with unrelated entities. No Director or Officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction.

B. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction.

XV. DISSOLUTION OF THE ASSOCIATION

A. Upon dissolution of the Association, all of its assets remaining after provisions for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner:

1. Dedication to any applicable municipal or other governmental authority of any property determined by the Board of Directors of the Association to be appropriate for such dedication and which the authority is willing to accept.

2. If no municipal or governmental authority will accept such dedication, the assets may be distributed to another corporation not for profit or comparable entity established under Florida law that agrees to accept the assets and continue the functions of the Association, including those functions required to maintain the Surface Water or Stormwater Management System and discharge facilities located within the Property.

B. The Association may be dissolved upon a resolution to that effect being approved by a majority of the Board of Directors and by two-thirds (2/3) of the Members. In the event of incorporation by annexation or otherwise, of all or part of the Property by a political subdivision of the State of Florida, the Association may be dissolved in the manner set forth above.

C. In no event shall the Association be dissolved, and any attempt to do so shall be ineffective, unless and until maintenance responsibility for the Surface Water or Stormwater Management System and discharge facilities located within the Property is assumed by an entity acceptable to the St. Johns River Water Management District, Florida Department of Environmental Regulation, or other governmental authority having jurisdiction, pursuant to the requirements of Rule 40C-42.027, Florida Administrative Code, or other administrative regulation of similar import.

XVI. MERGERS AND CONSOLIDATIONS.

Subject to the provisions of the Declaration applicable to the Property and to the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall be approved in the manner provided by Chapter 617, Florida Statutes as the same may be amended from time to time. For purposes of any vote of the Members required pursuant to said statutes, for so long as the Declarant shall own any portion of the Property, any such merger or consolidation shall require the Declarant's prior approval.

IN WITNESS WHEREOF, the Incorporator has hereto set his hand and seal this ___ day of _____, 2004.

Signed, sealed and delivered in the presence of

Laura Gazzoli
LAURA GAZZOLI
(Print or Type Name)

Robert Gazzoli
ROBERT GAZZOLI
Incorporator

Robert G. Cuff, Jr.
ROBERT G. CUFF, JR.
(Print or Type Name)

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 26 day of April, 2004 by ROBERT GAZZOLI, the Incorporator of RIVERGATE AT PALM COAST HOMEOWNERS ASSOCIATION, INC., a Florida corporation not-for-profit, on behalf of the corporation. He/She (check one) is personally known to me or has produced _____ as identification.



Robert G. Cuff, Jr.
MY COMMISSION # DD226091 EXPIRES
June 24, 2007
BONDED THRU TROY FAIN INSURANCE, INC.

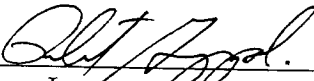
Robert G. Cuff, Jr.
Notary Public, State of Florida
Name: ROBERT G. CUFF, JR.

(Seal)


IN COMPLIANCE WITH SECTION 617.0501, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED:

RIVERGATE AT PALM COAST HOMEOWNERS ASSOCIATION, INC., DESIRING TO ORGANIZE UNDER THE LAWS OF THE STATE OF FLORIDA WITH ITS PRINCIPAL PLACE OF BUSINESS AT 185 CYPRESS POINT PARKWAY, PALM COAST, FLORIDA 32164, HAS NAMED LAURA GAZZOLI WHOSE ADDRESS IS 185 CYPRESS POINT PARKWAY, PALM COAST, FLORIDA 32164, AS ITS REGISTERED AGENT TO ACCEPT SERVICE OF PROCESS WITHIN THE STATE OF FLORIDA. SAID REGISTERED AGENT'S ADDRESS IS THE CORPORATION'S REGISTERED OFFICE.

**RIVERGATE AT PALM COAST
HOMEOWNERS ASSOCIATION, INC.**

By: 
Incorporator
Dated: APRIL 26, 2004

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE NAMED CORPORATION, AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY AGREE TO ACT IN THIS CAPACITY, AND I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES.


Registered Agent
Dated: APRIL 26, 2004

BYLAWS
OF
RIVERGATE AT PALM COAST HOMEOWNERS ASSOCIATION, INC.

I. **DEFINITIONS.**

All defined terms contained herein which are defined in the Declaration of Covenants and Restrictions for Rivergate ("Declaration") to be recorded in the public records of Flagler County, Florida, and in the Articles of Incorporation of the Association, shall have the same meanings as such terms are defined in the Declaration and Articles of Incorporation.

II. **LOCATION OF PRINCIPAL OFFICE.**

The office of the Rivergate at Palm Coast Homeowners Association, Inc. ("Association") shall be at 185 Cypress Point Parkway, Palm Coast, Florida 32164, or at such other place as may be established by resolution of the Board of Directors of the Association from time to time.

III. **VOTING RIGHTS AND ASSESSMENTS.**

A. Every person or entity who is a record fee simple owner of a Lot or any other portion of the Property, and the Declarant as long as it owns any Property subject to the Declaration, shall be a member of the Association (the "Members") as provided in the Articles of Incorporation of the Association, and shall have the voting rights as set forth in the Articles of Incorporation, provided that any such person or entity who holds such interest only as a security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to, and may not be separated from, ownership of any parcel within the Property.

B. Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the highest lawful rate and shall result in the suspension of voting privileges during any period of such non-payment.

IV. **BOARD OF DIRECTORS.**

A. A majority of the Board of Directors of the Association (the "Board") shall constitute a quorum to transact business at any meeting of the Board, and the action of the majority present at a meeting at which a quorum is present shall constitute the action of the Board.

B. Any vacancy occurring on the Board because of death, resignation or other termination of services of any Director, shall be filled by the Board, except that the Declarant, to the exclusion of other Members and/or the Board itself, shall fill any vacancy created by the death, resignation, removal or other termination of services of any Director appointed by the Declarant. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office and thereafter until his successor shall have been elected or appointed, and qualified.

V. ELECTION OF DIRECTORS.

A. Nominations for the election of Board members (other than Board members appointed by the Declarant) shall be made by the Nominating Committee described in Article IX hereof, or upon petition in accordance with Section C of this Article V. The Nominating Committee shall make as many nominations as it shall in its discretion determine.

B. The Declarant shall, within fourteen (14) days of the date set for the annual meeting of the Association, notify the Secretary of the names of the Directors that such Owner is appointing to the Board.

C. Petitions for nominees shall also be accepted if signed by Members representing one-third (1/3) of the total votes held by the Class A Members, and if received by the Secretary of the Association not less than thirty (30) days prior to the date fixed for the annual meeting of the Members. Nominations and notification of the vacancies being filled by the Declarant shall be placed on the written ballot referenced in Section D of this Article V.

D. All elections to the Board shall be made on written ballots to be voted at the annual meeting, or in the discretion of the Board, by mail, provided such ballots are mailed to the Members not less than fifteen (15) days prior to the date fixed for the annual meeting. The ballots shall (i) describe the vacancies to be filled by the Class A Members, (ii) set forth the names of those nominated for each such vacancy, and (iii) set forth the names of those appointed to the Board by the Declarant. Each Member may cast the number of votes to which such Member is entitled as set forth in the Articles of Incorporation.

E. In order for an election of members of the Board to be valid and binding, the election must occur at a meeting of the Members at which a quorum is present; or if the election is conducted by mail, the Association must receive as of the date established by the Board for receipt of ballots, a number of ballots representing not less than a quorum of the Members.

F. The members of the Board elected or appointed in accordance with the procedures set forth in this Article V shall be deemed elected or appointed as of the date of the annual meeting of the Members.

VI. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

A. The Board of Directors shall have power:

1. To call meetings of the Members.
2. To appoint and remove at its pleasure all officers, agents and employees of the Association; and to prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any Member, Officer or Director of the Association in any capacity whatsoever.

3. To establish, levy and assess, and collect the annual and special assessments necessary to operate the Association and carry on its activities, and to create such reserves as may be deemed appropriate by the Board.

4. To collect assessments on behalf of any other property owners association entitled to establish, levy and collect assessments from the Members of the Association.

5. To appoint committees, adopt and publish rules and regulations governing the use of the Common Areas or any portion thereof and the personal conduct of the Members and their guests thereon, including reasonable admission charges if deemed appropriate.

6. To authorize and cause the Association to enter into contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations.

7. To cause the financial records of the Association to be compiled, reviewed, or audited by an independent certified public accountant at such periodic intervals as the Board may determine in its sole discretion.

8. To exercise for the Association all powers, duties and authority vested in or delegated to the Association, except those reserved to Members in the Declaration or the Articles of Incorporation of the Association.

B. It shall be the duty of the Board of Directors:

1. To cause to be kept a complete record of all of its acts and corporate affairs.

2. To supervise all officers, agents and employees of this Association to insure that their duties are properly performed.

3. With reference to assessments of the Association:

(i) To fix the amount of annual assessments against each Class A Member for each annual assessment period at least thirty (30) days in advance of such date or period;

(ii) To prepare and maintain a roster of the Members and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member; and

(iii) To send written notice of each assessment to every Member subject thereto.

VII. DIRECTORS MEETINGS.

A. Regular meetings of the Board shall be held on such date and at such time as the Board may establish. Notice of such meetings is hereby waived.

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

C. Meetings of the Board of Directors shall be open to all Members and notices of meetings shall be posted in a conspicuous place within the Property at least forty-eight (48) hours in advance, except in an emergency. Notice of any meeting of the Board of Directors during which assessments are to be established, shall specifically contain a statement that the assessments shall be considered and a statement of the nature of such assessments.

D. The transaction of any business at any meeting of the Board, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice, if a quorum is present and, if either before or after the meeting, each of the Directors not present signs a waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records of the Association and made a part of the minutes of the meeting.

VIII. OFFICERS.

A. The Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as may be determined from time to time by the Board, in accordance with the Articles of Incorporation of the Association. The President shall be a member of the Board, but the other Officers need not be.

B. The Officers of the Association shall be elected by the Board at the annual meeting of the Board, which shall be held immediately following the annual meeting of the Association. New offices may be created and filled at any meeting of the Board. Each Officer shall hold office until his successor shall have been duly elected.

C. A vacancy in any office because of death, resignation, or other termination of service, may be filled by the Board for the unexpired portion of the term.

D. All Officers shall hold office for terms of one (1) year.

E. The President shall preside at all meetings of the Board, shall see that orders and resolutions of the Board are carried out and shall sign all notes, checks, leases, mortgages, deeds and all other written instruments.

F. The Vice President, or the Vice President so designated by the Board if there is more than one Vice President, shall perform all the duties of the President in his absence. The Vice President(s) shall perform such other acts and duties as may be assigned by the Board.

G. The Secretary shall be ex officio the Secretary of the Board, and shall record the votes and keep the minutes of all meetings of the Members and of the Board of Directors in a book to be kept for that purpose. The Secretary shall keep all records of the Association and shall record in the book kept for that purpose all the names of the Members of the Association together with their addresses as registered by such members.

H. 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, provided however, that a resolution of the Board shall not be necessary for disbursement made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer may, but need not, be a required signatory on checks and notes of the Association.

I. The Treasurer, or his appointed agent, shall keep proper books of account and cause to be prepared at the completion of each fiscal year an annual budget and an annual balance sheet statement, and the budget and balance sheet statement shall be open for inspection upon reasonable request by any Member.

J. With the approval of the Board of Directors, any or all of the Officers of the Association may delegate their respective duties and functions to a licensed and qualified property manager, provided, however, such property manager shall at all times be subject to the supervision and control of the Board of Directors.

IX. **COMMITTEES.**

A. The standing committees of the Association shall be the Nominating Committee and the Architectural Review Committee. The Nominating Committee and Architectural Review Committee shall have the duties, authority and functions as described in the Declaration and as elsewhere described in these Bylaws.

B. The Board shall have the power and authority to appoint such other committees as it deems advisable. Any committee appointed by the Board shall consist of a Chairman and two (2) or more other members and shall include a member of the Board. Committee members shall serve at the pleasure of the Board, and shall perform such duties and functions as the Board may direct which do not conflict with requirements of the Declaration or Articles..

X. **BOOKS AND RECORDS.**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Association shall retain the minutes of all meetings of the Members and the Board of Directors for not less than seven (7) years.

XI. **MEETINGS OF MEMBERS.**

A. The annual meeting of the Members shall be held prior to April 30th of each year, at such time as the Board may designate, or at such other date and time as may be selected by the Board.

B. Special meetings of the Members for any purpose may be called at any time by the President, the Vice President, the Secretary or Treasurer, by any two or more members of the Board or upon the written request of Members holding a majority of all the votes allocated to the entire Membership.

C. Notice of all meetings of the Members shall be given to the Members by the Secretary. Notice may be given to the Member either personally or by sending a copy of the notice through the mail, postage fully prepaid, to his address appearing on the books of the Association. Each Member shall be responsible for registering his address and telephone number with the Secretary and notice of the meeting shall be mailed to him at such address. Notice of the annual meeting of the Members shall be delivered at least fourteen (14) days in advance. Notice of any other meeting, regular or special, shall be mailed at least seven (7) days in advance of the meeting and shall set forth in general the nature of the business to be transacted; provided, however, that if the business of any meeting shall involve any action as governed by the Articles of Incorporation or the Declaration in which other notice provisions are provided for, notice shall be given or sent as therein provided.

D. The presence, in person or by proxy, of the Members holding not less than thirty percent (30%) of the total votes in the Association as established by the Articles of Incorporation, shall constitute a quorum of the Membership for any action governed by the Declaration, the Articles of Incorporation, or these Bylaws.

XII. PROXIES.

A. At all meetings of the Members, each Member may vote in person or by limited or general proxy.

B. All proxies shall be in writing and shall state the date of the proxy and the date, time and place of the meeting for which the proxy is given, and must be signed by the authorized Member giving the proxy. A proxy shall be effective only for the specific meeting for which it is given, as such meeting may be lawfully adjourned and reconvened from time to time. No proxy shall extend beyond a period of ninety (90) days from the date of the meeting for which it was originally given, and every proxy shall automatically cease upon the sale by the Member of his interest in the Property. All proxies shall be revocable at any time at the pleasure of the Member who executes same, and may include powers of substitution.

C. For elections of the Board of Directors, the Members shall vote in person or by proxy at a meeting of the Members, or by a written ballot that each Member personally casts.

XIII. SEAL.

The Association shall have a seal in circular form having within its circumference the words Rivergate at Palm Coast Homeowners Association, Inc., not for profit, 2003.

XIV. AMENDMENTS.

These Bylaws may be altered, amended or rescinded by majority vote of the Board of Directors at a duly constituted meeting of the Board. Amendments shall be effective on the date of passage by the Board and no amendment need be recorded in the public records of Flagler County, Florida. For so long as the Class B Membership shall exist, HUD and VA shall have the right to veto amendments to these Bylaws.

XV. INCONSISTENCIES.

In the event of any inconsistency between the provisions of these Bylaws and the Declaration or Articles of Incorporation, the provisions of the Declaration and Articles of Incorporation shall control, in that order of priority.

Adopted by the Board of Directors of Rivergate at Palm Coast Homeowners Association, Inc., a Florida corporation not for profit, effective _____, 2004,

By: _____
_____, Secretary