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Community Dev.
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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MARINERS LANDING

WATERFORD NPC, LLC, a Florida limited liability company ("Developer"), whose address is 333 South Tamiami Trail, Suite 101, Venice, Florida 34285, being the owner in fee simple of all of that certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property"), does hereby declare that the Property and all parts thereof are subject to the restrictions set forth below which shall be deemed to be covenants running with the land, and imposed on and intended to benefit and burden each Lot within the Property in order to maintain within the Property a residential area of high standard.

ARTICLE I
DEFINITIONS

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as attached hereto as Exhibit "B," including any and all amendments or modifications thereof.

1.2 "Association" shall mean and refer to Mariners Landing Owners' Association, Inc., a Florida not for profit corporation, its successors and assigns.

1.3 "Board of Directors" or "Board" shall mean and refer to the Association's Board of Directors.

1.4 "Bylaws" shall mean and refer to the Bylaws of the Association, as attached hereto as Exhibit "C," including any and all amendments or modifications thereof.

1.5 "Common Area" or "Common Areas" shall mean the Surface Water Management System facilities, and all portions of the Property (including pool, clubhouse, parking areas, docks, gate and gatehouse, and all other improvements and landscaping thereon, if any) now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 "Developer" shall refer to Waterford NPC, LLC, a Florida limited liability company, and its successors in interest, if such successors should acquire more than one undeveloped Lot from the Developer for the purpose of development, and provided some or all of Developer's rights hereunder are specifically assigned to such successors in interest.

Developer's rights hereunder may be assigned in whole or in part and on an exclusive or non-exclusive basis, at the option of Developer.

1.7 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Mariners Landing as modified and amended from time to time.

1.8 "Docks Slips" shall mean and refer to the Dock slips depicted on the Survey Sketch attached here to as Exhibit "D."

1.9 "Dwelling" shall mean and refer to each and every single-family dwelling unit constructed on any one Lot.

1.10 "Lot" shall mean and refer to any plot of land shown on any recorded plat or subdivision map of the Property or any part thereof, with the exception of Common Areas or areas deeded to a governmental authority or utility, if any.

1.11 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include the Developer for so long as the Developer shall hold title to any Lot, provided that the rights of Developer hereunder shall take precedence over any restrictions imposed hereunder upon Owners.

1.12 "Property" shall mean that certain real property herein before described (commonly referred to as "Mariner's Landing" or the "Development"), and such additions thereto as may hereafter be brought within the jurisdiction of the Association, if any.

1.13 "Surface Water Management System" shall mean that portion of the Property consisting of swales, inlets, culverts, lakes, outfalls, storm drains, and the like, and all connecting pipes and easements, used in connection with the retention, drainage and control of surface water, including but not by way of limitation, that portion of the Property subject to the jurisdiction of the Southwest Florida Water Management District ("SWFWMD") and the Charlotte County Natural Sciences Division.

ARTICLE II
PROPERTY RIGHTS

2.1 **Owner's Easement of Enjoyment**. A non-exclusive easement is hereby established over all portions of the Common Area, for ingress and egress to and from all portions of the Property, and for maintenance of the Common Area and all of the Dwellings, for the benefit of the Association, all Owners and residents of the Property, and their invitees and licensees, as appropriate, subject to the following:

(a) the right of the Association to suspend the voting rights and right to use of recreational facilities, if any, within the Common Area by an Owner, for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to

exceed thirty (30) days for any infraction of its published rules and regulations, whether or not such Owner had actual knowledge of such rules and regulations at the time of the infraction.

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any person or entity, including but not limited to the Owner of any Lot or Lots, another developer of the Property, or any public agency, authority, or utility for such purposes and upon such conditions as may be agreed to by a majority in interest of the members of the Association, provided that any such transfers (i) do not materially adversely affect any Owner unless such Owner has expressly consented to such transfer, and (ii) do not violate the intention of this Declaration.

(c) all provisions of this Declaration, any additional covenants and restrictions of record, any plat of all or any part or parts of the Property, and the Articles and Bylaws.

(d) rules and regulations adopted by the Association governing use and enjoyment of the Common Area.

(e) any right of Charlotte County, Florida, upon the failure of the Association to do so, to maintain such portions of the Common Area as are designated on any plat as being for drainage purposes, and to record a lien against such Common Areas to secure payment by the Association for the cost of such maintenance.

2.2 **Common Area**. The Common Area shall be for the use and benefit of the Owners and residents of the Property, collectively, for any proper purpose. Any Owner may delegate the right to enjoyment of the Common Area to such Owner's tenants who reside on the Property, but shall not thereafter be permitted to use the Common Area for so long as such right to enjoyment is delegated. The Common Area shall be used by each Owner or resident of a Dwelling in such a manner as shall not abridge the equal rights of other Owners and residents to the use and enjoyment thereof. Each Owner shall be liable to the Association for any and all damage to the Common Area and any personal property or improvements located thereon, caused by such Owner, his family, invitees, lessees, or contract purchasers, and the cost of repairing same shall be a lien against such Owner's Lot or Lots. The provisions of Section 6.4 regarding interest, costs and attorneys' fees shall apply to the lien established in this Section 2.2.

2.3 **Reciprocal Easements**. There shall be reciprocal appurtenant easements between each Lot and the portion or portions of the Common Area adjacent thereto, or between adjacent Lots, or both, for encroachments caused by footers and eaves of any Dwelling over the side, front or rear lot line of any Lot, provided that no such encroachment shall be greater than two feet (2') or shall interfere with any utilities installations upon the Lot which is encroached upon, (ii) encroachments caused by the unwillful placement, settling, or shifting of any improvements constructed, reconstructed or altered thereon in accordance with the terms of this Declaration; (iii) access to, maintenance and repair of utility facilities serving more than one Lot, and (iv) access to an adjacent Lot as reasonably required in order to complete construction of and maintain a Dwelling on any Lot, provided that this construction and maintenance easement shall not apply to any portion of a Lot on which a Dwelling or any portion thereof is already erected. Without limiting the generality of the foregoing, in the event an electrical meter, electrical

apparatus, CATV cable or other utilities apparatus is installed within a Lot and serves more than such Lot, the Owners of the other Lot(s) served thereby shall have an easement for access to inspect and repair such apparatus, provided that such easement rights shall be exercised in a reasonable manner and the Owner of the Lot encumbered by the easement shall be reimbursed for any significant physical damage to his Lot as a result of such exercise.

2.4 **Easements for Utilities and Drainage**. Perpetual non-exclusive easements for the installation and maintenance of utilities and drainage facilities are hereby reserved to Developer and any assignee of Developer over all utility and drainage easement areas shown on any plat of the Property or any part thereof now or hereafter recorded, or encumbered by recorded easements as of the date of recording hereof (which easements shall include, without limitation, the right of reasonable access over Lots to and from the easement areas). The Association, with the approval of either the Class B member alone or a majority of each class of members, shall have the right hereafter to convey such additional easements, permits and licenses encumbering the Common Area as may be deemed necessary or desirable on an exclusive or non-exclusive basis to any person, corporation or governmental entity. Further, an easement is hereby reserved over all portions of the Property for installation and maintenance of electrical apparatus, CATV facilities, or other apparatus for any utilities now or hereafter installed to serve any portion of the Property, in favor of the provider of such utilities, including without limitation Florida Power and Light Company, provided, however, no such apparatus or facilities shall be installed within a Lot or Dwelling so as to unreasonably interfere with the use thereof by the Owner, nor shall such facilities hinder the Association in the exercise of its rights hereunder. The specific location of any such apparatus or facilities, and the granting of specific easements therefore in favor of the providers of any such utilities, shall be determined by and within the powers of the Association. A specific easement fifteen feet (15') in width and directly adjacent to the road right-of-way abutting each Lot and along each access easement is also reserved for Florida Power and Light Company for the installation, operation and maintenance of electrical apparatus. Further, specific easements (except as otherwise indicated on the recorded plat), are hereby reserved on, under, across and through those portions of the Lots indicated below which are immediately adjacent to the lot lines indicated below, for drainage and the installation and maintenance of utilities to serve each of the Lots lying on either side of said lot lines:

(i) as to each Lot, easements of varying depth from the rear lot line as shown on the recorded plat;

(ii) as to each Lot, ten feet (10') in width from the front lot line and along each access easement.

The easement rights reserved pursuant to this section shall not impose any obligation on Developer or the Association to maintain any easement areas or install or maintain the utilities or improvements that may be located in, on or under such easements, or which may be served by them, but the Association shall have the maintenance obligations imposed elsewhere in this Declaration. Within such easement areas no structure, planting, or other material shall be placed or permitted to remain which may damage or prevent access to, or the installation and maintenance of, the easement areas or any utilities or drainage facilities, or which may change the direction or obstruct or retard the flow of water through drainage channels in such easement

areas, or which may reduce the size of any water retention areas constructed in such easement areas. However, subject to the following provisions regarding maintenance and repairs, and subject to the architectural approvals described in Article V, the following shall be permitted to encroach upon or be constructed and maintained within the easement areas described in this Section 2.4: roof overhangs or eaves; air conditioning or heating equipment; pool equipment; any walls or hedges screening air conditioning, heating and/or pool equipment from public view; driveways; sidewalks; walls; fences; and/or gates. Any improvements within easement areas shall be constructed and maintained at the risk of the Owner, and any damage to such improvements caused by utilization of the easements shall be repaired at the Owner's expense, except as follows. In the event a driveway, sidewalk, wall, fence, gate or landscaped area must be partially removed or damaged in order to gain access to any utilities facilities serving any Lot other than the Lot on which the damaged area is located, and provided that the need for access is not due to the fault of the Owner of the Lot on which the damaged area is located, the cost of repair of the damaged area shall be borne by (i) the Association, if more than one Lot is serviced by the utilities facilities to which access is needed, or (ii) if only one Lot is served by such utilities, the Owner of such Lot. The Owner of any Lot subject to an easement described herein shall acquire no right, title or interest in or to any poles, wires, cables, conduits, pipes or other equipment or facilities place on, in, over or under the portion of the Property which is subject to such easement. Subject to the terms of this Declaration regarding maintenance by the Association, the easement areas of each Lot and all above-ground improvements in such easement areas shall be maintained continuously by and at the expense of the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. With regard to specific easements for drainage, Developer shall have the right, but without obligation, to alter the drainage facilities therein, including slope control areas, provided any such alteration shall not materially adversely affect any Lot unless the Owner of such Lot shall consent to such alteration.

2.5 **Developer and Association Easement**. Developer reserves for itself, the Association, and their respective grantees, successors, legal representatives, agents and assigns, an easement for access and maintenance purposes to, over and across all portions of the Property and the right to enter upon each Lot for the purpose of exercising their respective rights and obligations under this Declaration. Absent emergency conditions, entry into any Dwelling shall not be made without the consent of the Owner or occupant thereof, except pursuant to a valid court order. An Owner shall not arbitrarily withhold consent to such entry for the purpose of discharging any duty or exercising any right granted by this Article, provided such entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner.

2.6 **Easements Serving Property and Adjacent Property**. Developer reserves a blanket easement, and the right to grant and record specific easements, encumbering all portions of the Property as reasonably required to provide access and utilities services to any portion of the property and/or lands adjacent to the Property. Developer, joined by any other party expressly benefited thereby under a separate written easement or other instrument, shall have the right to terminate the foregoing easements as to any portion of the Property on which the easement rights are not being utilized. Any specific easements granted pursuant to this Section 2.6 shall not unreasonably interfere with the use and enjoyment of the Property by the Owners.

Each Owner hereby appoints Developer its attorney in fact, coupled with an interest, to execute any instruments which may be necessary to effectuate the intent of this Section 2.6.

ARTICLE III
THE ASSOCIATION

3.1 **Powers and Duties**. The Association shall have the powers and duties set forth herein and in the Articles and Bylaws, including the right to enforce the provisions of this Declaration, the right to collect assessments for expenses relating to the Common Areas, and such additional rights as may reasonable be implied therefrom. As provided in the Bylaws, the Association may by written action without a meeting take any action authorized hereunder to be taken at a meeting.

3.2 **Membership**. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be transferred separately from the ownership of any Lot.

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

(a) Class A. Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one person or entity holds an ownership interest in a Lot, all such persons shall be entitled to one (1) vote, to be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot. If more than one Owner of a Lot attempts to vote on any issue and the attempted votes are not in agreement, no vote shall be counted as to such Lot.

(b) Class B. The Class B member shall be the Developer, and shall be entitled to nine (9) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earlier; (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; (ii) on June 1, 2020; or (iii) when Developer waives its right to Class B membership by recording an instrument evidencing same in the public records of Charlotte County, Florida.

3.4 **Services**. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper discharge of its duties as described in this Declaration, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with its operations or the enforcement of this Declaration. The Association shall provide for maintenance of:

(a) Common Areas;

(b) the Surface Water Management System, including, but not limited to, all lake banks, swales, ditches, retention and detention ponds within the Property, wherever located, including but not limited to mowing, fertilizing, and irrigation thereof, as necessary;

(c) all landscaping within the Property other than the following, which shall be the responsibility of the Lot Owner: (i) maintenance and replacement of annual plants; (ii) landscaping installed on any Lot by an Owner with Board of Directors approval on the condition that the Owner maintain same;

(d) all sidewalks and walks serving more than one Lot, if any, or serving the recreation area

(e) maintenance, repair, and replacement of private roads and parking areas within the Property.

The Association may arrange with others to furnish other common services to each Lot, and the cost thereof may be included in the assessments for maintenance described in Article IV below. In the event any landscaping or any planting shall die or be destroyed by any cause whatsoever, the Association shall not be responsible for such loss or damage, and shall have no responsibility, but shall have the option, to replace such item or items at its expense. The Association shall arrange with Charlotte County for the acceptance of treated effluent for irrigation purposes as soon as Charlotte County makes such effluent available, and each Owner is obligated to accept such effluent for irrigation of such Owner's Lot. At such time as Charlotte County makes such effluent available, the Association shall install a meter to measure the effluent used for irrigation and any other facilities necessary to provide effluent to the Property for irrigation purposes. The Association shall bear the initial cost of such meter and other facilities and may thereafter levy a special assessment against the Owner to recoup its expenditure as provided in Section 4.6.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 **Creation of the Lien and Personal Obligation of Assessments**. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and attorney's fees, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors unless expressly assumed by them. The provisions of Section 6.4 regarding interest, costs and attorney's fees and foreclosure shall apply to the lien established in this Section 4.1. Developer shall not be responsible for the payment of assessments as provided under this Section 4.1; this exemption shall apply to Developer as a Class A member. Developer's responsibilities are set forth in Section 4.8(b) of this Article.

4.2 **Purpose of Assessments**. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and authorized residents of the Property, including expenditures made and liabilities incurred by the Association in connection with its rights and obligations hereunder, including the improvement and maintenance of the Common Area and other property to be maintained by the Association hereunder.

4.3 **Reserves**. The Association may, in the discretion of a majority of its Board of Directors, establish and maintain, out of regular maintenance assessments, reserve funds for the periodic maintenance, repair, and replacement of improvements within the Common Area and other improvements which the Association is obligated to maintain hereunder. Developer shall not be responsible for reserves.

4.4 **Maximum Annual Assessment**. The Board of Directors may fix the annual assessments at an amount not in excess of the maximum stated herein, including authorized increases. Until January 1 of the year immediately following the commencement of the obligation for assessments, as described in Section 4.5(a) below, the maximum annual assessment shall be Two Thousand and 00/100 Dollars ($2,000.00) per Lot, subject to Section 4.5(b) below.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Developer, the maximum annual assessment may be increased each year by not more than the greater of (i) fifteen percent (15%) above the maximum assessment for the previous year, or (ii) the increase, if any, in the Consumer Price Index for All Urban Consumers, All Items, published by the Bureau of Labor Statistics, U.S. Department of Labor for the area including or nearest to Tampa, Florida ("CPI Increase"). The CPI Increase shall be determined by multiplying the maximum annual assessment then in effect by the Consumer Price Index for the most recent month for which figures are available and dividing the product by the Consumer Price Index for the same month of the preceding calendar year. If publication of the Consumer Price Index should be discontinued, the Association shall use the most nearly comparable index, as determined and selected by the Board of Directors.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Developer, the maximum annual assessment may be increased above the maximum increase permitted under subsection 4.4(a) by a majority vote of each class of members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

4.5 **Date of Commencement of Annual Assessments; Due Dates**.

(a) Subject to Section 4.8 below, the annual assessments provided for herein shall commence as to all Class A Lots on the first day of the month following the completion of construction of the common roadway; however, no later than the date a Certificate of Occupancy is obtained for the Dwelling constructed on the Lot, whether or not the Common Area

improvements are completed. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

(b) The Board of Directors shall fix the amount of the annual assessment against each Lot for each annual assessment period. In the event of a delay in establishing an annual assessment, an otherwise proper assessment may be collected retroactively. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. 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.

4.6 **Special Assessments for Exterior Painting, Roof Cleaning, Effluent Meter, and Capital Improvements**. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of paying for repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related to the Common Area, if any, provided that any such assessments in excess of Two Thousand and 00/100 Dollars ($2,000.00) per Lot per year shall have the assent by a majority vote of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. The foregoing requirement of a majority vote of each class of members shall not apply to a special assessment levied for the installation of a meter to measure effluent used for irrigation as described in Section 3.4. The Board of Directors may fix any special assessment not in excess of said limitation. Written notice of each special assessment, and the due date thereof, shall be sent to all Owners subject thereto at least thirty (30) days in advance of the due date.

4.7 **Notice and Quorum for Association Meetings Regarding Assessments**. Written notice of any meeting called for the members of the Association to approve annual or special assessments shall be sent to all members of the Association not less than ten (10) days nor more than twenty (20) days in advance of the meeting. At any such meeting called, the presence in person or by proxy of members entitled to cast a majority of all of the votes of each class of membership shall constitute a quorum. Should a quorum fail to be present at such meeting, another meeting may be called without any additional formal notice requirement, and the required quorum at the subsequent meeting shall be the presence of members or of proxies entitled to cast thirty-three percent (33%) of all of the votes of each class of membership entitled to be cast on the issue. If the required quorum is again not present, another meeting may be called upon at least ten (10) days' written notice, at which meeting there shall be no quorum requirement and those present in person or by proxy shall be entitled to decide the issue. This provision is included to insure the ability of the Association to act despite non participation by its members, and shall not be subject to attack on due process or other grounds. No such subsequent meeting(s) shall be held more than sixty (60) days following the preceding meeting(s).

4.8 **Rate and Collection**. Annual assessments may be collected on a monthly, quarterly or annual basis, as determined from time to time by the Board of Directors. Both

annual and special assessments must be fixed at a uniform rate for all Lots, subject to the following:

(a) Where a special assessment is required to perform work on less than all Lots or Dwellings, the amount of such special assessment may be allocated only to the Lots or Dwellings on which such work is performed. Without limiting the generality of the foregoing, any costs of maintaining any structure, addition or improvement added by an Owner other than Developer shall, at the option of the Association, be borne exclusively by the Owner, and his successors in interest, of the Dwelling and Lot to which such structure, addition or improvement is appurtenant, and shall be assessed only against such Lot.

(b) Notwithstanding any provision of this Declaration or the Association's Articles or Bylaws to the contrary, as long as there is Class B membership in the Association, Developer shall not be obligated for, nor subject to, any annual assessment for any Lot which it may own, provided: (i) the annual assessment paid by the other Owners shall not exceed the maximum assessment permitted without a vote of the Owners by Section 4 of this Article; and (ii) Developer shall be responsible for paying the difference between the Association's expenses of operation to be funded by annual assessments and the amount received from Owners, other than Developer, in payment of the annual assessments levied against their respective Lots. Such difference, herein called the "Deficiency," shall not include any reserves for replacements, operating reserves, depreciation reserves or capital expenditures. Developer may at any time give at least thirty (30) days' written notice to the Association and thereby terminate effective as of the expiration of said 30-day period its responsibility for the Deficiency, and waive its right to exclusion from annual assessments. Upon giving such notice, or upon termination of Class B membership, whichever is sooner, each Lot owned by Developer shall thereafter be assessed at one hundred percent (100%) of the annual assessment established for Lots owned by Class A members; without limiting the generality of the foregoing, thereafter the assessments for all Lots owned by Developer shall be subject to the limitation set forth in Section 4.5(b) above, if applicable. Such assessments shall be prorated as to the remaining months of the year, if applicable. Upon transfer of title to a Lot owned by Developer, the Lot shall be assessed in the amount established for Lots owned by Owners other than Developer, prorated as of and commencing with the month following the date of transfer of title, except, however, any Lot transferred to a builder who intends to build but does not intend to reside on the Lot shall not be assessed until such time as an A.C. is issued for the Lot as described in Section 5.1. Notwithstanding the foregoing, any Lots as to which Developer holds an interest only as mortgagee or contract seller to a buyer in possession shall be assessed at the same amount as Lots owned by Owners other than Developer, prorated as of and commencing with the month following the sale by Developer of the Lot or the contract purchaser's entry into possession, as the case may be.

4.9 **Lien for Assessments; Remedies of the Association**. All sums assessed to any Lot pursuant to this Declaration, together with interest and all costs and expenses of collection, including reasonable attorney's fees whether or not suit is filed, shall be secured by a continuing lien on such Lot in favor of the Association or any other party in whose favor the lien is granted under this Declaration. The Association or other party in whose favor the lien is granted may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose

the lien against the Lot. All provisions of Section 6.4 shall apply to the lien for assessments established herein. No Owner may waive or otherwise escape liability for the assessments or other charges provided for herein by non-use of the Common Area, or abandonment of his Lot.

4.10 **Interest on Assessments**. Any assessment not paid within five (5) days after the due date shall bear interest from the due date at the maximum contract rate of interest permitted by law, and there shall also be due and payable along with each such late payment a late charge of Twenty-five and 00/100 Dollars ($25.00) to cover increased administrative costs incurred on account of such late payment.

4.11 **Subordination of the Lien of Mortgages**. The Association's lien for assessments provided for herein shall be subordinate to the lien of any first mortgage recorded prior to the recording of a claim of lien against the portion of the Property encumbered by such mortgage, at any time prior to the foreclosure of the Association's lien, against the same portion of the Property as described in the Association's lien. The sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any conveyance in lieu thereof, shall extinguish the Association's lien for assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall, upon written request, report to any first mortgagee of a Lot any assessments remaining unpaid for a period longer than thirty (30) days after the same shall have become due, and shall give such first mortgagee a period of thirty (30) days in which to cure such delinquency before instituting foreclosure proceedings against the Lot; provided, however, in the case of a mortgage, that such first mortgagee shall have furnished to the Association written notice of the existence of its mortgage, which notice shall designate the Lot encumbered by a proper legal description and shall state the address to which notices pursuant to this Section are to be given. Any first mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Article.

ARTICLE V
ARCHITECTURAL CONTROL

5.1 **Architectural Control**. No Dwelling, building, wall, fence, pavement, swimming pool or other structure or improvement of any nature shall be erected, placed or altered on or removed from any portion of the Property until the construction plans and specifications, plot plan, tree survey or map showing all existing trees and those trees intended to be removed, and landscaping, drainage and irrigation plans (collectively "Plans") showing the location of all structures and improvements shall have been approved in writing by the Board, in their sole and absolute discretion. Each structure or improvement of any nature shall be erected, placed, altered or removed only in accordance with the Plans so approved and in accordance with the architectural guidelines promulgated and approved by the Board (the "Architectural Guidelines"). Refusal of approval of Plans may be based on any grounds, including purely aesthetic grounds, which in the sole discretion of the Board seem sufficient. The Board may condition its approval on any such matters as it may deem appropriate such as (but not limited to) replacement of trees removed with trees of certain size or type. Without limiting the foregoing, any change in the exterior appearance of any Dwelling, building, wall, fence, pavement, swimming pool, other structure or improvement, any material change in landscaping,

and any change in the finished ground elevation, shall be a change requiring approval under this Section 5.1. Plans shall be submitted to the Board for approval and in the event the Board shall fail to approve or disapprove any Plans within thirty (30) days of submission, evidenced by a written acknowledgment of receipt, approval of such Plans shall be deemed given. Prior to proceeding with any of the above, the Owner thereof or the builder, as Owner's agent, shall apply to the Architectural Control Committee (the "Committee") for an approval to commence ("A.C."), such application to be made on forms promulgated by the Committee. Once the Plans are approved, the Architectural Control Committee shall issue an A.C. for such Plans which the Owner shall submit to Charlotte County at the time the Owner applies for a building permit. Notwithstanding any of the foregoing, as long as the Developer owns a Lot, submission of Plans to and subsequent approval of Plans by the Committee, and issuance of an A.C. by the Committee, shall not be required of the Developer.

5.2 **Certificate of Approval**. Upon completion of a Dwelling, the Owner thereof or the builder of the Dwelling, as the Owner's agent, shall apply to the Architectural Control Committee for a certificate of approval by the Committee ("C.A.") for the completed Dwelling, such application to be made on forms promulgated by the committee. Within five (5) working days following the receipt of each application for a C.A., the committee shall issue the C.A. or shall advise the applicant by telephone of any deficiencies in the application or other reason for denial of the C.A. (Notwithstanding any of the foregoing, as long as the Developer owns a Lot, application made to the Committee for a C.A. and issuance of a C.A. by the Committee, shall not be required of the Developer.) In the event any Dwelling is occupied by any person prior to issuance of a C.A. for such Dwelling, the Owner of such Dwelling shall automatically be liable for a fine, without notice, in an amount up to Fifty and 00/100 Dollars ($50.00) for each day after such Dwelling is first occupied (regardless of whether such occupancy is continuous) until the C.A. is issued for the Dwelling in question. Such fine shall be payable to the Association and shall be secured by a lien against the Lot on which such Dwelling is located, in the same manner as provided in Section 6.4.

5.3 **Liability of Board of Directors**. The Board of Directors of the Association and each of its members from time to time shall not be liable in damages to anyone submitting any Plans for approval or to any Owner by reason of mistake in judgment, negligence or non-feasance of the Board, its members, agents or employees, arising out of or in connection with the approval or disapproval or failure to approve any Plans. The Board shall not be responsible for the compliance of any Plans with applicable governmental rules and regulations. Anyone submitting any Plans to the Board for approval, by the submitting of such Plans, and any Owner by acquiring title to any Lot, agrees that such person shall not bring any action or claim for any such damages against the Board, its members, agents or employees. Failure to enforce any provision hereof shall not establish a precedent, regardless of the length of time or the number of times that any such provision is not enforced, and failure to enforce on any given occasion or under any particular circumstances shall not preclude the board from enforcing the same provision retroactively, on another occasion, or under any other circumstances.

ARTICLE VI
MAINTENANCE AND COMMON AREAS; DAMAGE; INSURANCE

6.1 **Maintenance of Common Area and Landscaping**. All of the Common Area, all lawns and landscaped areas, all personal property owned by the Association, and all of the other items specified in items (a) through (j) of Section 3.4, shall be maintained by and at the expense of the Association, unless otherwise specifically set forth herein. It is the intent and purpose of this provision that all trees, grass, shrubs and plantings; all Common Area parking areas, roads and roadways within the property; all drainage easements, the pool, cabana, docks and all other commonly used recreational areas; all of the irrigation systems within the Property; and any other commonly owned facilities shall be maintained exclusively by the Association, and not by any Owner or Owners individually, regardless of whether any of same are within the boundaries of any Lot, except as otherwise set forth herein. Notwithstanding the foregoing, as provided in Section 3.4, the following shall be the responsibility of the Lot Owner: (i) maintenance and replacement of annual plants on any Lot, and (ii) landscaping installed on any Lot by an Owner with Board of Directors approval on the condition that the Owner maintain same. In the event that the need for maintenance or repair is caused by the willful or negligent act of an Owner, his tenants, family, guests or invitees, the cost of such maintenance or repairs shall be due and payable from the Owner, and shall be secured by a lien against such Owner's Lot as provided in Section 6.4. The Association's maintenance responsibilities shall extend to and include maintenance of all decorative identification sign(s) for Mariners Landing, indicating the name or location of and/or entrance to the Property. This provision shall not limit the obligation of an Owner to maintain the exterior of his Dwelling, including roofs, patios, screened porches and lanais, except as specifically provided herein to the contrary with regard to exterior painting (excluding roofs) and roof cleaning.

6.2 **Painting of Exterior of Dwellings and Roof Cleaning**. The Owners, subject to the provisions of Section 6.1 hereof, shall be responsible for the painting of the exterior of the Dwellings, including roofs, screened porches and lanais, and shall be responsible for the cleaning of roofs. Such painting and roof cleaning shall be performed at such times as may be designated by the Board of Directors, and shall be paid for by the Owners.

6.3 **Care and Appearance of Dwellings**. Each Dwelling shall be maintained in a structurally sound and neat and attractive manner, including walls, roofs, gutters, downspouts, glass, screened areas, mailboxes and post lights, by and at the expense of the Owner, except for the specific obligations of the Association under Section 6.2. Upon the Owner's failure to do so, the Association, through its Board of Directors, may, at its option, after giving the Owner thirty (30) days' written notice sent to his last known address, make repairs and/or improve the appearance of the Dwelling in a reasonable and workmanlike manner, with funds of the Association, and with the approval of a majority of the Board of Directors. The Owner of such Dwelling shall reimburse the Association for any work above required, and to secure such reimbursement the Association shall have a lien upon the Lot enforceable as provided in Section 6.4 below.

6.4 **Enforcement**. To secure reimbursement of the cost of performing any work described in Section 6.3, or to secure any other sum payable by a defaulting Owner under the terms of this Declaration, and interest thereon as hereinafter provided, the Association, and in the case of any sum due to an Owner from another Owner under the terms hereof, an Owner, shall be entitled to file in the Public Records of Charlotte County, Florida, a notice of its claim of lien by virtue of this contract with the defaulting Owner. Said notice shall state the sum payable and shall contain a description of the Lot against which the enforcement of the lien is sought. The lien herein provided shall date from the time that the obligation or expense is incurred, but shall not be binding against creditors until said notice is recorded. Each Lot shall stand as security for any expense due to the Association or to another Owner pursuant to Article IV or Article VI hereof and for any other sums due hereunder from the defaulting Owner to the Association or to another Owner, and in connection with such Lot, and this provision shall also be binding on the Owner of such Lot at the time the expense or obligation is incurred, who shall be personally liable. The amount secured by the lien herein provided shall be due and payable upon demand and if not paid, said lien may be enforced by foreclosure in the same manner as a mortgage. The amount due and secured by said lien shall bear interest at the highest contract rate of interest permitted by Florida law from time to time, from the date of demand for payment or such other date as may be specified herein, and any action to enforce payment, the Association, or the Owner to whom payment is determined to be due, shall be entitled to recover costs and attorney's fees, which shall also be secured by the lien being foreclosed. The defaulting Owner shall continue to be liable for assessments levied by the Association during the period of foreclosure, and if the Association is foreclosing the lien then all assessments levied through the date a judgment of foreclosure is entered shall be secured by the lien foreclosed. The Association or the Owner in whose favor the lien is granted shall have the right to bid at any foreclosure sale and acquire title to the Lot being sold. The lien herein provided shall be subordinate to the lien of any first mortgage recorded prior to the recording of a notice of lien, provided, however, that the holder of any such mortgage when in possession, any purchaser at any foreclosure sale, any mortgagee accepting a deed in lieu of foreclosure, and all persons claiming by, through or under any of the same, shall hold title subject to the obligations and lien herein provided. By acceptance of a deed thereto, the Owner and spouse thereof, if married, of each Lot shall be deemed to have waived any exemption from liens created by this Declaration or the enforcement thereof by foreclosure or otherwise, which may otherwise have been available by reason of the homestead exemption provisions of Florida law, if for any reason such are applicable; this provision is not intended to limit or restrict in any way the lien or rights granted to the Association by this Declaration, but to be construed in its favor.

6.5 **Utilities, Equipment and Fixtures**. All fixtures and equipment serving only one Dwelling or Lot, including without limitation, utility lines, pipes, wire, conduits, and the like, but specifically excluding items to be maintained by the Association as set forth in Section 3.4, shall be maintained and kept in good repair by the Owner of the Dwelling served by such equipment and fixtures. In the event any such equipment and fixtures installed within the Property serve more than one Dwelling, whether or not within a Lot, the expense of maintaining and repairing same shall be shared equally by the Owners of the Dwellings served by same. Notwithstanding the foregoing, in the event any such equipment or fixtures are damaged as a result of the actions of any person or entity other than all of the Owners responsible for repairing same, the person causing the damage shall be liable for all expenses incurred by the Owner or Owners in repairing

same. No Owner shall do or allow any act, or allow any condition to exist, that will impair the structural soundness or integrity of any Dwelling or impair any easement established or referenced herein, or do any act or allow any condition to exist which will or may adversely affect any Dwelling or any Owner or resident of the Property or create a hazard to persons or property. In the event a blockage or obstruction occurs in a sewer line serving more than one Lot, the cost of clearing such blockage shall be paid by the Owner reasonably deemed responsible by the Board of Directors, and if it cannot reasonably be determined which Owner was responsible, the cost shall be borne equally by all Owners of Lots served by the portion of the sewer line in which the blockage occurred and shall be assessed against all such Owners. Any cost payable by an Owner pursuant to this Section 6.4 which is paid on behalf of such Owner by another Owner or by the Association shall be repaid upon demand, and shall be secured by a lien upon such Owner's Lot as provided in Section 6.4.

6.6 **Damage; Reconstruction; Insurance**. In the event a Dwelling or any part thereof is damaged or destroyed by casualty or otherwise, or in the event any improvements within the Common Areas are damaged or destroyed by casualty or otherwise, the Owner thereof or the Association, as the case may be, shall promptly clear all debris resulting therefrom and rebuild or repair the damaged improvements in accordance with the terms and provisions of this Declaration. Without limiting the generality of the foregoing, where grassed and/or landscaped areas are damaged or destroyed, the Owner or Association, as the case may be, shall repair and/or replace such improvements in a manner consistent with the surrounding area. Any repair, rebuilding or reconstruction on account of casualty or otherwise shall be substantially in accordance with the plans and specifications for such improvements as originally constructed or with new plans and specifications approved by the Board of Directors. Liability insurance coverage shall be obtained in such amounts as the Association may determine from time to time for the purpose of providing liability insurance coverage for the Common Areas as a common expense of all Owners. Each Owner shall at all times maintain, for each Lot owned, adequate casualty insurance to provide for complete reconstruction of all improvements on such Lot after casualty, and liability insurance coverage in such amounts as may be required by the Association from time to time. Upon request, each Owner shall have the Association named as an additional insured as to liability insurance obtained by the Owner, and shall provide the Association with evidence of the insurance required hereunder, and each renewal of same. Upon any Owner's failure to obtain the required insurance, the Association may after three (3) days' written notice, procure the required insurance, and the cost thereof shall be immediately due and payable from the defaulting Owner and shall bear interest and be secured by a lien as provided in Section 6.4.

6.7 **Surface Water Management System**. If the Association ceases to exist, all of the Lot Owners shall be jointly and severally responsible for operation and maintenance of the surface water management system facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity assumes responsibility. If the surface water management system, or related facilities, are not adequately maintained in accordance with Charlotte County and/or SWFWMD standards, or if the Association should fail to exist, Charlotte County and/or SWFWMD shall have the right, but not the obligation, to go onto the property submitted to these restrictions and perform all necessary operation, maintenance, and repair functions. Charlotte County and/or SWFWMD shall have the right to take enforcement measures, including a civil action for injunction and/or penalties, against the

Association to compel it to correct any outstanding problems with the Surface Water Management System facilities. Charlotte County and/or SWFWMD shall have the right to recover all expenses of such operation, maintenance, and repair by imposing and enforcing assessments, including the right to impose liens, as set forth in these restrictions. Each Owner at the time of construction of a building, residence, or structure shall comply with the construction plans for the surface water management system approved and on file with SWFWMD and in accordance with the Owner's Instructions for Maintenance and Inspection attached hereto as Exhibit "E."

ARTICLE VII
GENERAL USE RESTRICTIONS

7.1 **Residential Use**. All of the Property shall be known and described as residential property and no more than one single-family Dwelling may be constructed on any Lot. No Dwelling may be divided into more than one (1) residential dwelling and no more than one (1) family shall reside within any Dwelling.

7.2 **Rental**. No Dwelling shall be leased for a term of less than three (3) months. The right to use the Common Areas shall pass to each tenant of a Dwelling, whether or not mentioned in any lease agreement, and the Owner shall not be entitled to use the Common Areas during any period that his Dwelling is leased. No Dwelling which is under lease from the Owner shall be occupied by more than two (2) persons for each bedroom in the Dwelling; this occupancy restriction shall apply only to tenants and not to Owners residing in a Dwelling.

7.3 **Structures**. Each Dwelling within the Property shall be erected within a Lot, but this provision shall not impair the easement for encroachments established in Section 2.3. Any structure of any kind erected or placed within the Property must be in compliance with all applicable zoning regulations and this Declaration.

7.4 **Landscaping; Sprinkling**. No Owner shall cause or allow any material alteration of the landscaping originally installed within his Lot without the approval of the Board. Without limiting the generality of the foregoing, no alteration shall be permitted which would hinder lawn care or mowing, or interfere in any way with the activities of the Association in performing its duties hereunder. Any shrubs or plantings permitted to be installed on a Lot under this Section shall be maintained by the Owner of the Lot, unless otherwise approved by the Board of Directors. All irrigation facilities within and serving a Lot shall be maintained by the Owners and the Association shall irrigate the lawns and landscaping of all Common Areas as needed, subject to any limitations on water use imposed by any governmental authority.

7.5 **Single Family Homes**. All Lots within the Property shall be developed only as single family residences; provided that the foregoing shall not prohibit the attachment or connection of privacy walls or fences to residences, walls or fences on adjacent Lots.

7.6 **Architectural Plans**. As provided in Section 5.1 of this Declaration, prior to construction of any Dwelling or other improvements or structures, a complete copy of the Plans therefor, as therein described, must be submitted for approval by the Architectural Control

Committee. Such Plans shall conform with the provisions of Sections 7.7 through 7.18 below unless a waiver or variance is granted pursuant to Section 7.35 below.

7.7 **Setback Requirements**. For purposes of this instrument, unless otherwise expressly provided herein, all structures attached or appurtenant to or forming a part of a single family dwelling unit built or to be built upon a Lot shall be considered a part of the "Dwelling." All of the following setbacks are subject to waiver or variance, in the sole discretion of the Developer, as provided in Section 7.35.

As to all Lots, and except as designated on the recorded plat, the following building setbacks shall apply. No part of any Dwelling shall be located nearer than: (i) twenty feet (20') from any point on the front lot line of any Lot; or (ii) fifteen feet (15') minimum from any point on the rear lot line of any Lot, or (iii) seven and one-half feet (7½') from the side lot line of the next consecutive numerical Lot.

Notwithstanding the foregoing, the following shall not be deemed part of a Dwelling for the purpose of this Section 7.7, and shall be permitted to encroach upon or be constructed and maintained within the foregoing setbacks: roof overhangs or eaves, air conditioning or heating equipment, pool equipment, and any walls or hedges screening air conditioning, heating and/or pool equipment from public view.

7.8 **Features of Dwelling**. All Dwellings constructed, altered or permitted to remain on any Lot shall conform to the following requirements:

(a) All roofs of Dwellings shall be metal unless otherwise approved by the Developer in writing. No tile roofs shall be permitted.

(b) Any structures such as garages, porches, service or utility rooms, guest rooms, servants quarters, and the like shall be attached to and be an integral part of the Dwelling and shall also conform with all requirements hereof. No separate or detached structures of any type shall be permitted without the written approval from the Architectural Control Committee in its sole discretion.

(c) Each Dwelling shall have a total floor heated and cooled living area of not less than two thousand (2,000) square feet, exclusive of the area of any garage, porches or patios, whether or not roofed.

(d) All Dwellings shall be of at least two (2) car capacity and shall be equipped with automatic door openers. The minimum driveway width shall be sixteen feet (16'). All driveways and sidewalks shall be constructed with a minimum of 3,000 PSI concrete, or as approved by Developer, with each drive extending to its intersection with a paved street, and shall be completed at the time of original construction of improvements and prior to issuance of a certificate of occupancy for the Dwelling served by such drive. All sidewalks shall be constructed in accordance with building code specifications promulgated from time to time by Charlotte County, including but not limited to the current requirement for an expansion joint at the boundary between the sidewalk and driveway. Driveway, parking area and walkway design,

location, materials and coloring shall be subject to Architectural Control Committee approval in its sole discretion.

(e) No carports shall be permitted anywhere in the Property.

(f) No screened garage doors or screened breezeways shall be permitted unless approved by the Architectural Control Committee. Nothing herein shall be construed as to prohibiting the screening of courtyards, upon approval by the Architectural Control Committee in its sole discretion.

7.9 **Unsightly Objects**. All unsightly objects, including but not limited to, side pads, air conditioning equipment, pool equipment, garbage cans, pumps, irrigation equipment and compressors, shall be constructed or stored in such a fashion as to not be visible from adjacent properties or streets. Such unsightly objects shall be fenced, walled, hedged or otherwise enclosed by a structure or landscaping, which must be approved by the Architectural Control Committee in its sole discretion.

7.10 **Parking and Storage**. No boats, commercial trucks, commercial vans, tractors, service vehicles or other commercial vehicles shall be permitted to remain within the Property other than for temporary parking unless parked within an enclosed garage with the garage door closed except when the boat or vehicle is being parked or removed. Temporary parking shall mean the parking of such vehicles while being used in the furnishing of services or materials to Owners, or used by Owners for loading and unloading purposes only; no overnight parking of such vehicles shall be permitted. The provisions of this Section shall apply to boats, trucks, and utility vehicles whether used for commercial purposes or not. Notwithstanding the foregoing, a van, or pickup truck for personal transportation purposes only, without advertising on the exterior, and which is not used for commercial purposes, may be parked on the driveway of a Lot, but no Lot may have more than one such vehicle regularly parked in the driveway. All garage doors shall be kept closed except while a vehicle or other article is being placed in or removed from the garage.

7.11 **Landscaping; Trees**. A landscape plan shall be submitted for approval by the Architectural Control Committee prior to construction or installation of landscaping. A tree survey designating all trees with a four inch (4") or greater caliper shall be provided to the Architectural Control Committee, designating which trees, if any, are to be removed from the Lot. Each Lot shall have a minimum of three (3) trees, either pine, palm, or oak, with at least six feet (6') clear trunk, and a minimum of a four inch (4") caliper. All approved landscaping for a Lot shall be completed prior to the issuance of the certificate of occupancy for the Dwelling on the Lot. In addition to the requirements of this Section 7.11, all builders must comply with the Charlotte County Tree Ordinance as adopted and enforced by Charlotte County.

7.12 **Yard and Lawns**. That portion of each Lot, and also the unpaved portion of a street right-of-way adjoining such Lot, that is not covered by a Dwelling, patio, flower bed, driveway or walkway, shall be sodded with **Floritam?** grass or other approved grass, at the time of the original construction of improvements on the Lot. "Sodded" shall be defined as the result of installing fully matured grass and not plugs or seed. The lawn shall thereafter be maintained

in good condition by the Association, as provided elsewhere herein, and replaced as may be necessary. In no event shall gravel or stone yards be permitted, provided that nothing contained herein shall prohibit the use of gravel and/or wood shavings for decorative landscaping purposes within an otherwise sodded area.

7.13 **Irrigation System**. All Lots shall be equipped with inground irrigation systems, including wells, for the lawn and landscaping thereon. All irrigation plans are subject to Architectural Control Committee approval in its sole discretion. The irrigation system on each Lot shall be tapped into and made a part of the master irrigation system serving the Property, if available.

7.14 **Drainage System**. All drainage system plans shall be submitted to the Architectural Control Committee for approval (in its sole discretion) prior to the installation or construction of the system. All drainage systems shall conform to the then current master drainage plan for the Property as filed with Charlotte County, which shall be made available for inspection by the Architectural Control Committee; any deviations from said master drainage plan shall be specifically brought to the attention of the Committee and shall be subject to the prior written approval of the Committee before commencement of construction of such drainage facilities. Common swales located in the rear of any Lot shall not be altered without Developer's prior written approval.

7.15 **Surface Water Management System**. It shall be the responsibility of each Owner at the time of construction of a building, residence or structure, to comply with the construction plans of the Surface Water Management System pursuant to Chapter 40D-4, F.A.C., approved and on file with SWFWMD. No Owner may construct or maintain any activity in the wetland, buffer areas, and upland conservation areas, if any, as described in the approved permit and the plat(s) for the Subdivision unless prior approval is received from SWFWMD pursuant to Chapter 40D-4. It is each Owner's responsibility not to remove native vegetation (excluding cattails) that become established within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicides or algaecides, introduction of grass carp, and cutting. Owners should address any questions regarding authorized activities within the wet detention pond to SWFWMD, Charlotte County Permitting Department. As used in this section, the terms "wetland", "buffer areas", "upland conservation areas" and "wet detention ponds" shall have the meaning set forth in the approved permit(s) for the Subdivision and the regulations of SWFWMD.

The Surface Water Management System for the subdivision shall be installed, operated and maintained by the Association in accordance with all permits and approvals issued by the controlling governmental authority. Furthermore, the Surface Water Management System shall not be adversely interfered with, changed or altered except pursuant to permits or approvals issued by the controlling governmental authority. No Lot shall be increased in size by filling in the water in which it abuts.

7.16 **Pools**. No above-ground swimming pool shall be permitted at any time anywhere within the Property. This provision shall not be deemed to prohibit hot tubs, therapy pools and hydra spas when they are incorporated into improvements and approved by the Architectural

Control Committee (in its sole discretion), even though such pools may be above grade. All pool enclosures shall be constructed to comply with applicable rules, regulations and standards of all governmental entities having jurisdiction. All pools, pool enclosure screening and caging shall be subject to approval by the Architectural Control Committee in its sole discretion.

7.17 **Standard Mailboxes, Post Lights and Identification Signs**. All mailboxes, post lights and identification signs with lettering or house numbers must be constructed to specifications approved by the Architectural Control Committee in its sole discretion. Post lights are required on all Lots, in locations approved by the Architectural Control Committee. In order to provide uniform light post designs throughout the Property, the Developer may promulgate design standards and specifications to be used for all post lights and identification signs, which must be complied with to the extent not inconsistent with any requirements of the Architectural Control Committee. All post lights shall be maintained by the Owner of the Lot on which they are located.

7.18 **Sidewalks; Curbs**. Sidewalks shall be installed in all neighborhoods where required by the building code requirements of Charlotte County, in accordance with the building code specifications promulgated from time to time by Charlotte County, at the expense of the Owner of the portion of the Property where such sidewalk is required. No Owner shall paint or otherwise deface the sidewalk, curb or any other part of the Common Area.

7.19 **Timing of Construction and Completion of Structures**. As to all Lots, construction of a Dwelling must commence before the expiration of (i) twenty-four (24) months after the date of purchase of the Lot from the Developer; or (ii) upon forty-five (45) days prior written notice from Developer, whichever is later. All structures and improvements must be completed substantially in accordance with the approved Plans within eighteen (18) months after the commencement of construction. As to either of the preceding requirements, the Developer may grant extensions for good cause shown, including those circumstances in which a bulk sale of Lots is made to a party other than a builder or future resident of the Lots, or where the Owner has made good faith diligent efforts to complete such construction but timely completion is impossible as a result of matters beyond the control of the Owner, such as strikes, casualty losses, national emergency, or acts of God. In the event of failure to comply with either of the preceding requirements, and in the absence of an extension granted by the Developer, the Owner of the Lot in violation shall be automatically be liable for a fine, without notice, in the amount of Fifty and 00/100 Dollars ($50.00) for each day that such Lot remains in violation of either of the requirements. Such fine shall be payable to the Association and shall be secured by a lien against the Lot on which such dwelling is located, in the same manner as provided in Section 6.4.

7.20 **Commercial Uses and Nuisances**. Except as provided in Section 7.37, no trade, business, profession, service, repair or maintenance operation or other type of commercial activity shall be carried on upon any portion of the Property, except that real estate brokers, Owners and their agents may show Dwellings within the Property for sale or lease. No illegal, noxious or offensive activity shall be permitted or carried on upon any part of the Property, nor shall anything be permitted or done thereon which is or may become a nuisance or source of embarrassment, discomfort or annoyance to the other residents of the Property. No Owner shall make any use of the Common Area that will increase the cost of the insurance above that

required when the Common Area is used for the approved purposes, or that will cause any such insurance to be canceled or threatened to be canceled, except with the prior written consent of the Association. No personal property of any nature shall be parked, stored or permitted to stand for any period of time on the Common Area, except in accordance with rules and regulations promulgated from time to time by the Association, and except for personal property owned by the Association.

7.21 **Modular and Temporary Structures and Use; Trash Receptacles**. Except as permitted under Section 7.37 of this Article, no modular or manufactured home or structure of a temporary character, including but not limited to, trailer, shed, tent, shack, garage, barn or other building, shall be moved to, erected or used on any portion of the Property at any time for a residence, workshop, office, or storage room, either permanently or temporarily. It is prohibited for any person or persons to be domiciled in a mobile home, travel trailer, recreational vehicle or camping trailer on the Property. As soon as construction of a Dwelling is commenced, and until final cleanup of the Lot after completion of such construction, the builder of such Dwelling shall maintain an industrial trash receptacle on such Lot and shall maintain the Lot in a reasonably neat and orderly condition, including but not limited to the daily collection and deposit of all construction debris in said trash receptacle and the prompt emptying of said receptacle when it is full.

7.22 **View Obstructions**. Developer shall have the right, but not the obligation, to remove, relocate or require the removal or relocation of any wall, bank, hedge, shrub, bush, tree or other thing, natural or artificial, placed or located on any portion of the Property, if the location of the same will, in the reasonable judgment of Developer, obstruct the vision of a motorist upon any of the private access streets.

7.23 **Animals**. No animals shall be kept or allowed to remain on the Property for commercial purposes, including without limitation breeding purposes. All dogs shall be kept on a leash while outside of the Owner's Lot or Dwelling, and shall be under the control of the owner at all times. Any animal which becomes a nuisance to or creates a disturbance for any other resident of the Property or their licensees or invitees may be ordered to be removed from the Property by the Board of Directors of the Association after reasonable notice to the owner of the animal and a hearing on the issue before the Board.

7.24 **Gas Tanks; Water Softeners**. No gas tank, gas container, or gas cylinder shall be permitted to be placed on or about the outside of any of the Dwellings or any ancillary building, and all gas tanks, gas containers, and gas cylinders shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all side by a decorative enclosure or other shielding approved by the Architectural Control Committee. Provided the design, construction and installation location shall have first been approved by the Architectural Control Committee, which approval may be conditioned upon adequate enclosure or other shielding, Owners may have water softener units installed.

7.25 **Garbage/Trash Collection; Mowing**. No trash, garbage, rubbish, debris, waste material, or other refuse shall be deposited or allowed to accumulate or remain on any part of the Property, nor upon any land or lands contiguous thereto. All trash, garbage, and other refuse

shall be stored in containers inside a garage or underground. Developer reserves the exclusive right to contract for, designate, and control the collection of garbage and trash and may provide one or more sanitary filled areas which shall be the locations permitted for the discard, storage, or disposal of garbage and waste, all subject to applicable governmental regulations. All Owners, their successors and assigns, may be billed a reasonable trash and garbage collection fee. Any Owner who allows a Lot it is supposed to maintain to become overgrown, or permits garbage or trash to collect so as to cause unsightliness, or a fire, mosquito, rat or vermin hazard, shall by this covenant permit such portion of the property to be mowed, ditched, graded or cleaned by the Association, and reasonable costs shall be assessed, after written notice that such conditions exist and failure to remedy the conditions, and such costs shall be payable by such Owner. Such costs, together with interest at the maximum contract rate permitted by law from five (5) days after the date of demand for payment, shall be secured by a lien against the portion of the Property owned by such Owner, as described in Article VI. No fires for the burning of trash, leaves, clippings, or other debris or refuse shall be permitted on any part of the Property, except by Developer.

7.26 **Clothes Hanging; Antennas**. Clothes hanging devices exterior to a Dwelling shall not be permitted. No exterior radio, television or other electronic antennas and aerials shall be allowed, unless installed so as to be completely concealed from public view, such as in attics, and no such devices shall be allowed in the event the same cause interference to the reception of other residents of the Property.

7.27 **Window Treatment**. No aluminum foil, reflective film or similar treatment shall be placed on windows, glass doors or window treatments visible from the exterior of any Dwelling.

7.28 **Signs**. No signs shall be displayed within the Property with the exception of a maximum of one "For Sale," "For Rent" and/or "Open for Inspection" sign upon each Lot, not exceeding 6" x 8" in area, fastened only to a stake in the ground and extending not more than three feet (3') above the surface of the ground. No portion of such sign may be erected closer than twelve feet (12') to any adjoining property line. Signs may be illuminated by reflection from a light source only (rotating, blinking, flashing, and other lights on the sign are prohibited), and such light source shall not in any way reflect light into any adjoining portion of the Property or street rights-of-way. Notwithstanding anything to the contrary herein, Developer and its assigns, to whom such rights may be assigned on an unlimited and non-exclusive basis, may maintain signs of any type and size and for any purpose within the Property, including without limitation advertising signs which may be erected by builders and lenders during the period of construction on any portion of the Property. None of the preceding prohibitions against signage shall prevent the erection of Street signs and traffic signs within the Property by the Developer or Charlotte County.

7.29 **Obstructions; Fences**. The Developer shall have the right but not the obligation to construct privacy walls or fences. No obstructions such as gates, fences, or hedges shall be placed on the Property so as to prevent access to or use of any of the easements described herein, except that the foregoing shall not prevent the erection and maintenance of privacy walls and fences on Lots, provided that they are installed by the Developer or approved by the

Architectural Control Committee. Any fence, wall or privacy structure within an easement area may be dismantled by Developer, the Association, utility providers or others entitled to use of the easement, at the Owner's expense, for maintenance, erection or replacement of utility facilities. Following completion of construction of any Dwelling, no wall shall be constructed servicing such Dwelling, except for replacement walls. In order to preserve the uniform appearance and aesthetics of the community, fences are prohibited, except as hereinafter provided. All fences shall be subject to the Architectural Control Committee's approval (in its sole discretion) as to all aspects of design and location, and subject to compliance with all applicable governmental requirements. No fences shall be permitted on the boundary of any portion of a Pond (as described in Section 7.30 below). The exterior side of any fence permitted must be maintained in a clean, attractive manner and may not be constructed or decorated in such a manner as to create a bizarre or aesthetically controversial or annoying effect. So-called "spite fences" are specifically prohibited. With the approval of the Committee, temporary fences may, or if required by the Committee shall, be erected as development boundaries.

7.30 **Ponds**. Any ponds or other water retention areas ("Ponds") constructed by Developer within the Property shall be part of the Property's drainage facilities. In no event may Owners or residents of the Property or members of the public use such Ponds for swimming, bathing, boating or other recreational purposes, other than fishing, which shall be permitted only by Owners or residents of the Property.

7.31 **Docks Slips**. Upon approval by the Developer, docks will be provided. Developer does not guarantee construction of any docks on the Property. In the event Dock Slips are provided, the provisions of Article VIII shall control.

7.32 **Wells; Septic Tanks; Oil and Mining Operations**. No water wells or septic tanks may be drilled or maintained on any portion of the Property without the prior written approval of the Architectural Control Committee in its sole discretion, which approval may be subject to any conditions deemed necessary or desirable by the committee. Any approved wells or septic tanks shall be constructed, maintained, operated and utilized in strict accordance with any and all applicable statutes and governmental rules and regulations pertaining thereto. No oil drilling, oil development operations, oil refining, fill dirt, quarrying or mining operations of any kind shall be permitted within the Property, nor shall any oil wells, tanks, tunnels, derricks, boring apparatus, mineral excavations or shafts be permitted upon or in the Property.

7.33 **Electrical Interference**. No electrical machinery, devices or apparatus of any sort shall be used or maintained on any portion of the Property which causes interference with the television or radio reception of any other resident of the Property. This provision shall not prevent the use during normal business hours of any equipment required in construction of any improvement upon the Property. No exterior radio, television or other electronic antennas or aerials shall be allowed, unless constructed so as to be completely concealed from public view, such as in attics.

7.34 **Solar Devices**. No solar device of any nature shall be permitted unless the Owner has obtained the prior written approval of the Architectural Control Committee as to same.

7.35 **Dwelling Plates**. A plate showing the number of the Dwelling shall be placed on each Dwelling. However, the size, location, design, style and type of material for each such plate shall be first approved by the Developer.

7.36 **Right of Developer to Grant Waivers or Variances**. The absolute right and discretion is hereby reserved to the Developer to grant waivers of or variances from the obligations of these restrictions in cases where not to grant such variances or waivers would create hardship, in the opinion of the Developer, or where the improvements allowed by such variances or waivers would be in keeping with the spirit and intent of this instrument or compatible with the character and nature of the Property, or would not substantially adversely affect any neighboring Owners or the Property as a whole. Such variances or waivers, if granted, shall be granted upon written application of the Owner setting forth in detail the variance or waiver desired and reasons for it. Any such variance or waiver, if granted, shall be evidenced by a written instrument executed by the Developer with the formalities of a deed and may be recorded in the Public Records of Charlotte County, Florida, at the expense of the Owner obtaining the variance or waiver.

7.37 **Rules and Regulations**. Reasonable rules and regulations concerning the appearance and use of the Lots, Dwellings and Common Area and consistent with the terms of this Declaration may be made and amended from time to time by the Board of Directors and the Association. If a rule or regulation promulgated by the Association shall conflict with a rule or regulation promulgated by the Board of Directors, the Board of Directors' rule or regulation shall be null and void but only to the extent in conflict with the Association's rule or regulation. Copies of such rules and regulations shall be made available to all Owners upon request. All Owners, their families, invitees and lessees shall use the Common Area only in accordance with such rules and regulations.

7.38 **Developer's Rights**. Nothing contained in these covenants shall prevent the Developer, or any other person designated by the Developer, from erecting or maintaining commercial or display signs, sales offices, construction trailers and other temporary structures, model houses and other structures as Developer may deem advisable for development and sales purposes, provided such are in compliance with the appropriate governmental regulations applicable thereto. Until the Developer has completed all construction within the Property and closed the sales of all Lots to other persons, neither the Owners nor the Association nor the use of any Lot shall interfere with the completion of improvements and sales of Lots. Further, without limiting the generality of the foregoing, Developer may use the Common Area or any Lot for a sales office, and there may be any number of sales offices on the Property, and display signs. The rights granted to Developer to maintain sales offices, general business offices, construction trailers and other temporary structures and model Dwellings shall not be restricted or limited to Developer's sale activity relating to the Property, but, at the sole discretion of the Developer, shall benefit other builders and developers who may become involved in the construction, development and sale of any portion of the Property, and may also benefit Developer in the sale of other property in which it may have an interest.

7.39 **Developer's Repurchase Option**. Construction of each Dwelling shall commence within twenty-four (24) months from the conveyance of a Lot to an Owner. In the

event an Owner has not commenced improvements on a Lot within the then applicable number of months after the date of conveyance, Developer shall have the option to repurchase said Lot from the Owner and return it to its respective inventory under such terms and conditions as may be prescribed in the Homesite Purchase Agreement. To assure that improvements are constructed on each Lot in a timely manner and consistent with the restrictions, Developer shall have a recorded repurchase option in accordance with the following terms, which shall be incorporated into the deed from Developer to Owner. In the event construction of improvements on the Dwelling is not commenced within twenty-four (24) months and thereafter diligently pursued to completion, or in the event the Dwelling or any interest therein is sold or transferred by Owner prior to completion of such construction without Developer's prior written consent, Developer shall have the right to repurchase the Lot for the purchase price of the Lot which Owner paid to Developer, not including any attorney's fees, interest, closing costs or financing costs, plus the cost of any permanent improvements constructed on the Lot. Owner shall pay closing costs on the repurchase, including title insurance, documentary tax, recording costs and prorations. This option shall terminate and be of no further effect twelve (12) months after the date of the recording of the deed to each Owner, unless an instrument evidencing the exercise of the option by Developer is sooner recorded in the Public Records of Charlotte County, Florida. In any legal proceeding to enforce or construe any provision of this option in which Developer is the prevailing party, Owner shall pay Developer's attorney's fees and court costs for both trial and appellate proceedings. This provision shall survive the closing of each Lot and may be enforced by Developer by injunctive relief, inasmuch as Owner acknowledges that Developer's remedies at law will be inadequate in the event of a breach of this provision.

ARTICLE VIII
DOCK SLIPS

8.1 Construction of Dock Slips. Developer intends to construct the Dock Slips which are to be located on the property as described in the Survey Sketch, attached in Exhibit "D". The Dock Slips will constitute Association Property, subject to the exclusive use of the Lot Owner to whom the respective Dock Slip use rights have been granted, or Developer and any of the members of Developer relative to any Dock Slips reserved by Developer. Developer shall have the right, but not the obligation, to construct any or all of the Dock Slips. Construction of the Dock Slips is contingent upon proper permitting and approval from any and all applicable governmental entities.

8.2 Sale and Reservation of Dock Slips. Developer reserves the exclusive right to sell the right to use the Dock Slips to Lot Owners and to reserve any unsold Dock Slips for Developer's use and any of the members of Developer. The land underneath the docks shall be assigned to the Association simultaneously with the recording of this Declaration, subject to the exclusive use of the Dock Club Users. All assignments of Dock Slips shall be effected by a separate Dock Slip Use Agreement executed by Developer. A copy of each such Dock Slip Use Agreement shall be included in the records of the Association but shall not be recorded in the Public Records. Each such grant of the right to use a Dock Slip and any assignment of such grant shall only be made to the owner of a Lot in Mariner's Landing, to Developer and any of the members of Developer, or to the Association. The dock providing access to a Dock Slip shall be shared by the parties to the Dock Slip Use Agreements for the adjacent Dock Slips. Any Lot

Owner who has purchased the right to use a Dock Slip shall have the exclusive right to use said dock/slip, the dock/slip shall become an appurtenance to such Lot, and it shall be encumbered or conveyed thereafter as an appurtenance to the Lot without necessity of specific reference thereto.

Such exclusive right may not be separately conveyed, assigned, or encumbered except as an appurtenance to the Lot to which it is assigned provided, however, that such exclusive right may be assigned or sold to another Lot Owner, be assigned or sold to a party who is not the owner of a Lot in Mariner's Landing provided the Association has granted written approval of same and provided it is allowed by the terms of all governmental laws, rules and regulations, or may be separately assigned or sold to the Association, and thereafter assigned by the Association, in its discretion and upon such terms as may be agreeable to it. The Association shall be obligated to accept any assignment of a Dock Slip from Developer at no expense to the Association. So long as such exclusive right shall be held by the Association, such Dock Slip shall be deemed to be in the sole and exclusive control of the Association and may be used for such purpose as the Association deems appropriate, so long as such use is not in conflict with applicable Florida Statutes.

8.3 Agency Relationship and Fees. The Dock Slip Users hereby irrevocably appoint the Association as their agent for the purpose of care, maintenance, preservation, and reconstruction of said docks and Dock Slips, and for this purpose the Association is given the right and authority to establish reasonable fees to be paid by the Dock Slip Users. The Association and Developer shall establish such reasonable fees to be paid by the Dock Slip Users for the purpose of the care, maintenance, preservation, and reconstruction of said Dock Slips. Said fees shall be in an amount reasonably necessary to cover the full cost of the utilities, care, maintenance, upkeep, preservation, and restoration of the Dock Slips from time to time. It is the purpose hereof to cause the entire cost of utilities, maintenance, preservation, care, upkeep, and replacement of the Dock Slips and related facilities water ward of the seawall to be shared among the twenty-one (21) Dock Slips. Each Dock Slip User does hereby designate and appoint the Association as such Dock Slip User's agent for the purpose of maintaining and caring for such dock and Dock Slips in conformity with the aforesaid as well as insuring same to the extent deemed appropriate by the Association, which insurance shall include such liability coverage as the Association deems appropriate. Said fees shall be collected in the same fashion as all other Assessments, including the right and authority of the Association to place and record liens against the subject Lot (or other property owned by the Dock Club User if not a Lot Owner) for nonpayment thereof.

8.4 Leasing. The Dock Slips shall be used only in accordance with this Declaration and such reasonable rules and regulations as may be adopted from time to time by the Association Board of Directors. Dock Slips shall not be rented or leased by a Dock Slip User unless allowed by governmental laws, rules and regulations and unless authorized by the Association. If so allowed, any lease must be for a term of at least thirty (30) days.

8.5 Facility Usage and Riparian Rights. All Dock Slips are subject to the provisions of this paragraph. All vessels docked at the Dock Slips, except small runabouts to which this provision would not be practical, must have governmental approved toilet facilities. Flushing of toilets in the waters is strictly prohibited. No boat house shall be built on any dock or Dock Slip,

and no dock or Dock Slip shall be covered in any fashion without the approval of the Association. The right to use the Dock Slips is a riparian right appurtenant to the Development Property and does not represent an ownership interest in the water bottoms.

8.6 Water Depth. Developer and the Association make no warranties or representations regarding the adequacy of water depths for boating access. By acceptance of a deed for a Lot and/or a Dock Slip Use Agreement, each Lot Owner/Dock Slip User acknowledges that there are fluctuations in water depth in the vicinity and agrees that those conditions are acceptable to the Lot Owner and Dock Slip User.

8.7 Rules and Regulations. Every Dock Slip User shall abide by the following use restrictions and any rules and regulations adopted by the Association which are not inconsistent with the provisions set forth herein:

(a) Dock Slip Users must comply with the applicable rules and regulations of the United States Coast Guard, Florida Game and Fish Conservancy, Charlotte County, or other governing authority.

(b) The Dock Slip User must provide vessel insurance verification to the Association for any vessels moored within the Dock Slip.

(c) It is the Dock Slip User's responsibility to ensure that appropriate vessels are seaworthy, secure and watertight.

(d) Docking, line handling, and mooring are the responsibilities of each Dock Slip User. There is no designated harbor master and no monitoring of VHF radio signals to aid in docking within the Dock slip mooring area.

(e) No overboard discharge of effluents, petroleum, or other toxic materials is allowed within the Dock Slip mooring area. Any questions regarding same should be directed to the United States Coast Guard for updated laws and regulations.

(f) Dock areas and sidewalks must be kept clear at all times. Dock boxes are not permitted. Storage of nautical materials is required to be located within each Lot Owner's garage or other area located outside the Development Property.

(g) Personal tenders and dinghies are to be stored aboard the primary vessel when not in use. No tender or dinghy storage is provided.

(h) Major repairs and renovation of vessels are not permitted at the Dock Slips. Minor repairs and maintenance are allowed Monday through Friday, 8:00 a.m. to 5:00 p.m. and such work shall be performed in accordance with the local work restrictions and noise ordinances.

(i) No cooking fires are allowed on any vessel (unless on an interior stove designed for that purpose), the docks, the sidewalks, or adjacent areas.

(j) Dock Slip Users are responsible for the safety, security, and conduct of their family members and guests while on the property. Persons under the age of 14 are permitted on board only while supervised by an adult.

(k) Dock Slip Users shall not make or permit any disturbing noises, as determined by the Board of Directors, in connection with the utilization of the Dock Slip, whether made by the Dock Slip User or the Dock Slip User's family, friends, guests, pets or employees, nor may a Dock Slip User do or permit to be done anything by such persons that would interfere with the rights, comforts or other conveniences of other Dock Slip Users or the Lot Owners. No person may play or suffer to be played any musical instrument, stereo, phonograph, radio or television set in his or her vessel or on or about the Dock Slips if the same shall in any manner disturb or annoy the other Dock Slip Users or the residents or owners of Lots. Vessels shall not be left unattended with VHF radios or stereos activated.

(l) Idling of engines and generators shall be limited to no more than five (5) minutes and only between the hours of 8:00 a.m. and 5:00 p.m. unless the vessel is preparing to depart.

(m) Household pets shall be permitted on the docks. All pets must be leashed at all times when not located in the Vessel and may be walked only in designated areas. Neither the Board, Developer, nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the provisions governing pets and any Dock Slip User maintaining a pet on a vessel shall indemnify and hold the Association, Developer, each Lot Owner and the Board harmless from any loss, claim or damage arising from or in connection with the maintenance of a pet on the vessel. The owner of the pet is responsible for cleaning up after the pet. The ability to keep such pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other Dock Slip Users or residents of the Development. In the event that in the future the Board of Directors or the Association promulgates a rule or regulation that results in a then current household pet to become noncompliant, then such household pet (and its then unborn offspring, if any) shall be grandfathered in, subject to the limitations of this provision prior to the issuance of such new rule or regulation.

(n) Trash must be properly bagged and deposited into the appropriate refuse containers located in designated closed in areas of the Development.

(o) Guest parking and parking for Dock Slip Users who are not owners of Lots in Mariner's Landing is allowed in designated uncovered parking areas. No boat trailers, motor homes, or storage trailers are allowed.

(p) "For sale" signs are not allowed to be posted on vessels moored at the Dock Slips.

(q) Swimming, snorkeling, scuba diving (except for cleaning the bottom of moored vessels), or fishing is not allowed. Cleaning of fish is not permitted on the docks and disposal of fish is not allowed in the on-premises trash receptacles.

(r) All subcontractors performing maintenance and/or repairs within the Dock Slip area or on vessels within the area must be licensed and insured.

(s) Laundry or towels must not be hung to dry on the exterior of any vessel or on the Dock Slips.

(t) In the case that a vessel is in need of salvage due to sinking or to prohibit it from sinking, the Association has the right to remove such vessel at the owner's expense.

(u) All vessels moored and stored at the Development must have adequate property damage and liability insurance and the owner of the vessel shall provide the Association with copies of the current insurance coverage on an annual basis, and keep such copies on board the vessel. In addition, the policies shall provide that the insurance company notify the Association at least thirty (30) days in advance of any cancellation or reduction in coverage.

(v) In the event of an emergency during the Owner's absence which may cause or may tend to cause any damage to other Owner's property or to Association Property, the Association shall be authorized, but is not required, to make any reasonable and necessary repairs to a vessel, the cost of which shall be charged to the Owner.

(w) In case of a fire, emergency or disaster, (or pending emergency or disaster, such as hurricane or tropical storm warnings or watches) as determined by the Association, it is expected that the Owner will make arrangements for safe storage of the vessel elsewhere. If any vessel is unattended and the Owner cannot be contacted, the Association shall be authorized to move the vessel, at Owner's expense, to a safer area to protect the vessel, property or general welfare. However, under no circumstances is the Association under any obligation to provide this service. Owner shall be solely responsible for any emergency measures.

ARTICLE IX
RESERVATION OF RIGHTS BY DEVELOPER

9.1 **Developer's Rights.** Developer hereby reserves the following rights, which shall not be limited or restricted to the Developer's activities with regard to the Property, but shall continue until Developer has completed all construction within the Property and has closed the sales of all Lots to other persons, and shall benefit the Developer in the development, construction, promotion and sale of any other property in which the Developer may have an interest:

(a) To use the Property and/or trailers or other temporary structures, which the Developer shall be entitled to erect on the Property for development or sales purposes, including construction and general business offices or models.

(b) To bring, invite or arrange for trucks and other commercial vehicles to enter and remain upon the Property for construction purposes.

(c) To erect and maintain commercial or display signs on the Property, including the common areas, for sale promotion.

(d) To sell or lease the Lots without compliance with the restrictions on transfers or leasing that are set forth in this Declaration.

(e) To create easements over the Property for drainage, utilities and access to serve any adjacent lands, whether or not those lands are added to the Property, provided that those easements may not unreasonably interfere with the enjoyment of the Property by the Owners.

(f) To amend this Declaration without executed joinders from any other person or entity, provided that no amendment shall be made which substantially alters the nature of the development contemplated herein.

9.2 **No Interference**. Until Developer has completed all construction within the Property and has closed the sales of all Lots to other persons, neither the Owners nor the Association nor the use of any Lot shall interfere with the completion of improvements and sale of Lots, and Developer may make such use of unsold Lots and of the Common Areas as may facilitate completion of improvements and sales of Lots. Further, without limiting the generality of the foregoing, Developer shall not be subject to the provisions of Section 5.1 hereof.

ARTICLE X
MISCELLANEOUS

10.1 **Term and Amendment**. This Declaration shall become effective upon its recordation in the Public Records of Charlotte County, Florida, and the restrictions herein shall run with the land, regardless of whether or not they are specifically mentioned in any deeds or conveyances of Lots within the Property subsequently executed, and shall be binding on all parties and all persons claiming under such deeds, for a period of thirty (30) years from the date this Declaration is recorded, after which time the term of this Declaration shall automatically extend for successive periods often (10) years each, unless terminated by the vote of sixty-six percent (66%) of the voting interest of each class of members present, in person or by proxy, at a meeting called for such purpose. This Declaration may be amended during the first thirty (30) year period or any subsequent ten (10) year period by an instrument signed either by: (i) the Developer as provided in Section 9.1 above; or (ii) Owners holding not less than sixty-six percent (66%) of the total Class A votes; or (iii) by the duly authorized officers of the Association provided such amendment by the Association's officers has been approved by at least sixty-six percent (66%) of the total votes cast in person or by proxy at a regular or special

members meeting. Notwithstanding anything herein to the contrary, so long as Developer shall own any Lot, no amendment, shall diminish, discontinue or in any way adversely affect the rights of Developer under this Declaration, nor shall any amendment pursuant to (ii) or (iii) above be valid unless approved by Developer, as evidenced by its written joinder.

Any amendment which would affect the Surface Water Management System, including the water management portions of the Common Area must have the prior approval of SWFWMD, the Charlotte County Engineer or its designee, and any other governmental authority with jurisdiction.

10.2 **Enforcement**. If any person, firm or corporation, or their respective heirs, personal representative, successors or assigns shall violate or attempt to violate any of the restrictions set forth in this Declaration, it shall be the right of the Developer, the Association or any Owner of a Lot within the Property to bring any proceedings at law or in equity against the person or persons violating or attempting to violate such restrictions, whether such proceedings aim to prevent such persons from so doing, or to recover damages, or to foreclose against the land any lien created hereunder, or otherwise, and if such person is found in the proceedings to be in violation of or attempting to violate the restrictions set forth in this Declaration, he shall bear all expenses of the litigation, including court costs and reasonable attorney's fees (including those on appeal) incurred by the party enforcing the restrictions set forth herein. Developer shall not be obligated to enforce the restrictions set forth herein and shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than itself. Failure of Developer or any other person or entity to enforce any provision of this Declaration upon breach, however long continued, shall in no event be deemed a waiver of the right to do so thereafter with respect to such breach or as to any similar breach occurring prior or subsequent thereto. Issuance of a building permit or license which may be in conflict with the restrictions set forth herein shall not prevent the Developer, the Association or any of the Owners from enforcing the restrictions set forth herein. Further, the Developer shall have the right, upon ten (10) days' prior written notice by certified or registered mail, return receipt requested, to take such action as Developer shall deem necessary to cure the default of any Owner who fails to comply with the provisions hereof, and all costs reasonably incurred in connection therewith, together with interest at the highest contract rate permitted by law from five (5) days after the date of demand, shall be due and payable from the defaulting Owner on demand, and shall be secured by a lien in favor of the Developer on the defaulting Owner's Lot as described in Article VI. Without limiting and in addition to the foregoing remedy, in the event the provisions of Section 7.19 regarding the construction deadline are violated, the Owner of the Lot as to which the violation occurs shall be liable for liquidated damages payable to the Developer in the amount of Ten and 00/100 Dollars ($10.00) per day, for each day beyond the deadline in Section 7.19 that construction is not completed. The right to such damages shall be secured by a lien in favor of the Developer as described in Article VI. If such a lien is filed but is subsequently removed or extinguished by foreclosure of a superior mortgage or other lien, the mortgagee or other person taking title by foreclosure shall again be subject to the deadline for construction set forth in Section 7.19, but the time period shall run from the date that title is acquired so that the mortgagee or other person taking title by foreclosure shall have another nine (9) months to complete construction. Liquidated damages shall again begin to accrue and shall be secured by a lien in favor of the Developer if the extended construction deadline is not met.

10.3 **Notice**. Any notice required to be sent to any Owner under the provisions of this instrument shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of said Owner.

10.4 **Severability**. Invalidation of any term or provision of this Declaration by judgment or court order shall not affect any of the other provisions hereof which shall remain in full force and effect.

10.5 **Interpretation**. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; the use of the terms "include" or "including" shall mean "include without limitation" or "including without limitation," as the case may be; and any reference to "attorney's fees" shall mean "reasonable attorney's fees incurred before, during and after litigation, including appellate proceedings, and including fees of legal assistants." The headings used herein are for convenience only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

10.6 **Approvals**. Wherever herein the consent or approval of the Developer, the Association or the Board of Directors is required to be obtained, no action requiring such consent or approval shall be commenced or undertaken until after a request in writing seeking the same has been submitted to and approved in writing by the party from whom such consent or approval is required. In the event such party fails to act on any such written request within thirty (30) days after the same has been received, the consent or approval to the particular action sought in such written request shall be conclusively and irrefutable presumed, except that no action shall be taken by or on behalf of the person or persons submitting such written request which violates any of the covenants herein contained other than the covenant to obtain the approval specifically requested as set forth above.

10.7 **Assignment**. Developer shall have the sole and exclusive right at any time and from time to time to transfer and assign to and to withdraw from such person, firm, or corporation as it shall select, any or all rights, powers, easements, privileges, authorities, and reservations given to or reserved by Developer under this Declaration. If at any time hereafter there shall be no person, firm, or corporation entitled to exercise the rights, powers, easements, privileges, authorities, and reservations given to or reserved by Developer under the provisions hereof, the same shall be vested in and be exercised by a committee to be elected or appointed by the Owners of a majority of Lots. Nothing herein contained, however, shall be construed as conferring any rights, powers, easements, privileges, authorities or reservations in said committee, except in the event aforesaid.

10.8 **Occupants Bound**. All provisions of this Declaration governing the usage of a Lot or the conduct of an Owner shall also apply to all occupants of the Lot and all family members, guests, and invitees of the Owner. Each Owner shall cause all such occupants, family members, guests and invitees to comply with such provisions and shall be jointly and severally responsible with such occupants, family members, guests, and invitees for any violation by them of such provisions. The lease of any Lot shall be deemed to include a covenant on the part of the tenant to comply with and be fully bound by such provisions.

10.9 **Litigation**. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Owners, inclusive of the Developer. This Section shall not apply, however, to (a) actions brought by the Association against parties other than the Developer to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided herein, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Developer or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

10.10 **Additional Covenants**. No Owner other than Developer may impose any additional covenants or restrictions on any part of the Property.

IN WITNESS WHEREOF the undersigned has caused these presents to be executed this 20th day of September, 2006.

WITNESSES:

Tammy Lindemuth
Print Name: Tammy Lindemuth

Pat Waguespack
Print Name: PAT WAGUESPACK

WATERFORD NPC, LLC, a Florida limited liability company

By: _____
Michael W. Miller,
as its Managing Member

STATE OF FLORIDA
COUNTY OF SARASOTA

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 20th day of September, 2006, by Michael W. Miller, as Managing Member of **WATERFORD NPC, LLC**, a Florida limited liability company, on behalf of the company. He is personally known to me.

Tammy Lindemuth
Notary Public
Print Name: Tammy Lindemuth
My Commission Expires: _____

TAMMY LINDEMUTH
MY COMMISSION # DD 546603
EXPIRES: August 29, 2010
Bonded Thru Notary Public Underwriters

CONSENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MARINERS LANDING

M&I, Marshall & Ilsley, being the holder of that certain mortgage recorded in Official Records Instrument #OR Book 2435, pg 417, Public Records of Charlotte County, Florida, which encumbers the property described in the Declaration of Covenants, Conditions, and Restrictions for Mariners Landing to which this Consent is attached, hereby consents to the Declaration, and agrees that any mortgage held by the undersigned encumbering the property described in the Declaration is subject and subordinate to the terms and provisions of the Declaration.

WITNESSES:

Print Name: Donald S. Stuart

Print Name: Stephanie A. Daubert

By:

Print Name: Stacey Romano

As Its: Comm. Real Estate Officer

STATE OF FLORIDA
COUNTY OF SARASOTA

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 1 day of Sept, 2006, by Stacey Romano, as Comm RE officer of M & I Bank, on behalf of said bank. He or she is personally known to me or produced _____ as identification.

DEIRDRE R. CHIOCCARELLI
Notary Public - State of Florida
My Commission Expires Jun 7, 2010
Commission # DD 553770
Bonded By National Notary Assn

Notary Public
Print Name: DEIRDRE R. CHIOCCARELLI
My Commission Expires: 6/7/10

749327v.3

EXHIBIT "A"

[Sketch and Description of Property]

MARINERS LANDING

LEGAL DESCRIPTION

Lot 8 and Lot 13, Block 1, BREEZEWOOD SUBDIVISION, recorded in Plat Book 2, Page 68 of the Public Records of Charlotte County, Florida.

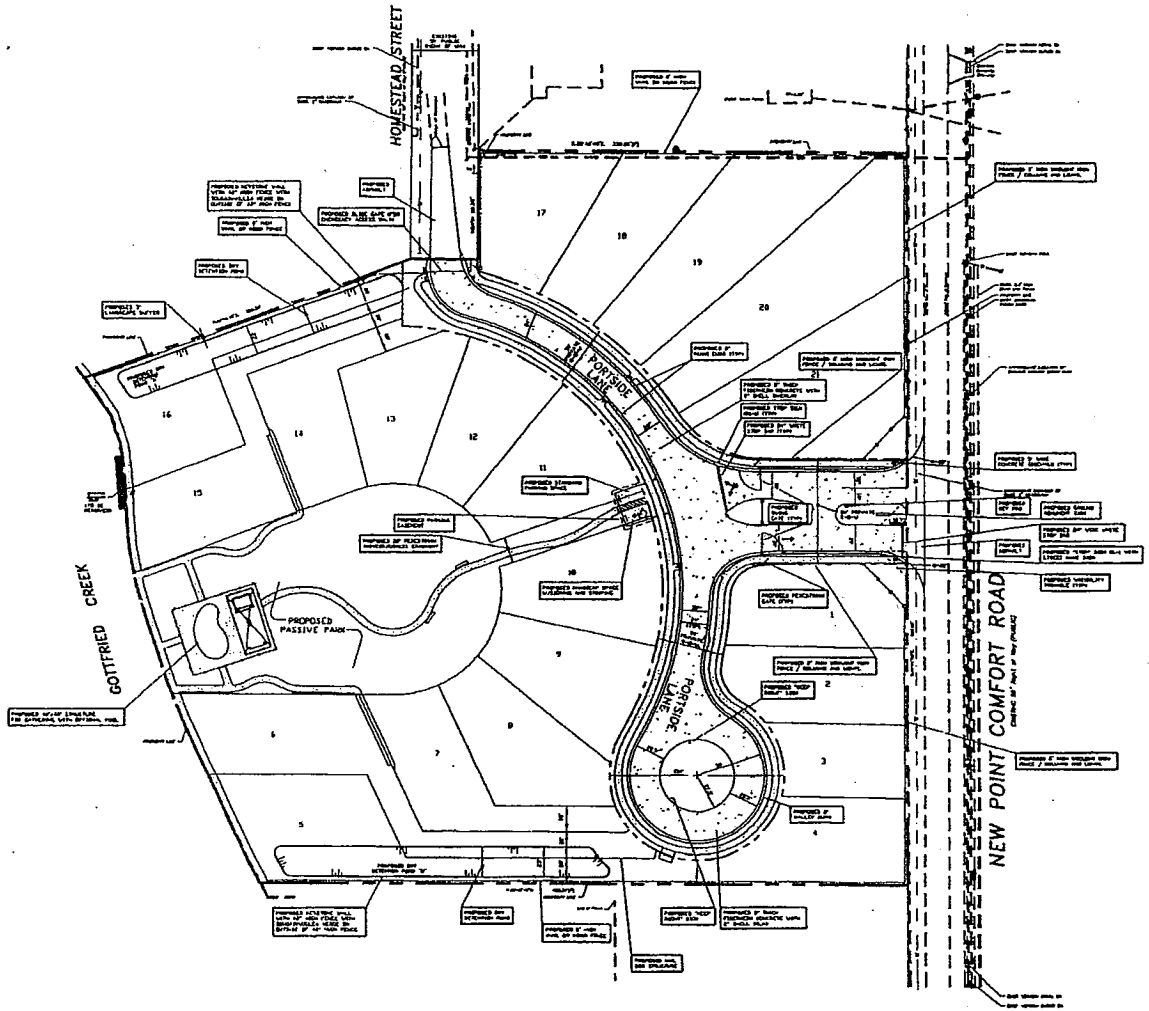
ALSO:

The South 125.00 feet of Lot 17, the North ½ of Lot 16, and the North 25.00 feet of the South Half of Lot 16, Grove City Land Company's Subdivision, recorded in Plat Book 1, Page 11 of the Public Records of Charlotte County, Florida.

LESS the following described parcel:

Begin at the S.E. corner of Lot 8, Block 2, Breezewood Subdivision, recorded in Plat Book 2, Page 68 of the Public Records of Charlotte County, Florida; thence N. 89°48'41"W., along the South line of said Lot 8, a distance of 345.28 feet, more or less, to the Mean High Water line of Gottfried Creek (Deer Creek); thence Southerly along said Mean High Water line for the following seven (7) calls: (1) S.53°58'50"E., a distance of 47.24 feet; (2) S.54°15'07"E., a distance of 33.86 feet; (3) N.48°19'44"E., a distance of 56.00 feet; (4) S.41°40'16"E., a distance of 38.00 feet, (5) S.48°19'44"W., a distance of 56.00 feet; (6) S.41°40'16"E., a distance of 6.76 feet; (7) S.35°32'20"E., a distance of 14.69 feet; thence N.69°10'10"E., leaving said Mean High Water Line, a distance of 258.39 feet, more or less, to the POINT OF BEGINNING.

Parcel Contains 6.4932 Acres ±



LEGEND

PROPOSED | EXISTING

CONTRACTOR TO CALL "SUNSHINE" AT 1-800-432-4770, 48 hrs. PRIOR TO ANY CLEARING OR CONSTRUCTION FOR EXISTING UTILITY LOCATIONS.

NORTH

40 20 0 40 80
30 10
GRAPHIC SCALE

SITE DATA

NOTES:

OWNER: ATERFORD NPC, LLC 33 SOUTH TAMIAMI TRAIL UITE 101 ENICE, FL. 34285 (941)441-1760	PROJECT NAME: SEC. 6 TWP. 41S RNG. 20E MARINERS LANDING SITE AND STRIPING PLAN	PROJECT NUMBER 04-1544 SCALE 1"=40'	NO.	DATE	BY	REVISIONS	

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PEER
PROFESSIONAL ENGINEERING RESOURCES, INC.
845 54th AVE. NORTH ST. PETERSBURG, FL 33708
CIVIL ENGINEERING, PLANNING, PERMIT EXPENDITURE (727) 576-8467

DRAWING TYPE
- PRELIMINARY
- CONSTRUCTION
- RECORD

DESIGNED BY PVS
DRAWN BY GMs
CHECKED BY PVS
DATE 5-27-03
APPROVED
PAUL V. SHERMA, REG. NO. 35828

SHEET NUMBER 4

Exhibit "B"

ARTICLES OF INCORPORATION
OF
MARINERS LANDING OWNERS' ASSOCIATION, INC.

The undersigned, for the purpose of forming a corporation under the Florida Not for Profit Corporation Act, hereby adopts the following Articles of Incorporation.

ARTICLE ONE
NAME

The name of the Corporation is MARINERS LANDING OWNERS' ASSOCIATION, INC., a Florida not for profit corporation.

ARTICLE TWO
PRINCIPAL OFFICE

The street address of the principal office of the Corporation is 333 South Tamiami, Suite 101, Venice, Florida 34285. The mailing address is the same.

ARTICLE THREE
PURPOSE AND POWERS

(A) The specific primary purposes for which the Corporation is organized is to provide an entity pursuant to Chapters 617 and 720, F.S., for the maintenance, preservation and architectural control of the residence lots and common areas within Mariners Landing, a subdivision to be located in Charlotte County, Florida, and to promote the health, safety, and welfare of the residents within the above-described subdivision and such additions thereto as may hereafter be brought within the jurisdiction of the Association for such purpose.

(B) The activities of the Association shall be financed by assessments on members as provided in the Declaration of Covenants, Conditions and Restrictions applicable to the subdivision, to be recorded in the public records of Charlotte County, Florida.

(C) The Corporation shall have all of the common-law and statutory powers of a corporation not in conflict with the terms of these Articles of Incorporation or Chapters 617 and 720, F.S.

(D) The Corporation shall have all of the powers and duties set forth in Chapters 617 and 720, F.S., and all of the powers and duties reasonably necessary to maintain, manage and operate the surface water management system facilities and the subdivision common property pursuant to these Articles, the Corporation's Bylaws and the Declaration of Covenants, Conditions and Restrictions (the Declaration), as they may be amended from time to time.

The Corporation shall have and exercise any and all powers, rights and privileges that a corporation organized under Chapter 617 of Florida Statutes by law may now or hereafter have or exercise.

ARTICLE FOUR
EXIS1ENCE OF THE CORPORATION

This corporation shall have perpetual existence. If, however, the corporation ceases to exist, any controlling governmental authority may assume the duties of the corporation to maintain the surface water management system and other subdivision common property.

ARTICLE FIVE
DIRECTORS

The directors of the Corporation shall be elected in the manner set forth in the Bylaws of the Corporation.

ARTICLE SIX
INITIAL REGISTERED AGENT AND ADDRESS

As set forth in the registered agents written acceptance of appointment which is delivered to the Department of Stale with these Articles of Incorporation, the name and address of the

initial registered agent for the Corporation are Michael W. Miller, 333 South Tamiami Trail, Suite 101, Venice, Florida 34285.

ARTICLE SEVEN
INCORPORATOR

The name and street address of the incorporator are Michael W. Miller, 333 South Tamiami Trail, Suite 101, Venice, Florida 34285.

The undersigned has executed these Articles of Incorporation this 20th day of September, 2006.

Michael W. Miller, Incorporator

ACCEPTANCE OF REGISTERED AGENT

The undersigned, who has been designated registered agent and to accept service of process for the above corporation, affirms that his name is Michael W. Miller, and the address for the registered office of the corporation is 333 South Tamiami Trail, Suite 101, Venice, Florida 34285. I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Michael W. Miller

Date September 20, 2006

Exhibit "C"

BYLAWS
OF
MARINERS LANDING OWNERS' ASSOCIATION, INC.

ARTICLE I
Identity

Section 1. **Name.** The name of the corporation is Mariners Landing Owners' Association, Inc., a Florida not for profit corporation (the "Association").

Section 2. **Principal Office.** The initial principal office of the Association is at 333 South Tamiami Trail, Suite 101, Venice, Florida 34285.

Section 3. **Adoption.** These Bylaws have been adopted as the Bylaws of the Association.

Section 4. **Definitions.** Terms used in these Bylaws which are defined in the Declaration of Covenants, Conditions and Restrictions for MARINERS LANDING (the "Declaration") shall have the same meaning in these Bylaws as in the Declaration.

ARTICLE II
Powers and Duties of the Association

The Association shall have all powers granted to it by Florida law, the Declaration, the Articles of Incorporation, and these Bylaws, all of which shall be exercised by its Board of Directors unless the exercise thereof is otherwise restricted in the Declaration, the Articles, these Bylaws or Florida law.

ARTICLE III
Membership

The Association shall have the following two (2) classes of membership: Class "A" Members and Class "B" Members, as described in the Declaration. Each Owner of a Lot other than Developer shall be a Class "A" Member of the Association. Class "A" Members shall have the right to vote only on Association matters requiring a Membership vote pursuant to the Declaration, Articles of Incorporation, Bylaws, or Florida law. The Class "B" Membership shall exist prior to Turnover and shall be held by Developer for Lots which it owns.

ARTICLE IV
Meetings of the Members

Section 1. **Date and Place of Meetings.** Meetings of the Members shall be held on the date and at the place designated by the Board of Directors.

Section 2. **Annual Meeting of Members**. An annual meeting of the Members shall be held each year in February. Subject to Article V. at each annual meeting, the Members shall elect the Board of Directors of the Association and may conduct such other business as may be properly brought before the meeting.

Section 3. **Special Meetings**. The President of the Association may call special meetings of the Members. In addition, it shall be the duty of the President to call a special meeting of the Members if so directed by resolution of a majority of the Board of Directors or, if after the Turnover, upon a petition signed by at least twenty-five percent (25%) of the voting interests. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. **Notice of Meetings**. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member, not more than fifty (50) nor less than ten (10) days before the date of such meeting, by or at the direction of the President or the Secretary.

Section 5. **Quorum**. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of the voting interests representing thirty-three percent (33%) of the total votes in the Association shall constitute a quorum at all meetings of the Association.

Section 6. **Adjournment of Meetings**. If any meeting of Members cannot be held because a quorum is not present, a majority of the voting interests who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time or place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed in Section 4.

Section 7. **Vote Required**. When a quorum is present at any meeting, a majority of the voting interests represented (in person or by proxy) at such meeting shall decide any question brought before the meeting, unless the Declaration, the Articles of Incorporation, these Bylaws, or any applicable law provides otherwise.

Section 8. **Proxies**. Members may vote by proxy; provided the form of proxy is subject to the reasonable approval by the Board of Directors. In lieu of proxies, sealed ballots may be utilized for election of directors.

Section 9. **Conduct of Meetings**. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions which occurred at the meeting.

ARTICLE V
Election of Board of Directors

Section 1. **Number of Directors**. The governance and administration of the affairs of the Association shall be vested in a Board of Directors. The number of directors of the Association shall be not less than three (3). The initial Board shall consist of Jayne E. Parrish, Michael W. Miller, and Paul DiStefano.

Section 2. **Election or Appointment of Directors**. Until the first annual meeting of Members after (i) Class B votes are equal to Class A votes, (ii) June 1, 2020, or (iii) at such earlier date as determined in the sole discretion of the Developer, whichever occurs earlier (the "Turnover Date"), the Developer shall have the right to appoint all of the Members of the Board of Directors. At the first annual meeting of Members to occur after the Turnover Date, the Board shall be established at a number equal to the number of directors to be elected by the Members. The Developer shall call a meeting within sixty (60) days of the Turnover at which the following shall occur: (a) the existing directors shall resign; (b) the Members shall elect the directors as described in Section 4; and (c) the Class "B" Membership shall terminate and be converted to a Class "A" Membership. The Developer may, in its sole and absolute discretion, permit the Members to elect a portion of the directors earlier than the Turnover Date.

Directors elected by the Members at the Turnover meeting and each annual meeting thereafter shall serve for annual terms and shall be elected by the Members at large.

For purposes of this Section, the total number of Lots within Mariners Landing shall be considered to be twenty-one (21). NO REPRESENTATION OR WARRANTY IS MADE THAT UPON BUILDOUT, MARINERS LANDING WILL BE DEVELOPED WITH THIS NUMBER OF LOTS.

Section 3. **Qualifications for Election**. Except with respect to directors appointed by the Developer, all directors shall be a Member of the Association.

Section 4. **Directors Election**. Prior to the Turnover, the Developer shall appoint all directors. After Turnover all of the directors shall be elected by the Class "A" Members.

Section 5. **Nomination of Directors**. Nomination for election to the Board of Directors shall be by Nominating Committee. However, nominations may also be made from the floor at any annual meeting of Members. The Nominating Committee shall consist of a chairman who shall be a member of the Board of Directors, and two or more Members of the Association. The committee shall be appointed by the Board of Directors prior to each annual meeting to serve from the close of such meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event shall it nominate less than the number of vacancies to be filled.

Section 6. **Removal of Directors and Vacancies**. Any director appointed by the Developer may be removed, with or without cause, only by the Developer. Any director elected by the Members may be removed, with or without cause, by the majority vote of the voting interests who were entitled to elect such director. Upon removal of a director, a successor shall be elected by the party entitled to elect or appoint the director so removed to fill the vacancy for the remainder of the term of such director.

Section 7. **Compensation**. No director shall receive a salary or any other compensation whatsoever from the Association for acting as such, but shall be entitled to be reimbursed for expenses reasonably incurred on behalf of the Association.

Section 8. **Fiduciary Duty**. The directors shall act in good faith in a manner they reasonably believe to be in the best interests of the development of MARINERS LANDING and the purpose of the Association.

ARTICLE VI
Meetings of the Board of Directors

Section 1. **Organizational Meeting**. The organizational meeting of the Board of Directors shall be held within ten (10) days after the annual meeting of the Members at such time and place as shall be fixed by the Board of Directors.

Section 2. **Regular Meetings**. Regular meetings of the Board of Directors may be held at such time and place as shall he determined from time to time by a majority of the directors, but commencing with the Turnover, at least four (4) regular meetings shall be held during each fiscal year, with at least one (1) per quarter; provided, however, that the annual meeting shall constitute a regular meeting. Notice of the time and place of any meeting shall be posted in a conspicuous place within Mariners Landing at least forty-eight (48) hours prior to the time of the meeting, unless the meeting is an emergency special meeting. In the alternative, notice of the meeting may be mailed or delivered to all Members at least seven (7) days in advance of the meeting.

Section 3. **Special Meetings**. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by any three (3) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The giving of notice of any special meeting shall comply with the notice provisions set forth in Section 2 of this Article VI.

Section 4. **Meetings Concerning Assessments**. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that Assessments will be considered and the nature of the Assessments.

Section 5. **Quorum of Board of Directors**. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If any meeting of the Board of Directors

cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted provided that notice of such reconvened meeting shall comply with the notice provisions set forth in Section 2 of this Article VI.

Section 6. **Conduct of Meetings**. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book containing written records of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings as well as a notation as to any Director who abstained from voting or voted contrary to the prevailing opinion. No votes at any Board of Directors meeting may be by proxy or secret ballot, except that secret ballots may be utilized in the election of officers.

Section 7. **Open Meetings**. All meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director and granted by the President. In such case, the President may limit the time any Member may speak.

Section 8. **Telephone Meetings**. Any regular or special meeting of the Board of Directors may be held by telephone conference, at which each participating director and any member in attendance can hear and be heard by all other participating directors.

ARTICLE VII
Officers

Section 1. **Officers**. The officers of the Association shall be a President and Vice President and a Secretary and Treasurer to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person. The initial officers are: Jayne E. Parrish - President; Michael W. Miller - Vice President; and Paul DiStefano - Secretary/ Treasurer.

Section 2. **Election, Term of Office and Vacancies**. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors during a fiscal year. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. **Removal**. Any officer may be removed by a majority vote of the Board of Directors in the sole discretion of the Board and the removal of a director who also is an officer shall automatically act as a removal from such director's position as an officer.

Section 4. **Resignation**. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified in the notice and unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective.

ARTICLE VIII
Duties of Officers

The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as are from time to time specifically conferred or imposed by the Board of Directors.

Section 1. **President**. The President shall be the chief executive officer of the Association and shall:

(a) Act as presiding officer at all meetings of the Members and the Board of Directors.

(b) Call special meetings of the Members and the Board of Directors.

(c) Sign, with the Secretary or Treasurer, if the Board of Directors so requires, all checks, contracts, promissory notes, leases, subleases and other instruments on behalf of the Association, except those which the Board of Directors specifies may be signed by other persons.

(d) Perform all acts and duties usually required of a chief executive to ensure that all orders and resolutions of the Board of Directors are carried out.

(e) Act as an ex-officio member of all committees and render an annual report at the annual meeting of Members.

Section 2. **Vice President**. The Vice President, in the absence or disability of the President, shall exercise the powers and perform the duties of the President. The Vice President also shall assist the President generally, and exercise other powers and perform other duties as shall be prescribed by the directors.

Section 3. **Secretary**. The Secretary shall have the following duties and responsibilities:

(a) Attend all regular and special meetings of the Members and the Board of Directors and keep all records and minutes of proceedings thereof or cause the same to be done.

(b) Have custody of the corporate seal, if any, and affix the same when necessary or required.

(c) Attend to all correspondence on behalf of the Board of Directors, prepare and serve notice of meetings and keep membership books.

(d) Have custody of the minute book of the meetings of the Board of Directors and Members and act as agent for the transfer of the corporate books.

Section 4. **Treasurer**. The Treasurer shall:

(a) Receive monies as shall be paid into the Treasurer's hands for the account of the Association and disburse funds as may be ordered by the Board of Directors, taking proper vouchers for disbursements and be custodian of all contracts, leases, and other important documents of the Association which shall be kept or caused to be kept safely deposited.

(b) Supervise the keeping of accounts of all financial transactions of the Association in books belonging to the Association, and deliver the books to the Treasurer's successor; prepare and distribute to all of the members of the Board of Directors prior to each annual meeting, and whenever else required, a summary of the financial transactions and condition of the Association from the preceding year; make a full and accurate report on matters and business pertaining to the office of Treasurer to the Members at the annual meeting and make all reports required by law.

(c) The Treasurer may have the assistance of an accountant or auditor, who shall be employed by the Association. In the event the Association enters into a management agreement, it shall be proper to delegate any or all of the Treasurer's functions to the management agent as is deemed appropriate by the Board of Directors.

ARTICLE IX
Committees

The Board or Directors shall appoint a Nominating Committee and Architectural Control Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its obligations and privileges.

ARTICLE X
Discipline

Section 1. **Enforcement**. The Board of Directors shall have the power to impose reasonable fines, which shall constitute an automatic and continuing lien upon the Lot of the violating Owner, to preclude contractors, subcontractors, agents and other invitees of an Owner or occupant from Mariners Landing for violation of any duty imposed under the Declaration, these Bylaws or the Rules and Regulations; provided, however, nothing herein shall authorize

the Association or the Board of Directors to limit an Owner's or occupant's ingress and egress to or from the Owner's Lot. In the event that any occupant of a Lot violates the Declaration, these Bylaws, or the Rules and Regulations, and a fine is imposed, the fine shall first be assessed against the occupant residing therein; provided, however, if the fine is not paid by the occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association. The failure of the Board of Directors to enforce any provision of the Declaration or Bylaws shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

Section 2. **Notice**. Prior to imposition of any sanction hereunder, the Board of Directors or its delegate shall serve the accused with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, (c) a period of not less than fourteen (14) days within which the alleged violator may present a written request to the Board of Directors for a hearing; and (d) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge has been requested within ten (10) days of the notice.

Section 3. **Hearing**. If a hearing is requested within the allotted fourteen (14) day period, the hearing shall be held before a committee comprised of at least three (3) members appointed by the Board of Directors who are not officers, directors or employees of the Association, or the spouse, parent, child, brother of sister or an officer, director or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the accused appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

Section 4. **Additional Enforcement Rights**. Notwithstanding anything to the contrary herein contained, the Association may elect to enforce any provisions of the Declaration, these Bylaws, or the Rules and Regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the violator shall pay all costs, including reasonable attorneys' and paralegals' fees actually incurred by the Association.

ARTICLE XI
Fiscal Management

Section 1. **Fiscal Year**. The fiscal year of the Association shall commence upon the first (1st) day of January and conclude on the thirty-first (31st) day of December.

Section 2. **Depositories**. The funds of the Association shall be deposited in such accounts as may be selected by the Board of Directors, including without limitation checking and savings accounts in one (1) or more banks and/or savings and loan associations, Certificates of

Deposit, U.S. Treasury Bills, and money market accounts with an investment firm or firms, all in accordance with resolutions approved by the Board of Directors. The funds shall be used only for lawful purposes of the Association.

Section 3. **Expenses**. The receipts and expenditures of the Association may be credited and charged to accounts as the Board of Directors may determine, in accordance with good accounting practices as set forth in Section 7 below.

Section 4. **Reserve Accounts.** The Association may, but shall not be required to, establish and maintain an adequate reserve account for the periodic maintenance, repair and replacement of the Common Area.

Section 5. **Budget.** The Board of Directors shall adopt a budget for each fiscal year that shall include the estimated funds required to defray the expenses of the Association for the fiscal year and to provide and maintain funds for the accounts established by the Board of Directors, in accordance with good accounting practices as set forth in Section 7 below. The Association shall provide each Member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Member. The copy of the annual budget or notice regarding availability must be provided within fifteen (15) days prior to the beginning of the fiscal year.

Section 6. **Books and Records**. The books, records, and papers of the Association shall be subject to inspection by any Member during ordinary business hours. The Declaration, Articles of Incorporation, and Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies shall be made available for sale at a reasonable price.

Section 7. **Fidelity Bonds**. The Board of Directors may determine that all persons who control or disburse Association funds should furnish adequate fidelity bonds. In such event, the premiums on such bonds, if any, shall be paid by the Association. Such fidelity bonds shall name the Association as an obligee, and shall be written in an amount approved by the Board of Directors.

ARTICLE XII
Miscellaneous

Section 1. **Parliamentary Rules**. Robert's Rules of Order (then current edition) shall govern the conduct of Association proceedings when not in conflict with Florida law, the Articles of Incorporation, the Declaration, or these Bylaws.

Section 2. **Construction**. If there are conflicts between the provisions of Florida law, the Articles of Incorporation, the Declaration, and/or these Bylaws, the provisions of Florida law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

Section 3. **Validity**. If any Bylaw or Rule or Regulation is adjudicated to be invalid, such fact shall not affect the validity of any other Bylaw or Rule or Regulation.

Section 4. **Notices**. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to an Owner or Member, at the address which the Owner or Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of the Owner or Member; or

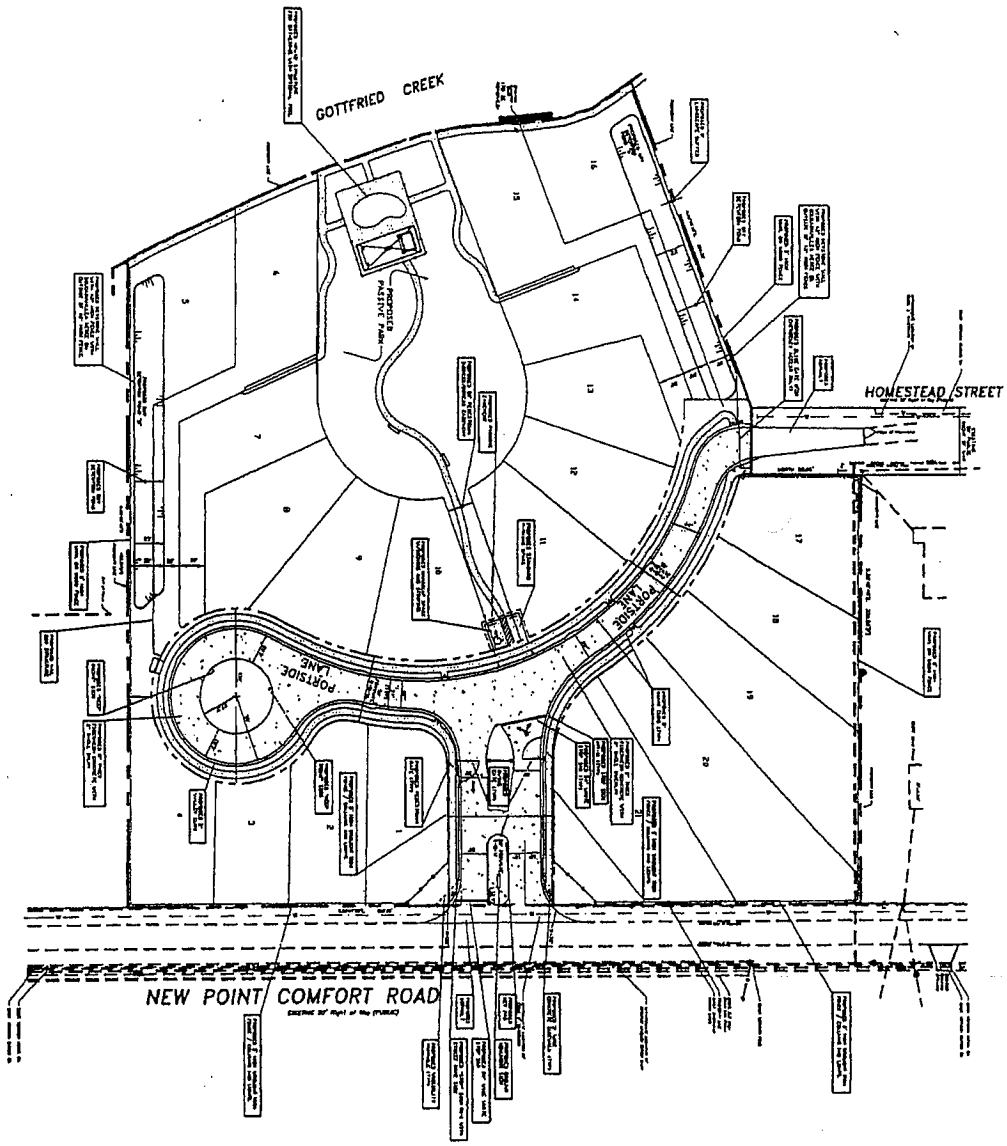
(b) if to the Association, the Board of Directors, or the Manager, at the principal office of the Association or the Manager, if any, or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

Section 5. **Amendments**. Until Turnover, the Developer may amend these Bylaws in its sole and absolute discretion. Prior to Turnover, the Class "A" Members shall have no right to amend these Bylaws. After Turnover, amendments to these Bylaws shall require the affirmative vote of a majority of the Board of Directors. However, the percentage of votes necessary to amend a specific clause shall be not less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege. Amendments to the Bylaws shall be recorded in the Public Records of Charlotte County, Florida.

Section 6. **Rules and Regulations**. The Association, through the Board of Directors, may adopt Rules and Regulations consistent with the rights and duties established by the Declaration. The Rules and Regulations as amended, duly adopted by the Board of Directors, shall by reference be incorporated herein.

Exhibit "D"

Sketch of Survey



OWNER:
ATERFORD NPC, LLC
33 SOUTH TAMIAMI TRAIL
JITE 101
NICE, FL. 34285 (941)441-1760

PROJECT NAME: SEC. 8 TWP. 41S RNG. 20E
MARINERS LANDING
SITE AND STRIPING PLAN

PROJECT NUMBER: 04-1344
SCALE: 1"=40'

NO	DATE	BY	REVISIONS

PER
PROFESSIONAL ENGINEERING RESOURCES, INC.
2048 49th AVE. NORTH FL. PETERSBURG, FLORIDA 33714
CIVIL ENGINEERING PLANNING (727) 576-1267

DRAWING TYPE
■ PRELIMINARY
□ CONSTRUCTION
□ RECORD

DESIGNED BY: PVS
DRAWN BY: PVS
CHECKED BY: PVS
DATE: 5-27-05
APPROVED
PAUL V. SPERANZELLA, PE. 33313

SHEET NUMBER: 4

LEGEND
PROPOSED
EXISTING

CONTRACTOR TO CALL "SUNSHINE" AT 1-800-432-4770, 48 hrs. PRIOR TO ANY EXCAVATION OR CONSTRUCTION AND IDENTIFY UTILITY LOCATIONS.

NORTH
40 20 0 40 80
30 10
GRAPHIC SCALE

SITE DATA

NOTES:

Exhibit "E"

MARINERS LANDING

OWNERS' INSTRUCTIONS FOR

MAINTENANCE AND INSPECTION

OF STORMWATER FACILITY

MARINERS LANDING

OWNERS' INSTRUCTION FOR

MAINTENANCE AND INSPECTION

OF STORM WATER FACILITY

TITLE	PAGE NO.
Storm Drainage Pipes, Catch Basins, Outfall Structures and Sumps	1 - 2
Biological Treatment Pond	3

OWNERS' INSTRUCTIONS FOR MAINTENANCE AND INSPECTION OF STORM DRAINAGE PIPES, CATCH BASINS, OUTFALL STRUCTURES AND SUMPS

Drainage systems should be inspected on a routine basis to ensure they are functioning properly. Inspections can be on an annual or semi-annual basis, but should always be conducted following major storms. Visual inspections of Storm Drainage Pipes, Catch Basins, Outfall Structures and Sumps are highly recommended. It should be stressed that good records should be kept on all maintenance operations to help plan future work and identify facilities requiring attention.

METHODS AND EQUIPMENT FOR CLEANOUT OF STORM DRAINAGE PIPE SYSTEMS

Various types of equipment are available commercially for maintenance of drainage systems. The most frequently used equipment and techniques are listed below:

1. VACUUM PUMP

This device is normally used to remove sediments from sumps and pipes. The equipment for this system is generally mounted on a vehicle. It requires a 200 - 300 gallon (0.757 - 1.36m) holding tank and a vacuum pump that has a 10" (254mm) diameter flexible hose with a serrated metal end for breaking up cake sediment. A two-man crew can clean a catch basin in 5 to 10 minutes. This system can remove stones, bricks, leaves, litter and sediment deposits. Normal working depth is 0 to 20' (0 - 6m).

2. WATERJET SPRAY

This equipment is generally mounted on a self-contained vehicle with a high pressure pump and a 200 - 300 gallon (0.760 - 1.40m) water supply. A 3" (76mm) flexible hose line with a metal nozzle that directs jets of water at a reverse angle, which propels the nozzle forward while blasting debris backwards toward the catch basin. As the hose line is reeled in, the jetting action forces all debris to the catch basin where it is removed by the vacuum pump equipment. Normal length of hose is approximately 200 feet (61m). Because of the energy supplied by the water jet, it should not be used to clean erodible trench walls.

3. FIRE HOSE FLUSHING

This equipment consists of various fittings that can be placed on the end of a fire hose such as rotating nozzles, rotating cutters, etc. When this equipment is dragged through a pipe, it can be effective in removing light material from the pipes.

4. SEWER JET FLUSHERS

Sewer jet flushers are usually truck-mounted and consist of a large water tank of at least 1000 gallons ($3.785m^3$) a triple action water pump capable of producing 1000 psi (6900 KN/m^2) or more pressure, a gasoline motor to run the pump, hose reel large enough for 500 feet (153m) of 1-inch (25mm) inside diameter high pressure hose, and a hydraulic pump to operate the hose reel. In order to clean pipes properly a minimum nozzle pressure of 600 psi (4140 KN/m^2) is required. All material is flushed ahead of the nozzle by spray action. This extremely mobile machine can be used for cleaning areas with light grease problems, sand and gravel infiltration, and for general cleaning.

OWNERS' INSTRUCTIONS FOR

MAINTENANCE AND INSPECTION

OF PERCOLATION PONDS FOR STORM WATER TREATMENT

The entire stormwater system should be inspected on at least a semi-annual basis. This should include a visual inspection of the pond, pond banks, pond bottom, control structures, and discharge pipes. These should be kept free of debris and cleaned on a frequency as required to keep them functional, as designed. Mowing/clearing around the structures may be required to prevent clogging.

The owner of the facility shall inspect the pond bottom periodically after heavy rainfall events to check for persistent ponding or pooling of water. All large debris shall be removed and disposed of elsewhere. If prolonged pending persists, i.e., in excess of 48 hours, the owner shall rake or scarify the surface. If required, the soils in the area of pending shall be removed and replaced with clean sandy, non-cohesive soils.

Sediment sumps, if designed and installed, should have sediment removed as necessary to allow the drainage structure to efficiently remove suspended particles. They should be re-dug to the original specifications, if silted in.

Please check the construction plans and approved permit to see if written reports on monitoring are required to be sent to any reviewing agencies. Written notes should always be kept which describe maintenance activities undertaken during each inspection.

Specific conditions of all permits may require additional maintenance activities above and beyond those outlined above. Please be aware of all permit conditions as issued by regulatory agencies to ensure permit compliance.