

This instrument prepared by:  
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*Handwritten:* Lady Campbell Circuit Court  
Brevard County, FL  
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14.00  
2  
109.00

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

LES VILLAS

LES VILLAS AT AQUARINA

*6<sup>th</sup>* THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made this day of JULY, 1993, by AQUARINA DEVELOPMENTS, INC., a Florida corporation (the "Developer").

RECITALS AND DECLARATION

WHEREAS, the Developer presently owns that certain property located in Brevard County, Florida, as described on Exhibit A attached hereto (the "AQUARINA LANDS");

WHEREAS, the Developer intends to create a mixed-use community on all or portions of the AQUARINA LANDS pursuant to a general plan of development, and with a view to that end, has recorded a Declaration of Covenants, Conditions and Restrictions for AQUARINA and formed a homeowners association called AQUARINA COMMUNITY SERVICES ASSOCIATION, INC.;

WHEREAS, the Developer's general plan of development contemplates the construction on the portion of the AQUARINA LANDS described in Exhibit B attached hereto (the "LES VILLAS LANDS"), of dwellings, each of which will share one or more party walls with one or more other such dwellings;

WHEREAS, recognizing that certain matters will be of unique or particular concern to the owners of LES VILLAS dwellings, as opposed to the owners of other dwellings in the overall AQUARINA community, the Developer wishes to submit certain of the dwellings (and appurtenant lots) it has already constructed (or started constructing) to various covenants, conditions, restrictions, charges and liens at this time (separate and apart from those imposed by the Declaration of Covenants, Conditions and Restrictions for AQUARINA generally); and

WHEREAS, in line with its wishes described above, the Developer has formed a non-profit corporation called LES VILLAS HOMEOWNERS ASSOCIATION, INC. to perform certain functions of common concern to the dwelling owners and to enforce the

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covenants, restrictions, charges and liens created by this Declaration.

NOW, THEREFORE, the Developer hereby declares that the real property described on Exhibit B attached hereto (including any and all improvements thereon), together with such additions thereto as are hereafter made pursuant to this Declaration, shall be held, conveyed, leased, mortgaged, used, occupied and improved subject to the easements, covenants, conditions, restrictions, servitudes, charges and liens created or provided for by this Declaration.

## ARTICLE I

### DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used herein shall have the meanings hereinafter specified:

1. "Articles" shall mean the Articles of Incorporation of the Association (a copy of which is attached hereto as Exhibit C), including any amendments thereto.

2. "Association" shall mean LES VILLAS HOMEOWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, and its successors and assigns.

3. "Board" shall mean the Board of Directors of the Association.

4. "By-Laws") shall mean the By-Laws of the Association which have been adopted by the Board (a copy of which is attached hereto as Exhibit D), including any amendments thereto.

5. "County" shall mean Brevard County, Florida.

6. "Covenants and Restrictions" shall mean the easements, covenants, conditions, restrictions, servitudes, charges and liens created or provided for by this Declaration.

7. "Declaration" and "this Declaration" shall mean (and, except as otherwise provided in Section 13 of this Article, "hereto," "hereof," "hereunder," "herein" and words of similar import) shall refer to this instrument as amended from time to time, together with all supplemental declarations thereto.

8. "Developer" shall mean AQUARINA DEVELOPMENTS, INC., a Florida corporation, and any successor or assign of AQUARINA

DEVELOPMENTS, INC., which acquires any portion of the LES VILLAS LANDS from the Developer for the purpose of development and to which AQUARINA DEVELOPMENTS, INC. specifically assigns all the rights of the Developer hereunder by an express written assignment recorded in the County's Public Records.

9. "Developer's Permittees" shall mean the Developer's officers, directors, partners, joint venturers (and the officers, directors and employees of any such corporate partner or joint venturer), employees, agents, independent contractors (including both general contractors and subcontractors), suppliers, visitors, licensees and invitees.

10. "Dwelling" shall mean the improvements (and the appurtenant garage or carport, if any) now or hereafter constructed on a lot (as defined in Section 16 of this Article) and designed and intended for use as a single family residence, for which a certificate of occupancy has been issued by Brevard County.

11. "LES VILLAS LANDS" shall mean the property described in Exhibit B attached hereto.

12. "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption; or (b) a group of not more than four (4) persons not so related who maintain a common household in a dwelling.

13. "Initial Declaration" shall mean (and, when following a section, paragraph, page or exhibit designation, the word "hereto") shall refer to this Declaration as initially recorded in the County's Public Records.

14. "Institutional Mortgage" shall mean a first mortgage on a dwelling held by an institutional mortgagee.

15. "Institutional Mortgagee" shall mean any bank, savings and loan association, insurance company, mortgage company, real estate investment trust, or agency of the United States Government; a lender generally recognized in the community as an institutional lender; and any assignee of a loan made by one of the foregoing to finance the purchase of a dwelling.

16. "Lot" shall mean one of the fifteen (15) lots of land described in Exhibit B hereto and is not subsequently withdrawn from the provisions of this Declaration by a supplemental declaration.

17. "Master Association" shall mean AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., and its successors and assigns; and "Master Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for AQUARINA and any supplemental declarations thereto.

18. "Member" shall mean any person or entity holding a membership in the Association.

19. "Owner" shall mean the person or persons or legal entity or entities holding fee simple interests of record to any dwelling, including the Developer and sellers under executory contracts for sale of a dwelling, but excluding those having such interests merely as security for the performance of an obligation and excluding purchasers under executory contracts for sale of a lot.

20. "Supplemental declaration" shall mean any instrument recorded by the Developer in the County's Public Records for the purpose of withdrawing lots or otherwise amending or supplementing this Declaration.

## ARTICLE II

### WITHDRAWAL OF LOTS AND ATTACHED DWELLINGS

1. Withdrawal. Anything herein to the contrary notwithstanding, the Developer reserves the absolute right at any time to withdraw one or more lots from the provisions of this Declaration by recording an appropriate supplemental declaration in the County's Public Records, provided that, to be effective, any such supplemental declaration must be executed by the Developer, the owner of the lot sought to be withdrawn, and the holder of any Institutional Mortgage on the lot sought to be withdrawn, and consented to by the County through the County's attorney.

## ARTICLE III

### THE ASSOCIATION

1. Membership. The Developer and every Owner of a dwelling shall be a member of the Association. No membership in the Association shall be assignable except to the successor-in-interest of an Owner, every membership being appurtenant to and inseparable from the member's dwelling. Ownership of a dwelling shall be the sole qualification for membership of a non-Developer Owner in the Association.

2. Classes of Voting Membership. The Association shall have two classes of voting membership:

A. CLASS A. Class A members shall be all owners, with the exception of the declarant, and shall be entitled to one vote for each dwelling owned. When more than one person holds an interest in any dwelling, all such persons shall be members. The vote for such dwelling shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any dwelling.

B. CLASS B. Class B members shall be the declarant and shall be entitled to eight (8) votes for each dwelling owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(2) On August 31st, 1996.

3. Merger or Consolidation. Upon a merger or consolidation of the Association with any other association organized to administer a residential community located within the AQUARINA LANDS, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or the properties, rights and obligations of any such association may be transferred to the Association as a surviving association. The surviving or consolidated association (whether the Association or another association) may administer, as one scheme, the Covenants and Restrictions established by this Declaration, together with the other Covenants and Restrictions established with respect to the lots or with respect to other properties. No such merger or consolidation shall revoke, change or add to the Covenants and Restrictions or dilute the Developer's voting power with respect to matters affecting the lots, except as may be specifically provided in this Declaration. Any such merger or consolidation shall require the vote or written approval of owners holding two-thirds (2/3) of the Class A membership voting power and the Class B member (if one then exists).

#### ARTICLE IV

#### ASSESSMENTS

1. Covenant to Pay; Creation of Lien.

A. Covenant to Pay. The Developer, for each dwelling now or hereafter owned by it, hereby covenants and agrees to pay the Association periodic and special assessments as hereinafter provided; and each person or entity who accepts a deed to a dwelling or who accepts title thereto as an heir or devisee, is hereby deemed to have covenanted and agreed to pay the Association periodic and special assessments as hereinafter provided (whether or not the covenant or agreement is expressly mentioned in the deed or other instrument by which title was acquired).

B. Creation of Lien. Each periodic and special assessment provided for in this Article, together with any related interest, penalties and costs of collection provided for in this Article, shall constitute a charge and continuing lien on the dwelling.

C. Personal Liability. Each periodic and special assessment provided for in this Article, together with any related interest, penalties and costs of collection, shall also constitute the personal obligation of the owner of the property against which the assessment is made, or on which the assessment constitutes or gives rise to a lien and, except as otherwise provided therein, the personal obligation of such owner's successors and assigns. If the owner consists of more than one person or entity, each such person or entity shall be jointly and severally liable for the aforesaid obligation.

2. Purpose. The Assessments imposed pursuant to this Article shall be used for the Association's operation and administration and the fulfillment of its duties hereunder.

3. Periodic Assessments. The Board shall fix the amount of the periodic assessments for each fiscal year of the Association (or part thereof if assessments commence on other than the first day of such fiscal year) to be levied against each Owner subject to assessment at least fifteen (15) days in advance of the period covered by the assessments, and written notice of any change in the amount of the periodic assessment during that period shall be given to each Owner at least fifteen (15) days in advance of the changes becoming effective. At least fifteen (15) days before the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the members of the Association, a written, itemized statement (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration. The assessments shall be based on a budget that includes reasonable reserves for deferred maintenance of improvements the Association is

responsible hereunder for maintaining and may (but need not) include reserves for other contingencies. The Board may provide in its absolute discretion that the periodic assessments be payable either quarterly or monthly. The Board of Directors shall cause to be prepared an annual balance sheet and operating statement for each fiscal year and shall cause to be distributed a copy of each such statement to each Member and to each Institutional Mortgagee who has filed a written request for copies of the same with the Board of Directors.

4. Special Assessments. Special (i.e., non-periodic) assessments may be levied by the Board (a) upon all Owners subject to periodic assessments to make up actual deficits or anticipated deficits in operating and maintenance accounts resulting from inadequate periodic assessments and (b) against any Owner individually to collect a liability of that Owner to the Association that is not common to all other Owners or a liability of that Owner provided for in Article VI, Section 3 hereof.

5. Share of Assessments. The periodic assessments provided for in Section 3 of this Article and the special assessments provided for in Section 4 of this Article shall be divided evenly among the Dwellings subject to assessment.

6. Association's Remedies for Non-Payment.

A. Penalties for Delinquency. Any assessment that is unpaid for more than ten (10) days after the date it is due shall bear interest at the highest rate permitted by law from the date it is due until the date it is paid. In addition, the Owner of any dwelling with respect to which an assessment is overdue by more than thirty (30) days may be required by the Board to pay the Association a late charge equal to the amount of the delinquent installment.

B. Enforcement of Lien. The Association may bring an action in its name to foreclose any lien on a dwelling in the manner in which mortgages on real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid periodic or special assessments with interest thereon (plus the costs and expenses mentioned in Subparagraph C below) without waiving any claim of lien, provided that in either case, the Association must give the delinquent Owner at least thirty (30) days written notice of its intentions and, in the case of a foreclosure, must file a claim of lien in the County's Public Records. Upon the timely curing of any default (including the payment of fees and costs secured by the Association's lien) for which a claim of lien was filed, the

Owner curing the default is entitled to have a satisfaction of lien recorded upon payment to the Association of a fee to be determined by the Association, but not to exceed fifty (\$50.00) dollars.

C. Attorney Fees and Other Costs of Enforcement. Reasonable attorney's fees incurred by the Association or its agent incident to the collection of any unpaid periodic or special assessment or the enforcement of any lien provided for by Section 1 of this Article (including attorney fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise), together with all sums advanced and paid by the Association or its agent for taxes and payments on account of superior liens or encumbrances that may be required to be advanced by the Association or its agent in order to preserve and protect its lien, shall be payable by the Owner liable for the assessment and be secured by the Association's lien.

D. Status of Transferees. No person or entity that acquired title to a dwelling as a result of a foreclosure of an Institutional Mortgage of record or that accepts a deed to a dwelling in lieu of foreclosing an Institutional Mortgage of record shall be liable for the share of periodic or special assessments pertaining to that dwelling or chargeable to the former Owner thereof which became due prior to its acquisition of title, unless such share is secured by a claim of lien for periodic or special assessments recorded prior to the recording of the mortgage in question. Any such shares of assessments for which the new Owner is not liable shall be collectible by periodic or special assessments from all the Owners, including the new Owner of the dwelling in question. Except as expressly provided hereinabove, every grantee in a voluntary conveyance of a dwelling shall be jointly and severally liable for all unpaid periodic or special assessments up to the time of conveyance. Nothing herein contained to the contrary notwithstanding, each and every Owner, including purchasers at judicial sale, shall be liable for all periodic or special assessments coming due while he is the Owner of a dwelling, regardless of how his title was acquired.

E. Cumulative Remedies. The remedies provided in this Section 6 shall be cumulative and not mutually exclusive.

7. Association's Certificate. Each Owner of an assessable dwelling and every holder of a mortgage thereon shall have the



right to require from the Association a certificate showing the amount of unpaid periodic or special assessments against the Owner with respect to his dwelling upon payment to the Association of a reasonable fee not exceeding fifteen (\$15.00) dollars. Any person other than the Owner of the Dwelling in question who relied upon such a certificate shall be protected thereby.

8. Subordination. The lien on each dwelling provided for in this Article shall be subordinate to the lien of any Institutional Mortgage on that dwelling recorded before a claim of lien is filed under this Article with respect to that dwelling.

9. Collection of Master Association Assessments. If requested by the Master Association, the Association shall collect from the Owners the assessments levied upon their dwelling by the Master Association and remit the assessments thus collected to the Master Association.

## ARTICLE V

### MAINTENANCE

#### 1. By the Association.

A. Maintenance of Dwelling. The Association shall be responsible for painting, repairing, reconstructing and replacing, as and when reasonably necessary, the party walls (exclusive of painting of interior party walls) and exterior building walls of each dwelling, the roof and foundations of each dwelling, those portions of each wall partially surrounding a patio, courtyard or pool appurtenant to a dwelling which is visible from outside the Lot on which the dwelling is situated, and the gutters, downspouts and window casements of each dwelling (but not the doors, windows and screens of any dwelling). The Board may delegate the responsibility of ordering and/or performing the work required by this Section to a management company.

B. Trash Collection. If and to the extent it is not provided for by the Master Association, the Association shall arrange and contract for the collection of trash from the dwellings.

#### 2. By Owners.

A. Maintenance of Dwelling. Each Owner shall be responsible for keeping the interior and exterior of his

dwelling in a clean, safe and orderly condition and good repair to the extent the Association is not responsible for doing so hereunder.

B. Failure to Perform. If an Owner fails to comply with the foregoing provisions of this Section 2, the Association may proceed in court to enjoin compliance with them. In addition, the Association shall be entitled (though not obligated) to restore the neglected dwelling to the condition required by this Section and to levy on the offending Owner a special assessment equal to the cost of the work that was the Owner's responsibility.

## ARTICLE VI

### INSURANCE

#### 1. Purchase, Custody and Payment.

A. Authorization of Association. The Developer for dwellings now or hereafter owned by it hereby irrevocably nominates, and each person who accepts added to a dwelling (or who accepts title thereto as a heir or devisee) is hereby deemed to irrevocably nominate

B. Purchase. All insurance policies described in Section 2 of this Article shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida and which, in the case of hazard insurance, has either a financial rating in Best's Financial Insurance Reports of Class VI or better or a financial rating therein of Class V and a general policyholder's rating of at least "A".

C. Approval. Each insurance policy, the agency and company issuing the policy and the insurance trustee hereinafter described (the "Insurance Trustee") shall be subject to the approval of the Primary Institutional Mortgagee in the first instance.

D. Named Insured. The named insured of each hazard policy shall be the Association, individually, and as agent for the Owner of a dwelling covered by the policy and as agent for his mortgagees, if any, with the Owner and the mortgagees as additional insureds.

E. Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee described in

Section 4 of this Article, and all policies and endorsements thereto shall be deposited with the Insurance Trustee.

F. Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional Mortgagee who holds a mortgage upon a dwelling covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

G. Personal Property and Liability. Unit Owners may obtain insurance coverage at their own expense and in their own discretion upon the property lying within the interiors of their dwellings, including, but not limited to, their personal property (except as covered in Section 2.A below), and for their personal liability and living expense and for any other risks.

2. Coverage. The Association shall maintain insurance covering the following:

A. Casualty. Every dwelling (including all fixtures, installations or additions comprising that part of the dwelling outside the interior living space of the dwelling and initially installed in accordance with the original plans and specifications therefor, and replacements thereof of like kind or quality, but excluding all furniture, furnishings and other personal property owned, supplied or installed by the Owners or his tenants and excluding all other alterations, capital improvements and betterments made by the Owner or his tenants) (collectively the "Insured Property"), shall be insured in an amount not less than one hundred percent (100%) of the insurable value thereof (based on replacement cost), excluding foundation and excavation costs. Any such policy may contain reasonable deductible provisions as determined by the Board. The coverage shall afford protection against:

(1) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and

(2) Such Other Risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in

construction, location and use, including, but not limited to, vandalism and malicious mischief, and, if required by the Primary Institutional Mortgagee or the Association elects, flooding.

B. Worker's Compensation and other mandatory insurance when applicable.

C. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable (including but not limited to fidelity bonding of the Association's directors, officers, employees and managing agents and liability insurance for its officers and directors).

D. Specific Provisions

(1) When appropriate and obtainable, each of the foregoing policies shall waive the insurer's standard right to: (a) subrogation against the Association and against the Owners individually and as a group, (b) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (c) avoid liability for a loss that is caused by an act of the Board, by a member of the Board or by one or more Owners.

(2) All policies of physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the named insureds, including all mortgagees of dwellings. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be obtained pursuant to this Section.

3. Premiums. Premiums for the coverage described in Section 2.B and 2.C of this Article shall be part of the Association's common expenses payable out of periodic assessments or special assessments provided for in Section 5(a) of Article V.

4. Insurance Trustee; Share of Proceeds. All insurance policies obtained by the Association shall be for the benefit of the Association, the Owners and their mortgagees, as their

respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board and which, if so appointed, shall be a bank, or trust company in Florida with trust powers, with its principal place of business in the County. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal of the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee (if applicable) shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Owners of the damaged dwellings and their respective mortgagees in proportion to the amount of damage to each Owner's dwelling.

5. Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Owner and mortgagee pursuant to the provisions of this Declaration.

6. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:

A. Expenses of the Trust. First, all expenses of the Insurance Trustee shall be paid or provided for.

B. Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairing and reconstructing the damaged property as provided elsewhere herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners thereof, remittances to Owners and their mortgagees being payable jointly to them.

C. Certificate. In distributions to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

7. Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner, for each owner of a mortgage or other lien upon a dwelling and for each owner of any other interest in the Insured Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

8. Insurance Trustee Not Appointed. The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee hereunder. Anything to the contrary in this Declaration notwithstanding, if the Association fails or elects not to appoint an Insurance Trustee, the Association shall perform directly all obligations imposed upon the Insurance Trustee by this Declaration.

## ARTICLE VII

### RECONSTRUCTION OR REPAIR AFTER CASUALTY DAMAGE

1. General. Any part of the Insured Property that has been damaged by casualty shall be reconstructed in the manner provided in this Article VII.

2. Responsibility for Reconstruction and Repair. If the damage is only to parts of the Insured Property the responsibility of repairing and maintaining which is the Owners' under Article V, each Owner shall be responsible for the reconstruction and restoration of his dwelling. In all other cases, the Association shall be responsible for reconstructing and repairing: damaged Insured Property the responsibility for maintaining which is the Association's; damaged Insured Property, such as non-glass entrance doors, balcony parapets, and terrace fences, the responsibility for maintaining which is normally divided between the Association and Owner; damaged interior partition walls out to their unfinished surfaces; and those portions of each two-story dwelling that lie between the unfinished ceiling of the dwelling's first story and the unfinished surface of the floor slab of the dwelling's second story.

3. Plans for Reconstruction or Repair. Any reconstruction or repair after casualty damage shall substantially follow the plans and specifications for the original improvements (including those for any authorized alterations and additions made after the Initial Declaration is recorded) unless an alternative set of plans and specifications are approved by the Board, by seventy percent (70%) of the Owners and by all Owners of dwellings covered by the alternative plans and specifications.

4. Estimate of Cost. Immediately after determining to reconstruct or repair property damaged by casualty, the Association shall obtain detailed estimates of the cost of doing so from reliable contractors.

**5. Assessments: Determination of Sufficiency of Funds.**

**A. Assessments.** If the proceeds of insurance are insufficient to defray the estimated costs of reconstruction and repair for which the Association is responsible, or if at any time during the work or upon its completion the funds available for the payment of such costs prove insufficient, special assessments shall be made by the Association against Owners in sufficient amounts to provide funds for payment of those costs. Such assessments shall be levied against the Owners in amounts proportional to the costs of reconstructing and repairing their dwellings.

**B. Determination of Sufficiency of Funds.** If the estimated costs of reconstruction and repair for which the Association is responsible do not exceed \$50,000.00, the sufficiency of funds to pay the costs shall be determined by the Board and the sums collected from the assessments levied pursuant to Section 5.A of this Article VII shall be held by the Association. If these estimated costs exceed \$50,000.00, the sufficiency of funds to pay the costs shall be determined by an architect qualified to practice in Florida and employed by the Association to supervise the work, and the sums collected from the assessments shall be deposited by the Association with the Insurance Trustee.

**6. Disbursement of Funds.** The funds held by the Association or the Insurance Trustee after a casualty (which funds will consist of insurance proceeds and sums collected from special assessments against Unit Owners on account of the casualty) shall be disbursed in the following manner and order:

**A. Expenses of Insurance Trustee.** Payment of all expenses of the Insurance Trustee or provision for their payment shall be made first.

**B. Reconstruction and Repair of Damage.** The balance of the funds shall be disbursed in the following manner:

(1) **Repair by Association When the Cost Does Not Exceed \$50,000.00.** If the estimated costs of reconstruction and repair that are the Association's responsibility do not exceed \$50,000.00, the funds shall be disbursed by the Insurance Trustee (and the Association, if applicable) in payment of these costs at the direction of the Board.

(2) Repair by Association When the Cost Exceeds \$50,000.00. If the estimated costs of reconstruction and repair that are the Association's responsibility exceed \$50,000.00 the funds shall be disbursed by the Insurance Trustee (and the Association, if applicable) in payment of those costs in the manner directed by the Board, with an architect who is licensed to practice in Florida and is employed by the Association to supervise the work approving all disbursements as being due and properly payable.

(3) Repair By Unit Owners. If insurance proceeds remain after payment of the costs of reconstruction and repair that are the Association's responsibility, they shall be distributed to the Owners of damaged dwellings who have the responsibility to reconstructing and repairing them in a share to each Owner equal to the ratio of the estimated cost of reconstructing and repairing his dwelling to the total of these costs in all damaged dwelling, provided, however, that no Owner shall be paid an amount that exceeds the estimated costs of the repair and reconstruction of his dwelling that are his responsibility. If a Unit is subject to a mortgage or mortgages listed on the Association's Roster of Mortgagees, the distribution shall be paid to the Owner and the mortgagees jointly, and they may use the proceeds as they determine between themselves.

(4) The first moneys disbursed in payment of the costs of reconstruction and repair shall be presumed to be from insurance proceeds. If there is a balance remaining after payment of the costs for which the funds are collected, the balance shall be distributed to the beneficial owners of the funds. Remittances to Owners and their mortgagees shall be made payable jointly to them, provided, however, that the part of a distribution to a Owner that is not in excess or any special assessments paid by the Owner into the funds shall not be made payable to any mortgagee.

C. Reliance Upon Certificates. Notwithstanding the provisions of this Declaration, the Insurance Trustee shall not be required to make a determination as to the existence of certain facts upon which the distribution of funds is conditioned. Instead, the Insurance Trustee may rely upon a certificate made by the Association's President and Secretary stating: (1) whether or not payments collected from special assessments against Owners pursuant to this Article VII shall be deposited with the Insurance Trustee;



(2) that particular sums are due and properly payable, the name of the payee and the amount to be paid; (3) the names of Owners to receive distribution of funds and the amounts to be distributed to them; provided, however, that when a mortgage is required by this Article VII to be named as a joint payee of a distribution to a Owner, the Insurance Trustee shall name the mortgagee as payee of any distribution of insurance proceeds to the Owner if the mortgagee is listed as holding a mortgage on that Owner's dwelling in the Roster of Mortgagees furnished the Insurance Trustee.

## ARTICLE VIII

### PARTY WALLS

1. General. Each wall built as part of the original construction of two dwellings and placed on the dividing line between Lots on which they are situated shall constitute a party wall, and each Owner of one of the dwellings shall own that portion of the wall which stands on his own dwelling, together with a cross-easement of support in the other portion. To the extent not inconsistent with the provisions of this Article or Article V, VI or VII hereof, the general rules of law regarding party walls and liability or property damage due to negligence or willful acts or omissions shall apply to all such party walls.

2. Easements. Easements are reserved in favor of all Lots sharing a party wall for overhangs or other encroachments resulting from original construction or from restoration that conforms substantially to the original construction.

3. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article generally, each party shall choose one arbitrator those arbitrators shall choose one additional arbitrator, and the decision of a majority of the three arbitrators thus chosen shall be conclusively determinative of the question involved. If a panel cannot be designated in this way, the matter shall be arbitrated pursuant to the rules of the American Arbitration Association (or its successors in function) then prevailing. Any decision made pursuant to this Section 3 shall be conclusive and may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code.

## ARTICLE IX

### USE RESTRICTIONS

1. Occupancy. Each dwelling shall be used as a residence only, except as otherwise expressly provided herein. A dwelling owned by an individual, corporation, partnership, trust or other fiduciary may be occupied only by the following persons, and such persons' families and guests: (a) an individual Owner, (b) an officer, director, stockholder or employee or a corporate Owner, (c) a partner or employee of a partnership Owner, (d) the fiduciary or beneficiary of a fiduciary Owner, or (e) permitted occupants under an approved lease or sublease of the dwelling (as described below), as the case may be. A dwelling may be occupied under an approved lease or sublease only by the following persons, and such persons' families and guests: (a) an individual lessee or sublessee, (b) an officer, director, stockholder or employee of a corporate lessee or sublessee, (c) a partner or employee of a partnership lessee or sublessee, or (d) a fiduciary or beneficiary of a fiduciary lessee or sublessee. Under no circumstances may more than one Family reside in a dwelling at one time. "Family" and words of similar import used herein shall be deemed to include spouses, parents, parents-in-law, brothers, sisters and children and grandchildren. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom in a dwelling. The Board of Directors shall have the power to authorize occupancy of a dwelling by persons in addition to those set forth above for visits of temporary duration that do not exceed sixty (60) days in any calendar year.

2. Pets. No animal may be kept anywhere in a dwelling or on a Lot unless it is a small bird or fish, a dog weighing less than twenty (20) pounds, a household cat, or some other "household pet" (as defined by the Board of Directors) capable of being hand-carried. With the exception of birds and fish housed in a cage or aquarium within the Owner's dwelling, no Owner may keep more than two (2) pets in a dwelling. No pet may be kept, bred or maintained for any commercial purpose or become a nuisance or annoyance to neighbors. Owners must pick up all solid wastes of their pets and dispose of them appropriately. All pets (including cats) must be leashed at all times when outside the dwelling. No dogs may be kept on a terrace, balcony, patio or lanai of a dwelling when the dwelling's Owners is absent from the dwelling. Violation of any provision of this Section shall entitle the Association to all of its usual rights and remedies (including, but not limited to, the right to fine Owners as provided herein, in the Association's By-Laws or in any applicable rules and regulations) and also to require any pet to

be permanently removed from its Owner's dwelling upon three (3) days' notice. No one other than an Owner shall be permitted to keep any pets.

3. Alterations. No Owner shall cause or allow improvements or changes to any exterior portion of his dwelling (including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, machinery or air-conditioning units or in any manner changing the appearance of any portion of the dwelling) without first obtaining the written consent of the Association.

4. Nuisances. No use or practice shall be allowed in or around dwellings which is a source of annoyance to Owners or occupants of dwellings or which interferes with the peaceful possession or proper use of the dwellings or any surrounding common areas.

5. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of any dwelling, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any dwelling shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the dwelling as elsewhere herein set forth.

6. Lease. No portion of a dwelling (other than an entire dwelling) may be rented. All leases shall be on forms approved by the Association and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, of the Articles of Incorporation and By-Laws of the Association, of applicable rules and regulations, of the Master Declaration or of any other instrument, document or instrument governing the dwellings. The leasing of dwellings shall also be subject to the prior written approval of the Association, which may reject the leasing of any dwelling on any reasonable grounds. The Owner of a leased dwelling shall be jointly and severally liable with his tenant to the Association to pay any claim of injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association or the Master Association whether before or after the lease was entered into. No dwelling may be leased more than three (3) times in any one calendar year.

7. Exterior Improvements; Landscaping. Without limiting the generality of Section 3 of this Article, no Owner shall,

without first obtaining the written consent of the Association, cause anything to be affixed or attached to, displayed or placed on, or hung from the exterior walls, doors, windows, patios, courtyards or terraces of his dwelling (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment), or plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his dwelling.

8. Effect on Developer; Selective Relief. The restrictions and limitations set forth in this Article shall not apply to the Developer or to Lots or dwellings owned by the Developer, nor to Institutional Mortgagees or to Lots or dwellings owned by Institutional Mortgagees. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Article for good cause shown.

#### ARTICLE XI

##### ADDITIONAL RIGHTS OF INSTITUTIONAL FIRST MORTGAGEE

In addition to all other rights herein set forth, each holder of an Institutional Mortgage shall have the right, upon written request to the Association, to:

1. Inspect the Association's books and records during normal business hours;
2. Receive an unaudited financial statement of the Association within ninety (90) days after each of its fiscal years closes;
3. Receive from the Association written notice of any meeting of the Association's membership and to attend any such meeting;
4. Receive from the Association written notice of any default under this Declaration or the By-Laws by an Owner of a Lot or dwelling encumbered by a mortgage to the Institutional Mortgagee, if the default remains uncured for more than thirty (30) days;
5. Receive timely written notice of casualty damage to or condemnation of any part of any dwelling on which it has a mortgage.

## ARTICLE XII

### GENERAL PROVISIONS

1. Covenant Running with the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, as well as the provisions of the Master Declaration and all applicable management contracts, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Lots and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent Owner(s) of the dwellings or any part thereof, or interest therein, and their respective heirs, personal representative, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Owners and tenants and occupants of dwellings shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, as well as the provisions of the Master Declaration as they may be amended from time to time. The acceptance of a deed or conveyance to a dwelling, or the entering into of a lease of, or occupancy of, any dwelling shall constitute an adoption and ratification by such Owner, tenant or occupant of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as well as the provisions of the Master Declaration and all applicable management contracts, as they may be amended from time to time, including, but not limited to a ratification of any attorneys-in-fact contained therein.

2. Duration. The Covenants and Restrictions shall be effective for a term of forty (40) years from the date the Initial Declaration is recorded. After that time they shall be automatically extended for successive periods of fifteen (15) years each unless an instrument has been recorded in which eighty percent (80%) of the then Owners and eighty percent (80%) of the holders of the then outstanding Institutional Mortgages agree by signing it to revoke the Covenants and Restrictions in whole or in part; provided, however, that no such agreement shall be effective unless it is made and recorded at least three (3) years before the effective date of the change provided for in it and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days before any action is taken.

3. Enforcement. This Declaration, the Articles of Incorporation and the By-Laws may be enforced by the Association as follows:

A. The breach of any of the covenants contained in the Declaration or the By-Laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by the Developer, the Association, the successors-in-interest of the Association or an Owner or Owners. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees, in such amount as the court may deem reasonable, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

B. The result of every act or omission whereby any of the covenants contained in this Declaration or the By-Laws are violated in whole or in part is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity with respect to nuisances either public or private shall be applicable and may be exercised by the Developer or the Association or their successors-in-interest.

C. The remedies herein provided for breach of the covenants or restrictions contained in this Declaration or in the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

D. The failure of the Association to enforce any of the covenants or restrictions contained in this Declaration or in the By-Laws shall not constitute a waiver of the right to enforce the same thereafter.

E. A breach of the covenants, conditions or restrictions contained in this Declaration or in the By-Laws shall not affect or impair the lien or charge of any mortgage made in good faith and for value on any dwelling; provided, however, that any subsequent Owner of a dwelling shall be bound by those covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

4. Severability. The invalidation of any one of the Covenants and Restrictions by judgment or court order shall in no way affect any of the other Covenants and Restrictions, all of which shall remain in full force and effect.

5. Interpretation. The article and section headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. The singular shall include the plural

and the plural the singular, and the masculine, feminine and neuter genders shall each include the other.

6. Amendments. This Declaration may be amended by the Association (1) by the affirmative vote or written consent of the Owners holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Class A Membership and the affirmative vote of the Class B Member (so long as the Class B Membership exists); or (2) by the affirmative vote of the Class B Member alone; provided, however, that no amendment shall be permitted which has a materially adverse affect upon substantial rights of any Owner or Institutional Mortgagee without the prior written consent of the Owner or Institutional Mortgagee so affected, as appropriate. Without in any way limiting the generality of clause (2) above, as long as it is the Class B Member or owns one or more dwellings, the Developer shall have an absolute right to make any amendments to this Declaration (without any other party's consent or joinder) which is required to correct a surveying error or an erroneous legal description or which is requested or required by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association or other governmental or quasi-governmental body which owns or expects to own one or more Institutional Mortgages or requested or required by any Institutional Mortgagee or prospective Institutional Mortgagee to enhance the salability of Institutional Mortgages owned by it to one or more of the foregoing. As long as the Developer owns any portion of the Aquarina Lands, no amendment may be passed that adversely affects the Developer's rights or privileges without its prior written consent. Nothing contained herein shall affect the right of the Developer to make such amendments of this Declaration or such Supplemental Declarations as may otherwise be permitted herein without any consents, approvals or joinders. This Section may not be amended. All amendments shall be in accordance with the Brevard County regulations, codes and ordinances applicable to planned unit developments.

7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right or title to a dwelling shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference hereto is contained in the instrument by which such person acquired an interest in such dwelling.

8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72)

hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Unit of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

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

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

DEVELOPER:

AQUARINA DEVELOPMENTS, INC., a  
Florida corporation

By: [Signature]  
JAMES BATES, Vice President

Address: 235 Hammock Shore Drive  
Melbourne Beach, FL 32951

[Signature]

Witness Signature

ALAN W. HAYER/HOEFFER

Print Witness Name

[Signature]

Witness Signature

PETER KUSHNICK

Print Witness Name

STATE OF FLORIDA )

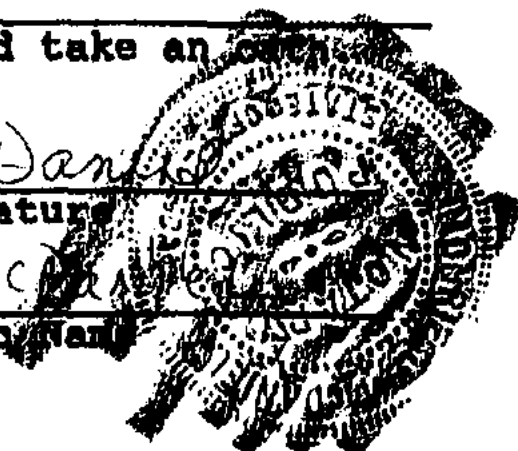
ss:

COUNTY OF BREVARD )

THE FOREGOING INSTRUMENT was acknowledged before me this 6<sup>th</sup>  
day of July, 1993, by JAMES BATES, as Vice President of  
AQUARINA DEVELOPMENTS, INC., a Florida corporation, who is  
personally known to me, or who produced \_\_\_\_\_  
as identification, and who did take an oath.

Monnie L. McDaniel  
Notary Public Signature

MONNIE L. McDANIEL  
Print Notary Public Name



My commission expires:

Notary Public  
State of Florida at Large  
My Commission Expires:  
September 23, 1994



**JOINDER**

LES VILLAS HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all the benefits and all the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits hereto.

IN WITNESS WHEREOF, LES VILLAS HOMEOWNERS ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this 6<sup>th</sup> day of JULY, 1993.

LES VILLAS HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit

By: [Signature]  
JAMES BATES, Secretary

Address: 235 Hammock Shore Drive  
Melbourne Beach, FL 32951

[Signature]  
Witness Signature

ALVIN HAYES ROEFER  
Print Witness Name

[Signature]  
Witness Signature

PETER F. WILKINSON  
Print Witness Name

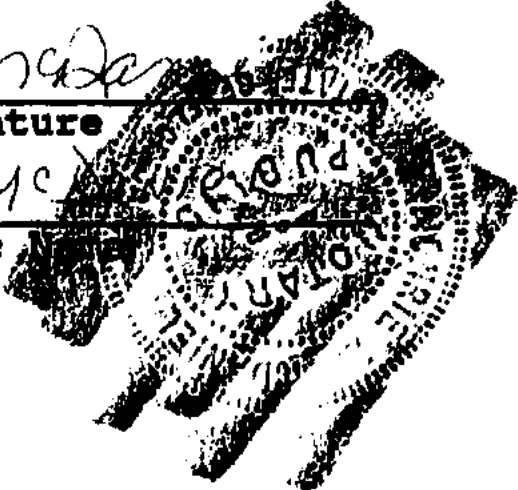
STATE OF FLORIDA )  
COUNTY OF BREVARD ) ss:

THE FOREGOING INSTRUMENT was acknowledged before me this 6<sup>th</sup> day of July, 1993, by JAMES BATES, as Secretary of LES VILLAS HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, who is personally known to me, or who produced \_\_\_\_\_ as identification, and who did take an oath.

My commission expires:

Notary Public  
State of Florida  
My Commission Expires:  
September 23 1994

[Signature]  
Notary Public Signature  
MORRIS L. Mc...  
Print Notary Public Name



**EXHIBIT A**

**LEGAL DESCRIPTION**

Government Lots 4 and 5, SECTION 25, Township 29 South, Range 38 East, Brevard County, Florida, LESS the Right of Way for State Road A1A:

AND

Government Lot 1, Section 35, Township 29 South, Range 38 East, Brevard County, Florida:

AND

Government Lots 1, 2 and 3, Section 36, Township 29 South, Range 38 East, Brevard County, Florida, LESS the right of way for State Road A1A, the South 50.00 feet of said Government Lots, 1, 2 and 3 lying West of State Road A1A, and that portion of said Government Lot 1 parallel with and adjacent to the existing West right of way line of State Road A1A to a depth of 20.00 feet, as recorded in Official Record Book 1338 at Page 26, public records of Brevard County, Florida.

TOGETHER with all submerged land, shore rights, littoral rights and riparian rights in the waters of the Atlantic Ocean and Indian River adjacent to said properties.

EXHIBIT B

DESCRIPTION: AQUARINA PUD STAGE 2 TRACT I  
(PREPARED BY BRIEL & ASSOCIATES LAND SURVEYORS, INC.)

A PORTION OF GOVERNMENT LOT 2, SECTION 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST AND BEING A REPLAT OF PORTIONS OF TRACT I AND TRACT B OF AQUARINA PUD STAGE 1 AS RECORDED IN PLAT BOOK 29, PAGES 86 & 87 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; FROM THE SOUTHEASTERLY CORNER OF SAID TRACT I RUN  $881^{\circ}22'41''$ W ALONG THE SOUTH LINE OF SAID TRACT I 18.75 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE ALONG SAID SOUTH LINE  $881^{\circ}22'41''$ W 162.73 FEET; THENCE DEPARTING SAID SOUTH LINE RUN  $N11^{\circ}13'56''$ W 96.52 FEET TO THE P.C. OF A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 235.50 FEET AND A DELTA ANGLE OF  $16^{\circ}25'32''$ ; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE 67.51 FEET TO THE P.T.; THENCE  $N05^{\circ}11'36''$ E 37.65 FEET TO THE P.C. OF A CURVE CONCAVE TO THE WEST HAVING RADIUS OF 177.00 FEET AND A DELTA ANGLE OF  $25^{\circ}48'53''$ ; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE 79.75 FEET TO THE P.T.; THENCE  $N20^{\circ}37'17''$ W 19.77 FEET TO THE P.C. OF A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 235.50 FEET AND A DELTA ANGLE OF  $20^{\circ}57'56''$ ; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE 86.17 FEET TO THE P.T.; THENCE  $N00^{\circ}20'39''$ E 89.69 FEET TO THE P.C. OF A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 181.50 FEET AND A DELTA ANGLE OF  $26^{\circ}00'02''$ ; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE 82.36 FEET TO THE P.T.; THENCE  $N25^{\circ}39'21''$ W 48.23 FEET TO THE P.C. OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 135.50 FEET AND A DELTA ANGLE OF  $69^{\circ}29'29''$ ; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE 164.34 FEET TO THE P.T.; THENCE  $N43^{\circ}50'07''$ E 72.48 FEET TO THE P.C. OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS 277.00 FEET AND A DELTA ANGLE OF  $24^{\circ}14'29''$ ; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE 117.20 FEET; THENCE DEPARTING FROM SAID CURVE ON A NON-TANGENT LINE  $S27^{\circ}54'30''$ E 184.39 FEET; THENCE  $S30^{\circ}28'33''$ W 121.38 FEET; THENCE  $S11^{\circ}51'49''$ E 197.47 FEET; THENCE  $S09^{\circ}35'37''$ E 127.71 FEET; THENCE  $S05^{\circ}39'37''$ E 287.41 FEET TO THE POINT OF BEGINNING.  
CONTAINING 3.178 ACRES MORE OR LESS.

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