

Prepared by and return to:

Stewart B. Capps, Esquire  
P.O. Box 034021  
Indialantic, FL 32903



CFN:2002317188 12-13-2002 09:23 am  
OR Book/Page: 4763 / 3799

**Scott Ellis**

Clerk Of Courts, Brevard County

#Pgs: 12 #Names: 2  
Trust: 6.50 Rec: 49.00 Serv: 0.00  
Deed: 0.00 Excise: 0.00  
Mtg: 0.00 Int Tax: 0.00

**FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVER OAKS AT AQUARINA**

THIS FIFTH AMENDMENT to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina ("Fifth Amendment") is made this 3<sup>rd</sup> day of December 2002 by River Oaks at Aquarina Homeowners Association, Inc., a Florida Corporation.

**WITNESSETH:**

WHEREAS, River Oaks at Aquarina Homeowners Association, Inc. is the association under the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina, recorded on September 25, 1995 in Official Records Book 3507, Page 1670, Public Records of Brevard County, Florida (the "Declaration"); and

WHEREAS, the Declaration was amended by the First Amendment to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina, recorded in Official Records Book 3624, Page 3748, Public Records of Brevard County, Florida; and

WHEREAS, the Declaration was amended by the Second Amendment to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina, recorded in Official Records Book 4179, Page 3574, Public Records of Brevard County, Florida; and

WHEREAS, the Declaration was amended by the Third Amendment to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina, recorded in Official Records Book 4019, Page 0246, Public Records of Brevard County, Florida; and

WHEREAS, the Declaration was amended by the Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina, recorded in Official Records Book 4210, Page 1579, Public Records of Brevard County, Florida; and

WHEREAS, the River Oaks at Aquarina Declaration of Covenants, Conditions and Restrictions can be amended, as provided for in paragraph 3 by owners of at least two-thirds of the voting interest of the Association which owners have duly voted for said amendment by a properly and officially called meeting of the members.

NOW, THEREFORE, River Oaks at Aquarina Homeowner's Association, Inc. hereby amends the Declaration of Covenants, Conditions and Restrictions of River Oaks at Aquarina as follows:

1. The Third amendment to the Declaration of Covenants, Conditions and Restrictions dated April 30, 1999 and recorded on June 2, 1999 in Official Record Book 4019, Page 0246, Public Records of Brevard County, Florida, is herewith canceled and rescinded.

2. A new Article IX is added with regard to mangrove trimming as follows:

Mangrove Trimming in the Conservation Area: The Board of Directors of River Oaks at Aquarina Homeowner's Association, Inc. has previously obtained a permit by the St. John's River Water Management District and D.E.P. for trimming of the mangroves in the Conservation Area Property owned in common by River Oaks at Aquarina Homeowner's Association, Inc., and in its discretion may elect to trim the mangroves. If River Oaks at Aquarina Homeowner's Association, Inc. elects not to trim the mangroves, then any abutting property owner in Lots 12 through 18 may at their own expense trim the mangroves, provided all applicable exemption or permits are obtained and the trimming is done in accordance with such exemption or permit, and it is done in the areas identified and described in the permit. In the event any owner trims the mangroves in the Conservation Area owned in common by River Oaks at Aquarina Homeowner's Association, Inc. in such a way that violates the permit issued by St. John's River Water Management District or D.E.P., or violates any other state or federal regulatory law, then such owner shall indemnify and hold River Oaks at Aquarina Homeowner's Association, Inc., and its officers and directors harmless for any loss or claim. For purposes of this amendment, loss or claim shall be deemed to include any possible loss or claim, including penalties, administrative fines, damages, or any court costs or attorney's fees incurred in defense of such loss or claim. Should River Oaks at Aquarina Homeowner's Association, Inc. sustain any loss or claim, then such homeowner who causes the loss or claim shall promptly reimburse River Oaks at Aquarina Homeowner's Association, Inc. its damages for the claim or loss within thirty days, and failing that, River Oaks at Aquarina Homeowner's Association, Inc. shall be entitled to impose a lien against the offending property owner, and may enforce that lien as provided for in Articles III and IV of the Declaration of Covenants, Conditions and Restrictions.

3. Except as modified hereby, the Declaration shall remain in full force and effect.

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

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Donna L. Capps  
Witness Signature

Donna L. Capps  
Witness Printed Name

Tracy Cassetta  
Witness Signature

Tracy Cassetta  
Witness Printed Name

RIVER OAKS AT AQUARINA  
HOMEOWNER'S ASSOCIATION, INC.

Dick Geach  
By: Dick Geach, President



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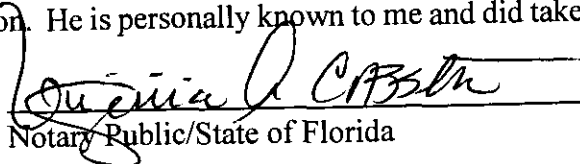
**STATE OF FLORIDA  
COUNTY OF BREVARD**



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The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of December 2002 by Dick Geach, who is president of River Oaks at Aquarina Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me and did take an oath.

  
Notary Public/State of Florida



Virginia A. Cassetta  
MY COMMISSION # DD070360 EXPIRES  
November 6, 2005  
BONDED THRU TROY FAIR INSURANCE, INC.

Stewart B Capps (320)  
Property Owner  
Printed Name: Stewart B Capps (320)

and as proxy for Anderson,  
Property Owner  
Printed Name: Kenefer, John & Moras  
A h Grack as Proxy for

Property Owner  
Printed Name: WILLIAM LEE  
345 HAMMOCK SHORE DR

Property Owner  
Printed Name: JAMES BATES  
270

Property Owner  
Printed Name: Donna Turner  
280 HAMMOCK SHORE DR

Property Owner  
Printed Name: Kurt F Luft  
355 Hammock Shore Dr.

Property Owner  
Printed Name: ROSS DAVIS  
330 Hammock Shore Dr

Property Owner  
Printed Name: EUGENE KAVE  
380 HAMMOCK SHORE DR.

Property Owner  
Printed Name: INA ULSAMER  
325 HAMMOCK SHORE DR

Property Owner  
Printed Name: Carl Colombo  
255 Hammock Shore Dr

Property Owner  
Printed Name: Vicki DeBriase  
360 Hammock Shore Dr



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Jennifer A Foster  
Property Owner

Printed Name: JENNIFER FOSTER

Janice M Geach  
Property Owner

Printed Name: Janice M Geach

Ann M. Murphy  
Property Owner

Printed Name: Ann M. Murphy

Joseph P. Smith  
Property Owner

Printed Name: JOSEPH P. SMITH

and as proxy for Phelan + McGuire  
Property Owner

Printed Name: \_\_\_\_\_

Property Owner  
Printed Name: \_\_\_\_\_

Property Owner  
Printed Name: \_\_\_\_\_

Property Owner  
Printed Name: \_\_\_\_\_

Property Owner  
Printed Name: \_\_\_\_\_

Property Owner  
Printed Name: \_\_\_\_\_

Property Owner  
Printed Name: \_\_\_\_\_



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LIMITED PROXY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned owner, or their voting representative, whose address is 375 Hammock Shore Dr. in River Oaks at Aquarina Homeowners Association, Inc., constitute and appoint Stewart C. App secretary of the association, his designee or Dick Gench, as nominee, as my true and lawful attorney and proxy with powers of substitution for and in the names and place of the undersigned, to appear, represent and cast votes only as I specifically instruct in reference to the following matters on behalf of River Oaks at Aquarina Homeowners Association, Inc., to be held on December 3, 2002 at 5:00 p.m. at the Administration Office, 235 Hammock Shore Drive, Melbourne Beach, Florida.

1. Vote on the proposed Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina



FOR

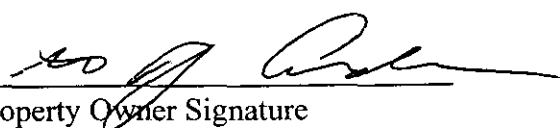


AGAINST

The undersigned ratifies and confirms any and all acts and things that the proxy may do or cause to be done in the premises, whether at the meeting referred to above or at any change, adjournment or continuation of it, and revokes all prior proxies previously executed.

DATED:

11-20-02

  
Property Owner Signature

Robert J Anderson



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LIMITED PROXY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned owner, or their voting representative, whose address is 340 Hammock Shore Drive in River Oaks at Aquarina Homeowners Association, Inc., constitute and appoint Stewart B. Cappe, secretary of the association, his designee or \_\_\_\_\_, as nominee, as my true and lawful attorney and proxy with powers of substitution for and in the names and place of the undersigned, to appear, represent and cast votes only as I specifically instruct in reference to the following matters on behalf of River Oaks at Aquarina Homeowners Association, Inc., to be held on December 3, 2002 at 5:00 p.m. at the Administration Office, 235 Hammock Shore Drive, Melbourne Beach, Florida.

1. Vote on the proposed Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina

FOR

AGAINST

The undersigned ratifies and confirms any and all acts and things that the proxy may do or cause to be done in the premises, whether at the meeting referred to above or at any change, adjournment or continuation of it, and revokes all prior proxies previously executed.

DATED: 11-19-02

Emery D. Johnson  
Property Owner Signature

Emery D. Johnson



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LIMITED PROXY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned owner, or their voting representative, whose address is 265 Hammock Shore Dr. in River Oaks at Aquarina Homeowners Association, Inc., constitute and appoint \_\_\_\_\_, secretary of the association, his designee or Stewart Capps, as nominee, as my true and lawful attorney and proxy with powers of substitution for and in the names and place of the undersigned, to appear, represent and cast votes only as I specifically instruct in reference to the following matters on behalf of River Oaks at Aquarina Homeowners Association, Inc., to be held on December 3, 2002 at 5:00 p.m. at the Administration Office, 235 Hammock Shore Drive, Melbourne Beach, Florida.

- 1. Vote on the proposed Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina

FOR  AGAINST

The undersigned ratifies and confirms any and all acts and things that the proxy may do or cause to be done in the premises, whether at the meeting referred to above or at any change, adjournment or continuation of it, and revokes all prior proxies previously executed.

DATED: 11-25-02

David Morris  
Property Owner Signature  
David Morris





LIMITED PROXY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned owner, or their voting representative, whose address is 420 Hammock Shore Dr - Lot #12 in River Oaks at Aquarina Homeowners Association, Inc., constitute and appoint Jessie Blapp, secretary of the association, his designee or Richard Beach, as nominee, as my true and lawful attorney and proxy with powers of substitution for and in the names and place of the undersigned. to appear, represent and cast votes only as I specifically instruct in reference to the following matters on behalf of River Oaks at Aquarina Homeowners Association, Inc., to be held on December 3, 2002 at 5:00 p.m. at the Administration Office, 235 Hammock Shore Drive, Melbourne Beach, Florida.

1. Vote on the proposed Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina



FOR

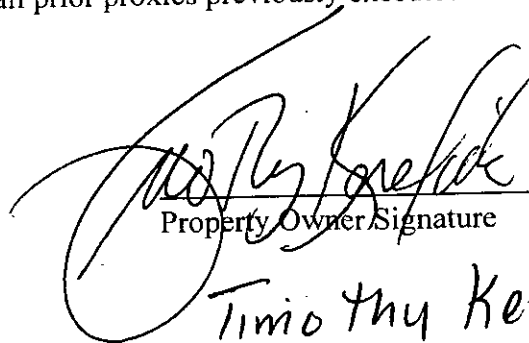


AGAINST

The undersigned ratifies and confirms any and all acts and things that the proxy may do or cause to be done in the premises, whether at the meeting referred to above or at any change, adjournment or continuation of it, and revokes all prior proxies previously executed.

DATED:

11/19/2002

  
\_\_\_\_\_  
Property Owner Signature  
Timothy Kenefick



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LIMITED PROXY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned owner, or their voting representative, whose address is 345 Hammock  
Shore Dr. in River Oaks at Aquarina Homeowners Association, Inc., constitute and appoint  
Dick Geer, secretary of the association, his designee or \_\_\_\_\_,  
as nominee, as my true and lawful attorney and proxy with powers of substitution for and in the  
names and place of the undersigned, to appear, represent and cast votes only as I specifically instruct  
in reference to the following matters on behalf of River Oaks at Aquarina Homeowners Association,  
Inc., to be held on December 3, 2002 at 5:00 p.m. at the Administration Office, 235 Hammock Shore  
Drive, Melbourne Beach, Florida.

1. Vote on the proposed Fifth Amendment to the Declaration of Covenants, Conditions and  
Restrictions for River Oaks at Aquarina

FOR  AGAINST

The undersigned ratifies and confirms any and all acts and things that the proxy may do or  
cause to be done in the premises, whether at the meeting referred to above or at any change,  
adjournment or continuation of it, and revokes all prior proxies previously executed.

DATED: 12/2/02

William T. Lee  
Property Owner Signature  
William T. Lee



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LIMITED PROXY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned owner, or their voting representative, whose address is 365 HAMMOCK SHORE DR.  
\_\_\_\_\_ in River Oaks at Aquarina Homeowners Association, Inc., constitute and appoint  
STEWART CAPPS, secretary of the association, his designee or \_\_\_\_\_,  
as nominee, as my true and lawful attorney and proxy with powers of substitution for and in the  
names and place of the undersigned, to appear, represent and cast votes only as I specifically instruct  
in reference to the following matters on behalf of River Oaks at Aquarina Homeowners Association,  
Inc., to be held on December 3, 2002 at 5:00 p.m. at the Administration Office, 235 Hammock Shore  
Drive, Melbourne Beach, Florida.

1. Vote on the proposed Fifth Amendment to the Declaration of Covenants, Conditions and  
Restrictions for River Oaks at Aquarina



FOR



AGAINST

The undersigned ratifies and confirms any and all acts and things that the proxy may do or  
cause to be done in the premises, whether at the meeting referred to above or at any change,  
adjournment or continuation of it, and revokes all prior proxies previously executed.

DATED:

11/18/02

T. F. Maguire  
Property Owner Signature

T. F. Maguire



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LIMITED PROXY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned owner, or their voting representative, whose address is 385 HAMMOCK SHORE DR in River Oaks at Aquarina Homeowners Association, Inc., constitute and appoint Joe Smith, secretary of the association, his designee or \_\_\_\_\_, as nominee, as my true and lawful attorney and proxy with powers of substitution for and in the names and place of the undersigned, to appear, represent and cast votes only as I specifically instruct in reference to the following matters on behalf of River Oaks at Aquarina Homeowners Association, Inc., to be held on December 3, 2002 at 5:00 p.m. at the Administration Office, 235 Hammock Shore Drive, Melbourne Beach, Florida.

1. Vote on the proposed Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for River Oaks at Aquarina

FOR  AGAINST

The undersigned ratifies and confirms any and all acts and things that the proxy may do or cause to be done in the premises, whether at the meeting referred to above or at any change, adjournment or continuation of it, and revokes all prior proxies previously executed.

DATED:

11/23/02

Gerard A. Phelan  
Property Owner Signature

Gerard A. Phelan



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