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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF HANCOCK CREEK SOUTH CENTER

RECORDED BY
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**DECLARATION
OF COVENANTS, CONDITIONS AND, RESTRICTIONS
OF HANCOCK CREEK SOUTH CENTER**

This Declaration of Covenants, Conditions, and Restrictions of Hancock Creek South Center is made this ~~20th~~ day of April, 1999, by E. C. Stern Enterprises, Inc., a Delaware corporation, hereinafter referred to as "Declarant" or "Developer."

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of parcels of property within the Property made subject to this Declaration and amendments thereto by the recording of this Declaration. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such Property. Declarant has incorporated under the laws of the State of Florida as a non-profit corporation, Hancock Creek South Center Property Owners' Association, Inc., for the purposes of exercising the functions stated above and within this Declaration, which Association is not intended to be a "Condominium Association" as such term is defined and described in the Florida Condominium Act (Chapter 718 of the Florida Statutes).

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

**ARTICLE I.
DEFINITIONS**

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, within or upon a Tract, the maintenance, repair, or replacement of which is the responsibility of the Association. The area of Common Responsibility shall be deemed to include the entrances, medians, signs and signage easements, preserve areas, walkways, drainage easements, and other similarly related improvements.

Section 2. "Association" shall mean and refer to Hancock Creek South Center Property Owners Association, Inc., a Florida not for profit corporation, its successors and assigns.

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Section 3. "Directors" or "Board" shall be the elected body responsible for the administration of the Association.

Section 4. "Bylaws" shall refer to the Bylaws of Hancock Creek South Center Property Owner's Association, Inc.

Section 5. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners and may include, without limitation or obligation, Conservation Areas, drainage easements, surface water management system, signs and signage easements, walkways or entrance areas.

Section 6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, and the Articles of Incorporation and Bylaws of the Association.

Section 7. "Conservation Areas" shall mean those portions of the Common Area which are of special environmental concern and are required to be left and maintained in a natural state. This area shall specifically include, but not be limited to, the Conservation Easement Areas as indicated on the Plat of the Subdivision.

Section 8. "Declarant" or "Developer" shall mean E. C. Stern Enterprises, Inc., a Delaware corporation, its successors and assigns.

Section 9. "Declaration" shall mean the Declaration of Covenants, Conditions, and Restrictions of Hancock Creek South Center.

Section 10. "Tract" shall mean a portion of the Property other than the Common Area intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Subdivision Plat filed in the Public Records of Lee County, Florida at Plat Book 63, Page 85, which is incorporated herein by reference, as the same may be amended from time to time. Where the context indicates or requires, the term Tract includes any structure on the Tract.

Section 11. "Majority" means those eligible votes, Owners, or other groups as the context may indicate totaling, more than fifty (50%) percent of the total eligible number.

Section 12. "Member" shall mean and refer to a person or entity entitled to membership in the Association as provided herein.

Section 13. "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 14. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee.

Section 15. "Mortgagor" shall include the trustor of a deed of trust, as well as a mortgagor.

Section 16. "Owner" or "Tract Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Tract which is part of the Properties, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant.

Section 17. "Property" or "Properties" shall mean and refer to the real property described in Exhibit "A" of this Declaration.

Section 18. "Turnover" or "Turnover Meeting" shall mean the point at which the Tract Owners are entitled to elect the Board of Directors.

Section 19. "Undeveloped Tract" shall mean a tract upon which no structure has been constructed, or, a tract upon which a structure has been constructed, but no certificate of occupancy has been issued by the local governmental authority.

ARTICLE II. PROPERTY RIGHTS AND EASEMENTS

Section 1. Owner's Easement of Enjoyment. Every Owner of a Tract shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Tract, subject to the following rights:

a. The right of the Association to suspend the voting rights of any owner for any period during which any assessment of the Association against that Owner's Tract remains unpaid for more than thirty (30) days after notice.

b. The right of the Association (or Declarant prior to Turnover) to dedicate or transfer all or any part of the Common Areas to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument executed by two-thirds (2/3rds) of the members agreeing to such dedication, or transfer, has been duly recorded.

c. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities, and in aid thereof to mortgage said property; the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

d. The right of the Declarant, with regard to the Properties which may be owned for the purpose of development,, to grant easements in and to the Common Area contained within the respective Properties to any public agency, authority, or utility for such purposes as benefits only the Properties or portions thereof and Owners of Tracts contained therein.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Area and facilities to his or her tenants, and business or social invitees.

Section 3. Owner's Right to Ingress and Egress. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Tract and such right shall be appurtenant to and pass with the title to each Tract.

Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept in or upon any Tract or on the Common Area or any part thereof to increase the rate of insurance on the Properties or any part thereof over what the Association, but for such activity, would pay. Noxious, destructive or offensive activity or any activity constituting an unreasonable source of annoyance, shall not be conducted in or upon any Tract or on the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Tract which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

Section 4. Use of Common Area. No planting or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the Common Area, except in accordance with the initial construction of the improvements located thereon or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the Owners of Tracts may use the property outside the boundaries of their respective Tracts only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

Section 5. Use of Conservation Areas. No planting, excavation, trimming, or alteration of any kind shall be done upon the Conservation Areas. The maintenance of such areas shall be the sole responsibility of the Association. The Association may enter onto a Tract to maintain the Conservation Easement Areas.

Section 6. Rules and Regulations. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, the Area of Common Responsibility, facilities located thereon and the individual Tracts. Copies of such regulations and amendments

thereto shall be furnished by the Association to all Owners prior to the rule's effective date. Such regulations shall be binding upon the owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, canceled, or modified by the Board or by the Association in a regular or special meeting by the vote of the Members holding a majority of the total votes in the Association. The Board shall have the authority to impose reasonable monetary fines and other sanctions, including the suspension of the right to use the Common Area. Monetary fines may be collected by lien and foreclosure, as provided in this Declaration.

Section 7. Declarant's Reserved Easement. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to the Properties and Additional Land for the benefit of Declarant, its successors, and assigns over, under, in, and/or on the Properties, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with the Properties and any other property now owned or which may in the future be owned by Declarant (such other property is hereinafter referred to as Additional Land). The reserved easement shall constitute a burden on the title to the Properties and specifically includes, but is not limited to:

a. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Properties; and the right to tie into any portion of the Properties with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Properties.

b. The right, but not the obligation, to enter into cross easement agreements with owners of adjoining properties.

c. The right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction and sale by Declarant of Tracts in the Properties or in any portion of the Additional Land.

d. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Properties and the Additional Land, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a Quit Claim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

e. The right to alter, replace, relocate and arrange all or any part of the shoreline or waterline as in the sole opinion of Declarant may be required, either for its own reasons or because of the requirements of any governmental agency.

Section 8. Easements for Utilities. There are hereby reserved to the Association blanket easements upon, across, above, and under all property within the Properties for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the properties or any portion thereof, including, but not limited to, gas, water, sanitary, sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television, antenna system, cable television system, or security system which the Association might decide to have installed to serve the properties. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

No trees may be planted or maintained in such a way as to interfere with public utility poles, wiring or drainage, or that may change the direction of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easements. The easement areas of each Tract and all improvements therein shall be maintained continuously by the owner of the Tract, except for those improvements for which a public authority or utility company is responsible.

In addition to any other remedies herein provided, the Declarant, its successors and assigns, or any utility company maintaining such utilities, shall have the right without prior notice to the Tract Owner, to enter the Tract and trim or remove the said tree or shrubbery so interfering. Additional drainage and utility easements, which are likewise so reserved with the Declarant, his heirs, assigns or successors, are set forth in the recorded subdivision plat referenced herein.

Section 9. Fill and Grade of Tracts. All Tracts will be filled in a manner in keeping with the engineered drainage plan of the Subdivision as approved by the South Florida Water Management District. All ditch culverts, if required, will have mitered end sections to be approved by the ARB.

Section 10. Construction and Sale Period. Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of including, but not limited to, business offices, signs and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant and

facilities located in the Common Area, if any, which may be owned by the Association, as models and sales offices.

Declarant may retain the legal title to said land or portion thereof until such time as all Tracts have been sold but notwithstanding any provision hereto, the Declarant hereby covenants that it shall convey said land and portions thereof to the Association, free and clear of all liens and financial encumbrances, not later than sixty (60) days after Declarant's right to annex Additional Land has terminated. This Section may not be amended without the express written consent of the Declarant; provided, however, the rights (contained in this Section shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded or (b) upon the Declarant's recording a written statement that all sales activity has ceased.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is the record owner of a fee or undivided fee interest in any Tract or portion of a Tract that is subject to this Declaration shall be deemed to have a membership in the Association, and shall be governed and controlled by the Articles' of Incorporation and the Bylaws thereof. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership.

Section 2. Initial Control. The affairs of the Association shall be managed by a Board of Directors. The initial Board of Directors shall consist of three (3) Directors, all of whom shall, be appointed by the Declarant. The Declarant shall have the right to designate and appoint the Directors until: (i) twelve (12) months after the Declarant has sold and conveyed one hundred (100%) percent of the Tracts contained in the property, including Tracts in any Additional Land, or (ii) at such earlier time as Declarant may in its discretion determine.

Section 3. Voting. The Association shall have two (2) classes of voting members as follows:

Class A. Class A members shall be all Tract Owners. Tract Owners shall be entitled to vote as follows:

Block 6635 Tract "A"	3 votes
Block 6630 Tract "A"	6 votes
Block 6634 - Future Development	12 votes
Block 6631 Tract "A"	3 votes
Block 6633 Tract "A"	3 votes
Block 6632 Tract "A"	3 votes

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Block 6633 Tract "B"	0 votes
Block 6632 Tract "B"	3 votes
Block 6633 Tract "C"	1 vote

Notwithstanding the foregoing, in the event Block 6634 "Future Development" is subdivided into a single family subdivision, and a separate sub-association is established to govern the single family subdivision, then the Developer shall have the right to require the sub-association to vote all 12 votes and to collect all assessments pertaining to this Tract for the Hancock Creek South Center Property Owners' Association, Inc. Class A members shall be entitled to vote after relinquishment of control by Declarant as provided in Section 2 above. When more than one (1) person holds an interest in any Tract, all such persons shall be members. The vote for such Tract shall be exercised as such members may determine among themselves, but in no event shall more than one vote be cast with respect to any Tract. In the event a Tract is subdivided, the votes for the parent Tract, if any, shall be allocated to the subdivided parcels based upon the acreage of the subdivided parcels.

Class B. The Class B member shall be the Declarant. Class B shall be the sole Class entitled to vote until Declarant relinquishes control as provided in Section 2 above. Upon relinquishment of control by the Declarant, the Class B membership shall cease and be converted to Class A membership at the rate of three (3) votes for each Tract owned by Declarant.

ARTICLE IV. COMMON AREAS WHICH CONSTITUTE CONSERVATION AREAS

Section 1. Background. Pursuant to the requirements of local and state law and regulations, certain portions of the common area are to be deemed "Conservation Areas". Conservation Areas are as depicted on the Plat of the Subdivision and are areas which are to be left in a natural state.

Section 2. Maintenance. The Association bears the sole and perpetual responsibility to maintain the conservation areas including the trimming of any mangroves. The Association will maintain such conservation areas in accordance with the requirements of the Florida Department of Environmental Regulation.

Section 3. Alteration. The conservation areas may not be altered from their natural state without permission and approval of the necessary governmental and regulatory agencies.

Section 4. Uses. Activities which are prohibited within the conservation areas include but are not limited to:

- a. construction or the placing of buildings on or above the ground;

- b. dumping or placing soil or other substances such as trash in the conservation areas;
- c. removal, destruction, trimming, or alteration of trees, shrubs, mangroves, or other vegetation with the exception of exotic vegetation removal;
- d. excavation, dredging, or removal of soil material;
- e. diking or fencing;
- f. any other activities detrimental to drainage, flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation.

Section 5. Conservation Easement. The Declarant for itself and for the Association reserves the right to grant conservation easements to any appropriate state or federal agencies if doing so would not violate the conditions and requirements set forth above.

ARTICLE V. MAINTENANCE; RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon including furnishings and equipment related thereto, if any, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws. The responsibilities of the Association shall include operation, control and maintenance of all roads not maintained by Lee County and the surface water management systems within or upon the Properties.

The maintenance of the Common Area shall be deemed to include, but not be limited to, maintenance, repair, and replacement, subject to the insurance and casualty loss provisions contained herein, at the Association's sole cost and expense, of all trees, fences, shrubs, grass, parking spaces, drainage easements, conservation and preservation areas, walks, signs, entrance wall and other improvements situated upon the Common Areas.

Section 2. Area of Common Responsibility. The Association, subject to the rights of the Owners, shall maintain and keep in good repair the Area of Common Responsibility, which responsibility shall be deemed to include the Common Area and the maintenance and repair of such utility lines, pipes, wires, glass, conduits, and systems which are a part of the Common Area and which a public or private utility company has not already agreed to maintain. The Association shall also maintain and repair the surface water management system, entrance wall, sign, median and other similarly related improvements to the entrance to the property.

Section 3. 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 operation of the Properties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, and other common services to each Tract.

Section 4. Personal Property and Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real property or personal property, leasehold, or other property interests conveyed to it by the Declarant which are located within the Property subject to this Declaration or within any Additional Land which may be annexed in accordance with this Declaration.

Section 5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 6. Enforcement. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Tract or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the Bylaws, these rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Tract owner fifteen (15) days written notice of its intent to take such actions. All costs of such abatement or removal including reasonable attorney's fees actually incurred shall be assessed against the violating Tract Owner and shall be collected as provided for herein for the collection of assessments.

Section 7. Right of Entry. The Association shall have the right, in addition to and not in limitation of all of the other rights it may have, to enter onto Tracts for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties and, except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the owner or occupant.

Section 8. Rights upon Owner's Failure to Maintain. In the event that the Board of Directors of the Association, by a two-thirds (2/3rds) vote, determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance,

repair, or replacement of items for which he or she is responsible hereunder; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repair, or replacement, deemed necessary. The Owner shall have fifteen (15) days within which to complete the maintenance, repair, or replacement or in the event that such maintenance, repair, or replacement is not capable of completion within the fifteen (15) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Tract and collected as provided herein for the collection of assessments.

ARTICLE VI. MAINTENANCE; OBLIGATIONS OF OWNERS

All maintenance of the Tract and all structures, landscaping, and other improvements thereon unless specifically identified as being the responsibility of the Association shall be the responsibility of the Owner. All Owners shall maintain their Tract and all such improvements in a manner consistent with the development standards and this Declaration.

ARTICLE VII. ASSESSMENTS

Section 1. Purpose of Assessments. The assessments levied by the Association shall be used for the general purposes of promoting the health, safety and welfare of the Members of the Association, common benefit and enjoyment of the Owners, and, in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Tracts situated within the Property, all of which may include, but not be limited to, performance of the following duties and the payment of:

- a. Improvements, maintenance, and repair of the Area of Common Responsibility;
- b. Water, electrical lighting, and other necessary utility services, if any, for the Area of Common Responsibility;
- c. Fire and other hazard insurance covering the full insurable replacement value of the Common Areas with extended coverage;

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d. Taxes levied on real property constituting the common areas and on personal property of the Association;

e. Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees, or tenants of any Owner arising out of their occupation and/or use of the Area of Common Responsibility. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association;

f. Workman's compensation insurance to the extent necessary to comply with the Florida Statutes, and any other insurance deemed necessary by the Board of Directors of the Association.

g. Acquisition of equipment for the Area of Common Responsibility as may be determined by this Association, including without limitation, all equipment and personnel necessary or proper for use of the Area of Common Responsibility;

h. Operation, repair, and maintenance of the roads, if the same is not the responsibility of City of Cape Coral;

i. Operation, repair, and maintenance of the surface water management system of the Properties, including but not limited to, drainage, utility, and maintenance easements and retention areas, as described on the subdivision plat;

j. Operation, repair, and maintenance of entranceway and signs;

k. Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or By-Laws, or which shall be necessary or proper in the opinion of the Board of Directors of the Association for the operation of the Properties, for the benefit of the Owners or for the enforcement of these restrictions.

Section 2. Creation of the Lien and Personal Obligation of Assessments. Except as hereinafter more fully provided, the Declarant hereby covenants for each Tract within the properties and each Owner of a Tract is hereby deemed to covenant by acceptance of his deed for such Tract, whether or not it shall be so expressed in his deed, to pay to the Association: (i) annual assessments, (ii) special assessments for capital improvements and other expenditures that the Association deems appropriate, such assessments to be fixed, established, and collected from time to time as hereinafter provided, and (iii) specific assessments against any particular Tract which are established pursuant to this Declaration including but not limited to fines as may be imposed in accordance with other provisions of this Declaration.

All such assessments, together with interest at the highest rate allowable under the laws of the State of Florida, costs, and reasonable attorney fees, shall be a continuing lien upon the Tract against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the joint and several personal obligation of each person who is the Owner of such Tract at the time of the assessment fell due. Each Owner shall be liable for any assessment coming due while he or she is the Owner of the Tract and his or her Grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include without limitation acceleration of the annual assessments for delinquents.

Section 3. Annual Assessments. The Annual Assessments provided for herein shall commence as to all Tracts on the first day of the calendar month following the conveyance of any such Tract by the Developer "Commencement Date". For the year of purchase, the annual assessment shall be prorated and paid in advance; thereafter, it shall be paid annually, in full and in advance, except that the Assessment Period or schedule may be changed from time to time at the discretion of the Board of Directors. At the time of initial conveyance from the Declarant to an Owner, an initial capital contribution funding fee of \$104.32 per acre (\$.0024 per square foot), or such other amount as Declarant deems appropriate, shall be charged. Until such time as Declarant relinquishes control of the Association as provided in this Declaration the initial and subsequent annual assessments shall be established by the Declarant. Both annual and special assessments shall be fixed at a uniform square foot rate for all Tracts, based upon the total square footage of each Tract, as related to the total square footage of all Tracts in the Property, except that any wetland easement or water conservation easement area shall not be included in this calculation. Declarant shall not be required to pay any such assessments however, the Declarant shall pay the difference of the cost between the sum of annual assessments collected from the Members and the actual costs of operation of the Association. In the event of an increase in the actual cost of the Association, the Declarant may increase the annual assessments prior to its relinquishment of control of the Association. After Declarant relinquishes its control of the Association, the Declarant shall not be obligated to pay any annual or special assessments on any undeveloped Tracts which it owns in its name. Notwithstanding any provision that may be to the contrary in this Declaration, the Declarant may at any time commence paying assessments as to Tracts that it owns and thereby automatically terminate its obligation to fund deficits, but at any time thereafter the Declarant may again elect to follow the procedures specified, in the three preceding sentences.

Section 4. Special/Specific Assessments. In addition to the Annual Assessments authorized by Section 3 hereof, the Board may levy in any Assessment Year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Area of Common Responsibility, including the necessary fixtures and personal property related thereto, or for any other purpose deemed appropriate by the Association. The Board may levy a Specific Assessment against any Owner to reimburse the

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Association for costs incurred in bringing the Owner and his or her Tract into compliance with the provisions of the Declaration, the Amendments thereto, the Articles, the Bylaws, and the Association Rules and Regulations. The due date of any Assessment under this Article shall be fixed in a resolution authorizing such assessment. The Declarant shall not be obligated to pay a Special Assessment levied on any undeveloped Tract.

Section 5. Annual Assessment/Computation by Board of Directors. After Turnover, it shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting, to prepare a budget covering the estimated costs of operating the Association during the coming year which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Tract for the following year to be delivered to each Member at least thirty (30) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the total Association Members or the Declarant (provided the Declarant still has the option to unilaterally subject additional property to this Declaration). Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

The Board, shall prepare a roster of the Tracts and assessments applicable thereto which shall be kept in the office of the Association and which shall be open for inspection for any owner. The Association shall, upon demand at any time, furnish to any owner liable for any assessment, a certificate in writing signed by an officer of the Association setting forth whether any such assessment has been paid. Said certificate duly acknowledged by an officer of the Association shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6. Effect of Non-Payment of Assessment, Remedies of Association. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for more than ten (10) days shall incur a late charge in an amount as the Board may determine from time to time. The Association shall cause a notice of delinquency to be given to any Member who has not paid an assessment within ten (10) days following the due date. If the assessment has not been paid within thirty (30) days, a lien as herein provided for shall attach and in addition the lien shall include the late charge, interest on the principal amount due plus the late charge at the maximum allowable rate by law from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event the assessment remains unpaid after sixty (60) days, the Association may as the Board shall determine institute suit to collect such amounts or to foreclose its Lien. Each owner, by his or her acceptance of deed to a Tract, vests in the Association or its agents, the right and power to bring all actions against him or her personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this article shall be in favor of the Association and shall be

for the benefit of all other Owners. The power to bid on the Tract at any foreclosure sale or to acquire, hold, lease, mortgage and convey the same, shall be held by the Association acting on behalf of the Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, the abandonment of his or her Tract.

Section 7. Subordination of the Lien to First Mortgages. Subject to any law or regulation to the contrary, the lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The sale or transfer of any Tract pursuant to a mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such foreclosure sale. No such foreclosure sale shall relieve such Tract from liability for any assessments thereafter becoming due or from the lien thereof.

Section 8. Property Exempt from Assessments. All properties conveyed or transferred (by deed, dedication, grant of easement, or otherwise) to and accepted by a local, state, or federal public or regulatory authority are fully exempt from the assessments created herein.

ARTICLE VIII. ARCHITECTURAL REVIEW BOARD

Section 1. Members of Committee. The Architectural Review Board, sometimes referred to in this Declaration as the ARB, shall consist of three (3) members, except that the Declarant reserves the right to fulfill the duties of the ARB until such time as the Tract Owners have elected the Board of Directors or such earlier time as Declarant may designate. Thereafter, each new member of the ARB shall be appointed by the Board of Directors and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the ARB may be removed at any time without cause. The Board of Directors shall have the right to appoint and remove all members of the ARB. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Review Board. This Article may not be amended without the Declarant's consent, so long as the Declarant owns any land subject to this Declaration or so long as Declarant has the right to annex any land to this Declaration. No construction, which term shall include within its definition staking, clearing, excavating, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Section, until the requirements thereof have been fully met, and until the approval of the ARB has been obtained.

Section 2. Review of Proposed Construction. No new structure or building or site construction, and no modifications, additions, or alterations to existing structures, shall commence or be erected until the same shall have been submitted and approved in writing by the ARB. The ARB shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the Properties as a whole, and

that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The ARB may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARB may also issue rules or guidelines setting forth procedures for the submission of plans for approval. The ARB may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARB of all required plans and specifications, the ARB may postpone review of any plans submitted, for approval. The ARB shall have thirty (30) days after receipt of all required materials to approve or reject any such plans, and if not rejected within such 30-day period, said plans shall be deemed approved. The ARB shall also specify a time limitation for the completion of any work approved under this Article. All construction, changes, and alterations shall also be subject to all applicable permit requirements, and to all applicable governmental laws, statutes, ordinances, rules, regulations, orders, and decrees. Final written approval of the ARB must be obtained prior to making application for a building permit. Any decision of the ARB may be appealed to the Board within fifteen (15) days from the date of rendition of the decision of the ARB pursuant to procedures established by the Board.

Section 3. Meetings of the ARB. The ARB shall meet from time to time as necessary to perform its duties hereunder. The ARB may from time to time, by resolution unanimously adopted in writing, designate an ARB representative who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARB, except the granting of variances pursuant to Section 8 hereof. In the absence of such designation, the vote of any two (2) members of the ARB shall constitute an act of the ARB.

Section 4. No Waiver of Future Approvals. The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whenever subsequently or additionally submitted for approval or consent.

Section 5. Compensation of Members. The members of the ARB shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder. The ARB, however, shall have the power to engage the services of professionals for compensation for purposes of aiding the ARB in carrying out its functions. All expenditures of the ARB are subject to the prior written approval of the Board of Directors.

Section 6. Noncompliance. In the event any work for which approved plans are required under this Article is not completed in substantial compliance with said approved plans, the ARB or its duly authorized representatives shall notify the Applicant in writing of such noncompliance

specifying the particulars of noncompliance and requiring the Applicant to remedy the same within thirty (30) days. If, upon the expiration of thirty (30) days from the date of such notification, the Applicant shall have failed to remedy such noncompliance, the ARB shall notify the Board in writing of such failure. The Board shall then determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the applicant does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying improvements or remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant to the Association, the Board shall levy a Special Assessment for noncompliance against such Applicant's Tract for reimbursement.

Section 7. Non-Liability of ARB Members. Neither the ARB nor any member thereof, nor its duly authorized ARB representative, shall be liable to the Association or any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance or non-performance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall be liable therefore. The ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Properties. The ARB shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 8. Variance. The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require. Such variance must be evidenced in writing which must be signed by at least two (2) members of the ARB. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Tract, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

Section 9. Declarant's Exemption. The Declarant shall be exempt from the provisions hereof with respect to alterations and additions desired to be effected by Declarant and shall not

be obligated to obtain ARB approval for any construction or changes in construction which the Declarant may elect to make at any time.

Section 10. Attorney's Fees. For all purposes necessary to enforce this Article, the Association shall be entitled to collect reasonable attorneys' fees, court costs and other expenses against the Owner of a Tract, whether or not litigation is instituted, and the Board may assess such amounts in the form of a Special Assessment for noncompliance.

Section 11. Land Use Restrictions. In order to maintain the standards of community design and environmental protection which Declarant has set for the Properties and to ensure a degree of uniformity and compatibility for the mutual benefit of the property Owners therein, the following Land Use Restrictions are hereby adopted for the achievement of the stated goals. In particular, the philosophy of development includes the ability to maintain an aesthetically pleasing atmosphere throughout the community and the preservation of aesthetic qualities alone shall be sufficient to trigger the enforcement provisions set forth herein. Essential to the development plan are the preservation and encouragement of the lush tropical vegetation native to Southwest Florida which is deemed necessary and desirable to achieve the aesthetic qualities sought.

a. **Use.** All Tracts shall be used, improved and devoted exclusively to commercial, multi-family, single family, and accessory uses permitted by the final Development Plan, as the same may from time to time be amended.

b. **Utilities.** All telephone, electric and cablevision wiring and all water transmission and sewer collection lines shall be underground from the transmission cable/lines located within the platted utility easements to the location of any improvements constructed on the Tracts to be served by such utilities.

c. **Signs.** Advertising signs shall be restricted to advertising only the use conducted on the Tract or the products produced and sold thereon by the respective Owner. No sign, advertisement or notice of any type or nature whatsoever shall be erected or displayed upon any Tract or the Common Properties within the Site, except where express prior written approval of the size, shape, content and location thereof has been obtained from the Board of Directors, which approval may not be unreasonably withheld; provided, however, the Developer and its construction lender, if any, shall be permitted to post and display advertising signs on the Site. All signs shall be maintained in good repair.

d. **Garbage and Trash Containers.** All garbage and trash containers must be placed and maintained so as to render the same and the contents thereof hidden from view from streets and adjoining Tracts and properties. No garbage or trash shall be placed anywhere except in containers as aforesaid.

e. **Structures.** No building, fence, wall, shed or other structure of any type or nature shall be commenced erected or maintained on the Site, nor shall any exterior addition to or

change, or alteration therein or thereon (including awnings and shutters) be made unless and until the plans and specifications showing the nature, kind, shape, type, materials and location of the same shall have been submitted to and approved in writing by the Board of Directors. No Owner shall be permitted to make any change or modification to the exterior walls of his Tract (including painting of the same) nor shall any Owner be permitted to materially alter or change the landscaping or grading within his Tract without the prior written consent of the Board of Directors.

f. Visibility of Street Intersection. No obstruction to visibility at street intersections shall be permitted. The Board of Directors reserves the right to adopt additional restrictions concerning the height and type of trees and shrubs within any of the Tracts.

g. Compliance. It shall be the responsibility of each Owner, and their authorized employees, invitees, guests and tenants, to conform and abide by the rules and regulations in regard to the use of the Site which may be adopted in writing from time to time by the Board of Directors of the Association, and to see that all persons using an Owner's Tract by, through and under him to do likewise.

h. Compliance Inspections. Owners shall allow the Board of Directors or the agents and employees of the Association to enter the exterior portion of any Tract for the purpose of maintenances, inspection and repair, or in the case of emergency, for any purpose, or to determine compliance with this Declaration.

i. Amendments and Modifications. The Board of Directors may from time to time adopt rules or amend previously adopted rules and regulations governing the details of the maintenance and control of the Tracts, and any facilities or services made available to the Owners. A copy of the Rules and Regulations adopted from time to time as herein provided shall, from time to time, be posted in a conspicuous place.

j. Violation. Upon violation of any of the Rules or Regulations adopted as herein provided, or upon violations of any of the provisions of this Declaration of owner or his authorized employees, invitees, tenants, or guests, the Association or any Owner may bring an action for specific performance, declaratory decree or injunction. The successful party may recover costs and attorneys' fees in such suit.

k. Additional Rules and Regulations. The Developer, until it conveys the Common Properties, and thereafter the Board of Directors of the Association, may establish such additional rules and regulations as may be deemed for the best interests of the Association and its Members for purposes of enforcing the provisions of this Article.

l. Nuisances. No business shall be allowed upon a Tract or portion thereof nor shall any use or practice be permitted which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Common Properties by Owners or their

representatives All parts of a Tract shall be kept in clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist. No use shall be made of any Tract or of the Common Properties which would increase the rate of insurance upon the Properties.

m. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of a Tract or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Properties shall be observed.

n. Common Properties. The Common Properties shall be used only for the purpose for which they are intended to be used in the furnishing of services and facilities for the enjoyment of the Tracts.

ARTICLE IX. LANDSCAPING REQUIREMENTS

The landscaping design requirements for the Properties are established to maintain compatibility throughout the property by preserving the natural character of the property and ensure that new landscape plantings are functional are well suited to their location.

These landscape guidelines have been prepared as an aid to each Tract Owner in preparing the landscape plan. It is essential that close attention be paid to the protection and enhancement of as much of the natural setting as possible, preserving the best of the site's botanic and scenic features, conserving ground forms and native vegetation plus the development of a harmonious residence, pleasant paths of movement and attractive site use areas.

The Tract Owner, while preserving the landscape integrity of the property, may add an individual touch to the Tract as long as such additions are in conformity with the requirements and spirit of the protective covenants.

The major functions for which landscaping is to be used include:

1. Architectural: Privacy control, screening objectionable views and defining paths of movement;
2. Engineering: Erosion control, glare reduction and noise control;
3. Climate Control: Heat reduction (shade) and wind protection; and
4. Aesthetic Uses: Maintaining property visual continuity through the enhancement and complementing of architecture using background and accent plantings.

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These functions are to be derived from the careful selection and placement of plant materials. The Tract Owner is responsible for the providing and maintaining of landscaping to the street pavement.

Section 1. Plant Materials. The plant material outlined in the established landscape plant palette attached hereto and incorporated herein as Exhibit "B", is suggested with respect to soil type, sun or shade tolerance and specific purpose. Plant quality, measurements, branching and grading shall meet or exceed Standards of Florida No. 1, as presented in "Grades and Standards for Nursery Plants," Florida Department of Agriculture.

Section 2. Native Vegetation. The preservation and utilization of native trees and shrubbery is strongly encouraged and adjustment of these standards for such plant material will be permitted if incorporated and compatible with the overall landscape plan.

Section 3. Irrigation. A complete, underground automatic landscape irrigation system for all landscape areas shall be provided as part of the overall landscape plan. If provided, this irrigation system shall be designed to provide full ground coverage and to meet the peak moisture demand of all landscape material. However, this will not relieve any owner from their obligations herein contained. The irrigation system shall also be designed and operated to prevent or minimize run-off and discharge of irrigation water onto roadways, driveways, native plant stands, adjacent properties, and any are not under control of the user. The system shall be maintained so as to be in optimum proper working order. The irrigation system shall provide protection to native planting stands and irrigation water shall be directed away from such areas to avoid plant stress and decline.

Section 4. Landscape Plan. Prior to occupancy, a Tract must be landscaped according to a plan submitted and approved by the ARB. Each Tract Owner must submit a landscape plan to the ARB depicting the location, type, and size of all plants as well as all other substantial elements of the landscaping including objects and land contour. All landscaping shall be installed according to accepted commercial Planting procedures. Adequately sized planting beds with fertile soil (free of limerock, pebbles or other construction debris) shall be used. Tract Owners shall be responsible for the maintenance of the landscaping of their own sites. Plants shall be maintained in a healthy and growing condition or replaced with equal size and species material. Tract Owners are also responsible for the removal of all exotic vegetation on the site including such species as Brazilian Pepper, Melaleuca, and Australian Pines. It is imperative that these landscape guidelines be followed to maintain visual continuity throughout the Properties. This continuity can be achieved through careful landscape planting and by avoiding the installation of plant material that is out of character with the plant palette described in Exhibit "B".

ARTICLE X.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT PROVISIONS

Hancock Creek South Center Property Owner's Association, Inc., a Florida non-profit corporation, has been formed by Declarant in compliance with Chapter 617, Florida Statutes. The purpose of said non-profit corporation, in addition to otherwise enforcing the covenant and conditions herein, is to operate and maintain common property, specifically the surface water management system as per permits granted by the South Florida Water Management District within the Exhibit "A" property, including all lakes, retention areas, culverts, and related appurtenances. In connection with the requirements of said Agency, Association is specifically granted the following additional powers by Declarant:

- a. To own and convey property;
- b. To establish such rules and regulations as it may deem appropriate or as may be required by the South Florida Water Management District;
- c. To sue and be sued;
- d. To assess members and enforce said assessments relating to operation and maintenance of common property;
- e. To contract for services for operation and maintenance, if the said corporation deems outside services appropriate and feasible; and,
- f. In the event of dissolution of said corporation, said corporation shall have the power to dedicate the operation and maintenance of the common areas, and specifically the surface water management system, to an appropriate agency of local government for purposes of operating and maintaining said common property in accordance with South Florida Water Management District requirements, or if not accepted by such local agency, then the surface water management system must be dedicated to a successor or similar non-profit corporation.

Any amendment affecting the surface water management system contained within the Exhibit "A" property, including the water management portions of the common areas, must first be submitted for prior approval to South Florida Water Management District.

ARTICLE XI. GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or any Member thereof for a period of twenty-five (25) years from the date hereof. Thereafter they shall be automatically extended for additional periods of ten (10) years unless an instrument in writing, signed by two-thirds of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. Covenants Run with the Land. All restrictions, reservations, covenants, conditions, and easements contained in this Declaration shall constitute covenants running with the land; and all grantees, devisees, or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through, or under such persons agree to be bound by the provisions of (a) this Declaration of Covenants, Conditions, and Restrictions and (b) the Articles of Incorporation and By-Laws of the Association which will be the entity responsible for the operation and maintenance of the common area.

Section 3. Enforcement. Declarant, the Association, or any Owner, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, and shall be entitled to recover all expenses, costs and attorney's fees related thereto. Failure by the Declarant, the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Amendments. The Declarant shall have the unrestricted right to amend this Declaration until such time as Declarant relinquishes control as provided in Article III, Section 2, of this Declaration. Thereafter this Declaration may be amended by duly recording an instrument executed and acknowledged by two-thirds (2/3rds) of the then Owners; provided, however that no amendments shall be adopted without the consent and approval of the Declarant so long as it shall own one or more Tracts in the Properties, and further provided, that any amendment which would affect the surface water management system, including the water management portions of the common areas, must have the prior approval of the South Florida Water Management District.

Section 6. Subordination. No breach of any of the conditions herein contained or re-entry by reason of such breach shall defect or render invalid the lien of any mortgage made in good faith and for value as to the properties or any Tract therein; provided, however, that such conditions shall be binding upon any Owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

Section 7. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good

faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors, liability insurance to fund this obligation, if such insurance is reasonably available.

Section 8. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 20 day of April, 1999.

Thomas H. Gundersen
Witness

Thomas H. Gundersen
Printed Name

Jean M. Adams
Witness

JOAN M. ADAMS
Printed Name

E. C. STERN ENTERPRISES, INC.,
a Delaware corporation

By: Edward H. Stern
Edward H. Stern, President

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STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged to before me by Edward H. Stern, as President of E.C. Stern Enterprises, Inc., on behalf of said corporation. He is personally known to me or has produced a _____ as identification and he has taken an oath.

SWORN AND SUBSCRIBED TO before me, this 20 day of April, 1999.

Thomas H. Gunderson
Notary Public

My Commission expires:

Printed Name



Thomas H. Gunderson
MY COMMISSION # CCS34138 EXPIRES
March 24, 2000
BONDED THRU TROY FAIR INSURANCE, INC.

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LEGAL DESCRIPTION

EXHIBIT "A"

A PARCEL OF LAND LOCATED IN SECTIONS 4 & 5, TOWNSHIP 44 SOUTH, RANGE 24 EAST, CITY OF CAPE CORAL, LEE COUNTY, FLORIDA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 4; THENCE N05°13'29"W ALONG THE WESTERLY LINE OF SAID SECTION 4 FOR 40.19 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF PONDELLA ROAD (80 FEET WIDE) AND THE POINT OF BEGINNING; THENCE CONTINUE N05°13'29"W ALONG SAID WESTERLY LINE FOR 1339.55 FEET TO THE SOUTHEAST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 1943, PAGE 3249; THENCE S84°46'31"W FOR 221.32 FEET; THENCE N89°24'30"W FOR 360.00 FEET TO THE WESTERLY LINE OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 3, PAGE 238; THENCE N00°35'30"E ALONG THE WESTERLY LINE OF SAID PARCEL FOR 1229.26 FEET TO A NON-TANGENT POINT OF CURVATURE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF PINE ISLAND ROAD (S.R. 78), ALSO BEING THE SOUTHWEST CORNER OF RIGHT-OF-WAY TAKE PARCEL 116 RECORDED IN OFFICIAL RECORDS BOOK 2360, PAGE 1201; THENCE NORTHEASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHWEST (RADIUS = 11,703.00 FEET, INTERIOR ANGLE = 02°41'11", CHORD BEARING AND DISTANCE = N63°20'30"E, 548.68 FEET) FOR 548.73 FEET TO A POINT OF TANGENCY; THENCE N61°59'54"E FOR 599.41 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF ORCHID ROAD (50 FEET WIDE) AS RECORDED IN LEE COUNTY COMMISSIONERS MINUTES BOOK 12, PAGES 357 & 358, ALSO BEING THE SOUTHEAST CORNER OF AFORESAID RIGHT-OF-WAY TAKE PARCEL 116; THENCE S05°04'57"E LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE OF S.R. 78 ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF ORCHID ROAD FOR 414.42 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF AFORESAID SECTION 4; THENCE S05°05'00"E FOR 703.91 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ORCHID ROAD; THENCE S89°49'01"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 708.88 FEET TO A POINT ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF AFORESAID SECTION 4; THENCE S04°56'32"E ALONG SAID EAST LINE FOR 653.97 FEET TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE S89°47'02"E ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4 FOR 657.09 FEET TO THE NORTHEAST CORNER OF SAID FRACTION; THENCE S04°48'04"E ALONG THE EAST LINE OF SAID FRACTION FOR 679.30 FEET TO THE SOUTHEAST CORNER OF SAID FRACTION; THENCE N89°45'02"W ALONG THE SOUTH LINE OF SAID FRACTION FOR 1310.88 FEET TO THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4; THENCE S05°05'00"E ALONG THE EAST LINE OF SAID FRACTION FOR 638.66 FEET TO THE AFORESAID NORTHERLY RIGHT-OF-WAY LINE OF PONDELLA ROAD (80 FEET WIDE); THENCE N89°43'01"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR 653.90 FEET TO THE POINT OF BEGINNING.

SUBJECT TO A 60 FEET WIDE LEE COUNTY ELECTRIC CO-OPERATIVE, INC. RIGHT-OF-WAY EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 309, PAGE 678 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND BEING 30 FEET EACH SIDE OF THE WEST LINE OF SECTION 4.

BEARINGS BASED ON THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 4 BEING N05°13'29"W PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP OF STATE ROAD 78 (PINE ISLAND ROAD), SECTION 12060-2519, DATED 3-25-91.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF AFORESAID SECTION 4, TOWNSHIP 44 SOUTH, RANGE 24 EAST; THENCE S89°50'59"E ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER FOR 610.17 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF ORCHID ROAD (50 FEET WIDE); THENCE S05°05'00"E ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 703.91 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ORCHID ROAD AND THE POINT OF BEGINNING; THENCE S89°49'01"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 708.88 FEET TO A POINT ON THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF AFORESAID SECTION 4; THENCE S04°56'32"E ALONG SAID EASTERLY LINE FOR 50.20 FEET; THENCE N89°49'01"W, 50 FEET SOUTH OF AND PARALLEL TO SAID SOUTHERLY RIGHT-OF-WAY LINE OF ORCHID ROAD FOR 708.76 FEET; THENCE N05°05'00"W FOR 50.21 FEET TO THE POINT OF BEGINNING. CONTAINING 0.81 ACRES MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

083124 PG1557

EXHIBIT "B"
Hancock Creek South Center
Suggested Landscape Plant Palette

Trees:

<u>Common Name</u>	<u>Botanical Name</u>	<u>Overall Height</u>	<u>Diameter</u>
Buttonwood	Conocarpus Erectus	8' - 10'	4' - 6'
Mahogany	Swietenia Mohagany	8' - 16'	4' 10'
Slash Pine	Pinus Elliottii	8' - 12'	3' - 6'
Wax Myrtle	Myrica Cerifera	8' - 10'	4' - 6'

Shrubs:

Bougainvillea	Bougainvillea Spp.	5' O.C.
Silver Buttonwood	Conocarpus Erectus	
	Var. Sericeus	3' O.C.
Coco Plum	Chrysobalanus Icaci	3' O.C.
Croton	Codiaeum Variegatum	3' O.C.
Varnish Leaf	Dodanea Viscosa	3' O.C.
Oleander	Nerium Oleander	5' O.C.
Florida Privet	Forestiera Segregata	3' O.C.
Rapeanea	Myrsine Guianensis	3' O.C.
Scarlet Bush	Hamelia Patens	3' O.C.
Silver Thorne	Eleagnus Patens	5' O.C.
Wax Myrtle	Myrica Cerifera	3' O.C.

0R3124 Pg1558

**JOINDER AND CONSENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF HANCOCK CREEK SOUTH CENTER**

The undersigned Owners of a portion of the real property described on Exhibit "A" of the foregoing Declaration of Covenants, Conditions and Restrictions of Hancock Creek South Center ("Declaration") hereby join the Declaration to submit their property to the Declaration and agree to be bound by the Declaration.

Witnesses:


Witness Signature

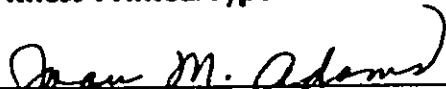
Thomas H. Guadagnoli
Witness Printed/Typed Name


Witness Signature


JOAN M. ADAMS
Witness Printed/Typed Name

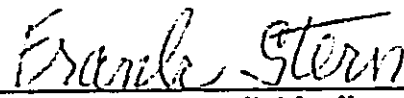

Witness Signature

Thomas H. Guadagnoli
Witness Printed/Typed Name


Witness Signature

JOAN M. ADAMS
Witness Printed/Typed Name

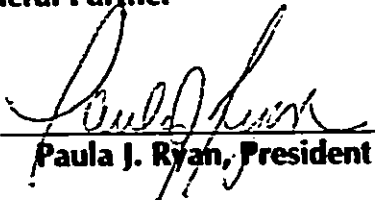

EDWARD H. STERN, Individually


FRANK STERN, Individually

083124 P61559

CROSSINGS AT CAPE CORAL, LTD., a
Florida limited partnership

By: WHITE OAK ASSOCIATES II, INC.,
a Florida corporation, Managing
General Partner

By: 
Paula J. Ryan, President


Witness Signature

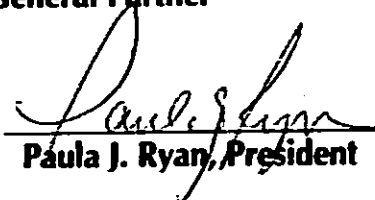
Shelly Parson
Witness Printed/Typed Name


Witness Signature

Tikel R. Wedges
Witness Printed/Typed Name

CROSSINGS AT CAPE CORAL II, LTD., a
Florida limited partnership

By: WHITE OAK CAPE CORAL, INC.,
a Florida corporation, Managing
General Partner

By: 
Paula J. Ryan, President


Witness Signature

Shelly Parson
Witness Printed/Typed Name


Witness Signature

Tikel Wedges
Witness Printed/Typed Name

OR3124 Pg. 1560

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 20 day of April, 1999 by **EDWARD H. STERN, Individually**, who is personally known to me or who has produced _____ as identification.

Thomas H. Gunderson
Notary Public

My commission expires: _____



Thomas H. Gunderson Commission No.
MY COMMISSION # CCS34138 EXPIRES
March 24, 2000
BONDED THRU TROY FARN INSURANCE, INC.

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 20 day of April, 1999 by **FRANK STERN**, who is personally known to me or who has produced _____ as identification.



Thomas H. Gunderson
MY COMMISSION # CCS34138 EXPIRES
March 24, 2000
BONDED THRU TROY FARN INSURANCE, INC.

Thomas H. Gunderson
Notary Public

My commission expires: _____

Commission No. _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 27 day of May, 1999 by **Paula J. Ryan, as President of WHITE OAK ASSOCIATES II INC., a Florida corporation, Managing General Partner of CROSSINGS AT CAPE CORAL, LTD., a Florida limited partnership**, who is personally known to me or who has produced _____ as identification.

Stephanie M. Piatt
Notary Public

My commission expires: _____

CC731359
Commission No.




Stephanie M. Piatt
MY COMMISSION # CC836359 EXPIRES
May 12, 2003
BONDED THRU TROY FARN INSURANCE, INC.

STATE OF FLORIDA

COUNTY OF PAIM BEACH

The foregoing instrument was acknowledged before me this 27 day of May, 1999 by Paula J. Ryan, as President of WHITE OAK CAPE CORAL, INC., a Florida corporation, Managing General Partner of CROSSINGS AT CAPE CORAL, II, LTD., a Florida limited partnership, who is personally known to me or who has produced _____ as identification.



Notary Public
P 02 21-359
Commission No.

My commission expires:



Stephanie M. Platt
MY COMMISSION # C0856359 EXPIRES
May 12, 2003
BONDED THROUGH FARM INSURANCE, INC.

DR3124 PB1562

CHARLIE GREEN, CLERK
LEE COUNTY, FL
1999 MAY 28 PM 4:34