

→ wtc61
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Instrument prepared by and record and return to:
RONALD L. PLATT, ESQ.
c/o Independence Title
170 N.W Spanish River Blvd.
Boca Raton, Fl 33431

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF PALM BEACH PLANTATION HOMEOWNERS ASSOCIATION, INC.**

Relating to

PALM BEACH PLANTATION HOMEOWNERS ASSOCIATION, INC.,

of DIAMOND "C" RANCH, according to the Plat thereof as recorded in Plat Book 99, Pages 173 through 179, inclusive, of the Public Records of Palm Beach County, Florida, being more particularly described as:

SEE ATTACHED EXHIBIT "A"

**The following should be read by any potential purchaser
of a home in
PALM BEACH PLANTATION:**

IF YOU PURCHASE A HOME IN THIS COMMUNITY, YOU WILL BE LIVING IN A SPECIAL TAXING DISTRICT KNOWN AS THE PALM BEACH PLANTATION COMMUNITY DEVELOPMENT DISTRICT (THE "DISTRICT") AND WILL BE SUBJECT TO ADDITIONAL COSTS. SPECIAL ASSESSMENT BONDS WILL BE ISSUED BY THE DISTRICT TO FINANCE CERTAIN COMMUNITY WIDE INFRASTRUCTURE. SUCH BONDS WILL BE PAYABLE BY SPECIAL ASSESSMENTS LEVIED AGAINST ALL HOMES IN THIS DEVELOPMENT. THESE SPECIAL ASSESSMENTS WILL APPEAR ON YOUR TAX BILL EACH YEAR FOR NOT MORE

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THAN 30 YEARS FROM THE FIRST INSTALLMENT AS A NON-AD VALOREM ASSESSMENT. THIS SPECIAL ASSESSMENT WILL BE IN ADDITION TO OTHER PROPERTY TAXES AND ASSESSMENTS. THE ANNUAL SPECIAL ASSESSMENTS LEVIED ON EACH HOME TO PAY DEBT SERVICE ON SUCH BONDS IS ESTIMATED TO BE \$850.00 PER YEAR (\$70.83 EACH MONTH) FOR HOMES WITH A LOT SIZE OF 45' X 120' AND \$950.00 PER YEAR (\$79.17 EACH MONTH) FOR HOMES WITH A LOT SIZE OF 65' X 125' AND HOMES WITH A LOT SIZE OF 75' X 125'. UNDER CERTAIN CIRCUMSTANCES, YOU MAY PREPAY YOUR ASSESSMENTS. PALM BEACH COUNTY DOES NOT LEVY THESE SPECIAL ASSESSMENTS. CONTACT SPECIAL DISTRICT SERVICES, INC. AT (561) 630-4922 FOR MORE INFORMATION REGARDING THESE SPECIAL ASSESSMENTS, YOUR PREPAYMENT RIGHTS AND A GOOD FAITH ESTIMATE OF THE ANNUAL OPERATION AND MAINTENANCE ASSESSMENTS THAT THE DISTRICT MAY ALSO LEVY.

PREAMBLE

TOWN & COUNTRY BUILDERS, INC., a Florida corporation, the owner of all of the foregoing described lands, does hereby impress upon said lands the covenants, restrictions, reservations and servitudes hereinafter set forth. The described lands contain 600 total Lots which shall be governed by the terms and conditions of this Declaration. Single Family Residencies will be constructed as both zero lot line and non zero lot line parcels as also shown on the aforesaid Plat.

ARTICLE 1
DEFINITIONS

As used in this Declaration of Covenants and Restrictions, the following words have the following meanings:

- (a) ASSOCIATION means PALM BEACH PLANTATION HOMEOWNERS

ASSOCIATION, INC., a Florida corporation, not for profit, its successors or assigns.

- (b) **BOARD / BOARD OF DIRECTORS** means the Board of Directors of the ASSOCIATION.
- (c) **BUILDING(S)** means a single family residence.
- (d) **PALM BEACH PLANTATION** shall mean and refer to all of the real property subject to this Declaration of Covenants and Restrictions.
- (e) **DECLARANT / DEVELOPER** means Town & Country Builders, Inc., a Florida corporation, its successors and assigns.
- (f) **INSTITUTIONAL LENDER** means the holder of a first mortgage encumbering a LOT, which holder in the ordinary course of business takes, purchases, guarantees or insures residential mortgage loans, whether construction or permanent, and which holder is not the OWNER of the LOT and is not owned or controlled by the OWNER. An INSTITUTIONAL LENDER may include, but is not limited to, a bank, savings and loan association, credit union, insurance company, real estate or mortgage investment trust, pension fund or profit sharing plan, mortgage company, an agency of the United States or any other governmental authority, private person or any private entity or any other similar type of lender generally recognized as an institutional type lender or any FHA, FNMA, GNMA or VA approved mortgage lending institution. For definitional purposes only, an INSTITUTIONAL LENDER shall also mean the holder of any mortgage executed by or in favor of DECLARANT, or any private person, trust, or corporation, whether or not such holder would otherwise be considered an INSTITUTIONAL LENDER.
- (g) **LOT(S)** means a tract of real property designated as a residential building lot, as shown on the Plat of DIAMOND "C" RANCH, whether improved or unimproved.
- (h) **IMPROVED LOT** means a LOT upon which there has been constructed a residence for which a valid Certificate of Occupancy has been issued by an applicable governmental authority.
- (i) **DECLARATION** means this instrument and all exhibits hereto, as may be amended from time to time.
- (j) **MEMBER / OWNER** the holder or holders of the fee simple title to a LOT as herein defined.

- (k) PERSON means a person, firm, association, or corporation.
- (l) COMMON AREA / COMMON PROPERTY / COMMON AREAS means the community clubhouse, fitness room, cabana, pool, security gate, "tot lot", private roadways and those areas not included within an IMPROVED LOT as specifically defined in Paragraph (h) hereinabove. COMMON AREAS are further defined as any area dedicated to or reserved for the Association on any recorded Plat or Replat of the Properties. COMMON AREAS are further defined in Article 9.
- (m) PROPERTY / SUBDIVISION means the following described lands: all of DIAMOND "C" RANCH, according to the Plat thereof as recorded in Plat Book 299 at Pages 173 through 179, inclusive, of the Public Records of Palm Beach County, Florida.
- (n) COMMON EXPENSES means all expenses and assessments which are properly incurred by the ASSOCIATION for the care, operation and maintenance of the SUBDIVISION.
- (o) UNIT means the residential dwelling constructed on a lot including the garage, if any.
- (p) UNIMPROVED LOT means a LOT owned by the DECLARANT for which a Certificate of Occupancy has not been issued or which LOT has not been conveyed by the DECLARANT to any owner other than DECLARANT.
- (q) STREET / PRIVATE ROADWAY, means any street, highway, private roadway or other thoroughfare within the SUBDIVISION which is part of the COMMON AREA, the regulation of which shall be by the ASSOCIATION.
- (r) The use of any gender is deemed to include all genders, the use of the singular includes the plural and the use of the plural includes the singular.
- (s) SINGLE FAMILY RESIDENCE, means a home situated on a zero Lot line or a home situated within the confines of a Lot.
- (t) COUNTY when used herein shall mean Palm Beach County, Florida
- (u) CONSERVATION EASEMENT. A Conservation Easement is set forth in Article 9.1(b)2 and is defined below:

"Conservation Easement" means a right or interest in real property pursuant to Section 704.06, F.S., which is appropriate to retaining land or waste areas predominantly in their natural, scenic, open, agricultural, or wooded condition;

retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any and all of the following:

- (a) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground;
- (b) dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- (c) removal or destruction of trees, shrubs, or other vegetation;
- (d) excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- (e) surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- (f) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- (g) acts or uses detrimental to such retention of land or water areas; and
- (h) acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

ARTICLE 2

PALM BEACH PLANTATION HOMEOWNERS ASSOCIATION, INC.

2.1 Formation. At or prior to the time of the recording of this Declaration, Declarant has caused the Association to be formed by the filing of the Articles of Incorporation in the Office of the Secretary of State of Florida. The Association is formed to own, operate and maintain the Common Area; enforce the covenants, conditions, restrictions and other provisions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in the Declaration and in the Articles of Incorporation and the By-Laws of the Association. Subject to the additional limitations provided herein and in the Articles of Incorporation and By-Laws, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in Florida Statutes, Chapter 617, Part I (1990), as amended from time to time, (Corporations Not For Profit). When city, county, state federal or other agency laws or regulations are more restrictive than those specified

in the Declaration of Covenants and Restrictions, Articles of Incorporation or By-Laws of the Association the more restrictive shall govern.

2.2 Membership. A person or entity shall automatically become a Member of the Association upon acquisition of fee simple title to any Lot and filing a deed therefore in the public records of the County. Membership shall continue until such time as the Member transfers or conveys his interest of record or the interest is transferred and conveyed by operation of law, at which time membership, with respect to the Lot conveyed shall automatically be conferred upon the transferee. Membership shall be appurtenant to, and may not be separated from ownership of a Lot subject to this Declaration. No person or entity holding an interest of any type or nature whatsoever in a Lot only as security for the performance of an obligation shall be a Member. Declarant, by including additional property within the imposition of this Declaration, may cause additional membership in the Association and may designate the ownership basis for such additional membership. There shall be only one (1) voting member per Lot, regardless of how the deed or instrument evidencing ownership of a particular Lot is set forth.

2.3 Voting. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Members shall be the Declarant and shall be entitled to one thousand (1,000) votes. The Class B membership shall cease on the happening of one of the following events, whichever occurs earlier:

- (a) 3 months following the closing of 90% of the Lots located within the property, or
- (b) Seven (7) years following conveyance of the first Lot to a Lot purchaser; or
- (c) Such earlier date as Declarant may determine.

2.4 Administration of the Association. The affairs of the Association shall be administered by the Board of Directors in accordance with this Declaration, the Articles of Incorporation and the By-Laws of the Association. The Articles of Incorporation and By-Laws may be amended in the manner set forth therein; provided, however, that no such amendment shall conflict with the terms of this Declaration or adversely affect the rights of Declarant without

Declarant's prior written approval; and provided further, that no amendment, alteration or revision may be made which materially, directly or adversely affects the rights or privileges of any Mortgagee without the prior written approval of the Mortgagee so affected, and any attempt to amend, alter or rescind contrary to this prohibition shall be of no force or effect.

2.5 Suspension of Membership Rights. No member shall have any vested right, interest or privilege in or to the assets, functions, affairs or franchises of the Association, or any right, interest or privilege which may be transferable, or which shall continue after his membership ceases, or while he is not in good standing. A Member shall be considered "not in good standing" during any period of time in which he is delinquent in the payment of any Assessment, or in violation of any provision of this Declaration or of any rules or regulations or traffic regulations promulgated by the Association. While not in good standing, the Member shall not be entitled to vote or exercise any other right or privilege of a Member of the Association.

2.6 Control by Declarant

2.6.1 Anything contained herein to the contrary notwithstanding, Declarant shall have the right to retain control of the Association until the earlier of the following events:

- a) 3 months after the closing of 90% of the Lots located within the property, or
- b) Seven (7) years following conveyance of the first lot to a Lot purchaser, or
- c) Such earlier time as is determined by Declarant at declarant's sole discretion. Prior to ninety (90) days after the happening of the earliest of the foregoing events, the Association shall conduct the Turnover Meeting. So long as it retains control of the Association, Declarant shall have the right to appoint three (3) members of the Board of Directors for each Board Member appointed by the Members and to approve the appointment of all officers of the Association, and no action of the Members of the Association shall be effective unless and until approved by Declarant. In the event that Declarant shall enter into any contracts or other agreements for the benefit of Owners or the Association, Declarant may, at its

option, assign its obligations under such contracts or agreements to the Association, and in such event the Association shall be required to accept such obligations.

2.6.2 After turnover of control of the Association, no action shall be taken or decision adopted by the Board which would adversely impact on the construction, development, sale or marketing of the Property or on the condition or appearance of the Property without the prior written consent of the Declarant; so long as the Declarant has title to at least one lot. The Board shall submit such decisions and actions to the Declarant, for approval. The Declarant shall approve or disapprove such decisions and actions within thirty (30) days after receipt thereof. In the event the Declarant fails to act within such time period, such failure shall be deemed approval by the Declarant.

2.7 Acquisition and Conveyance of Property. The Association shall have the power and authority to acquire and convey such interest in real and personal property as it may deem beneficial to its Members. Such interests may include fee simple or other absolute ownership interests, leaseholds or such other possessory use interests as the Association may determine to be appropriate. Any property acquired pursuant to this section shall be Common Area.

2.8 Traffic Regulation. Subject to approval by the City, the Association, through its Board of Directors, shall have the right to post and promulgate traffic regulations throughout the Subdivision for use of the Streets. A copy of all traffic regulations shall be made available to all members for inspection at the office of the Association. The Association, through its Board of Directors, shall also have the right to establish enforcement mechanisms for violation of the traffic regulations, including without limitation, the assessment of special assessments for non-compliance, which shall be collected pursuant to this Declaration, the removal of vehicles, and the suspension of Owners' rights and easements of enjoyment provided herein. Upon request, those who violate the traffic regulations shall be entitled to a hearing before the Board of Directors and they shall be given notice of the date and time of such hearing. A special assessment may also be levied pursuant to the provisions of Article 8 in addition to or in lieu of other remedies available to the Association.

2.9 Owners' Easement of Enjoyment. Subject to the provisions herein, each Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to, and shall pass with the title to each Lot.

2.10 Continual Maintenance. In the event of a permanent dissolution of the Association, the Members shall immediately thereupon hold title to the Common Area as tenants in common and shall collectively provide the continued maintenance and upkeep thereof. In no event shall the County or City be obligated to accept any dedication offered to it by the Association or the Members pursuant to this section, but the County and City may accept such a dedication and any such acceptance must be made by formal resolution of the then empowered Board of County Commissioners or the City Commission. In the event of a dissolution of the Association, for whatever reason, any Owner may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association in place of and instead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and the Common Area.

2.11 Pool/Clubhouse Regulations The Association shall promulgate rules and regulations from time to time regarding the pool, clubhouse, and common areas in proximity thereto.

ARTICLE 3 **USE RESTRICTIONS**

3.1 Zoning. All of the LOTS in the Property subject to the provisions hereof shall be used only for the purposes as are permitted under the zoning classifications of the government body having jurisdiction as of the date hereof.

3.2 Commercial Building. No commercial buildings shall be erected, nor shall any building be used for any commercial purpose on any Lot, provided, however, that construction structures may be placed on a Lot by the Declarant and remain there during the course of active construction of a Building, and provided further that no other portable or temporary buildings may be placed on any Lot except that the Declarant may do so.

3.3 Leases. No Owner shall lease his Improved Lot, or any portion thereof, without the prior approval of the Association. Said approval shall not be unreasonably withheld. Under no circumstances shall the Improved Lot, or any portion thereof, be leased for a period of less than six (6) months.

3.4 No Trade, Business or Professionals, etc. No trade, business, professional or any other type

of commercial activity including but not limited to day care centers shall be carried on upon any of the Lots. However, notwithstanding this restriction, the Declarant and its assigns shall not be prohibited from operating sales models or trailers or offices on any Lots(s).

ARTICLE 4
ARCHITECTURAL CONTROL COMMITTEE

For the purposes of insuring the development of the Property as a residential area of high standards, the Declarant, until an Architectural Control Committee has been designated by the Board of Directors of the Association, shall exercise architectural control over additional changes to buildings, structures and other improvements placed on the Lots. The Owners of each and every Lot, except Declarant, by taking title thereto or by taking possession thereof, covenant and agree that no building, wall, structure or other improvements, including but not limited to any satellite dish shall be placed upon such Lot unless and until the plans and specifications therefore and the plot plan have been approved, in writing, by the Declarant or a majority of such control committee. Each such building, wall, structure or other improvements shall be placed upon said Lot only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans and specifications by the Declarant or such committee may be based on any reasonable discretion including purely aesthetic grounds, which, in the sole discretion of the Declarant or such committee, shall be sufficient pursuant to standards established by the Declarant. No alterations in the exterior appearance of the Buildings or other structures shall be made without like approval. Said approval shall not be unreasonably withheld. Plans for such approval shall be submitted to the Declarant or the Committee at the Declarant's office unless Declarant or the Committee shall establish a different place to submit such plans. In the event Declarant or said Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to them or if no suit to enjoin the constructions, addition, alterations, or change has been commenced prior to the completion thereof, approval will not be required and this provision shall be deemed to have been fully complied with.

It is intended that the architectural control committee shall have the right to control all architectural and visual aspects of any improvements constructed in the Subdivision, including, without limitation, height, site

planning, setback requirements, open spaces, exterior design, window tinting, outside window treatments, house colors, landscaping, including the right to establish minimum landscaping criteria for each Lot provided that the same shall be applied equitably and without discrimination. It is the purpose of these restrictions that the entire area of which the subject lands are a part may be developed as a planned high quality residential community with each area thereof complimenting the others and forming a homogeneous whole. Nothing contained in this Article 4 regarding the Architectural Control Committee shall exempt the Declarant, Association or any Owner from complying with any and all Palm Beach County Codes and Regulations,

ARTICLE 5
PARKING, TRASH, CLOTHESPOLES, ANTENNAE, HURRICANE OR STORM SHUTTERS, SOLAR
PANELS, SWIMMING POOLS, FENCES, GARAGE DOORS, MAILBOXES AND OTHER
RESTRICTIONS

- 5.1 No clothesline or other clothes drying facility shall be permitted which is located outside of the dwelling unit.
- 5.2 No sign of any nature whatsoever shall be erected or displayed upon any of the Lots, except where express prior written approval of the size, shape, content and location thereof has been obtained from the Association which approval may be arbitrarily withheld, providing, however, that the Declarant shall have the right to place such signs upon the Lots and Improved Lots as Declarant deems necessary and proper in its sole discretion in connection with the sale by Declarant of Lots and Improved Lots within the Subdivision, including resales of the same. For Sale signs not larger than 6" x 10" may be displayed from within the residence located upon an Improved Lot only after Declarant has turned over control of the Association pursuant to Article 2.
- 5.3 No exterior radio, television, other electronic antennae, or aerial may be erected or maintained anywhere upon any of the foregoing described lands except as may be approved by the Association herein. A satellite dish is permitted provided it is no larger than twenty-four (24)" inches in diameter and prior written approval is granted by the Architectural Control Committee.
- 5.4 No front yard fences, other than those erected by the Declarant shall be permitted anywhere within the Subdivision. Only white aluminum picket fencing or black vinyl chain link may be constructed on any Lot upon obtaining the prior approval of the Architectural Control Committee and the appropriate governmental authority. Shrubbery must be planted and maintained by the Owner along the outside entire perimeter of said fencing. Prior written approval is required by the Architectural Control Committee of any shrubbery to be planted along the perimeter of the fencing as well as any shrubbery or landscaping to any part of an exterior Lot, except that Owner may plant annuals (as that term is

commonly used) such as impatiens without prior Association approval. Any shrubs or plants put in by the Owner shall be maintained by the Owner. Any fencing constructed in violation of this Paragraph hereinabove may be removed by the Association. The entry onto the property to remove the violation by the Association or its agents shall not be deemed a trespass and the Association shall bear no liability to the Lot Owner therefor. The expense of said removal shall be paid by the Owner. In the event the Owner shall fail to pay said expense, the Association shall have the right to cause a lien to be placed against the Improved Lot in the same manner as is provided for herein.

- 5.5 All garbage and trash must be placed in closed containers and kept in an orderly fashion when it is placed outside for trash pickup. All garbage and trash must be kept indoors before it is placed outside for trash pickup. No garbage or trash may be put out for pick-up more than twelve (12) hours prior to said pick-up. Empty containers must be moved out of sight within 10 hours after pick-up.
- 5.6 The parking or storage of automobiles and other motor vehicles is permitted only in garages and driveways. There shall be no parking or storage of any vehicles permitted on the swale or green belt right of way area. Overnight parking in the streets is prohibited.
- 5.7 The parking or storage of boats and boat trailers, campers, trailers, commercial vehicles or other recreational vehicles (that is vehicles designed and constructed primarily for recreational use) upon any lands in the Subdivision is prohibited except in spaces expressly approved in writing in advance by the Association or Declarant and in accordance with any time constraints imposed herein.
- 5.8 Only vehicles (non-commercial) bearing current license and registration tags and inspection certificates, as required pursuant to State law and which are operable without assistance shall be permitted to be parked or stored on any lands within the Subdivision.
- 5.9 The overnight parking or storage of trade or commercial vehicles in excess of one-half ton rated capacity is prohibited.
- 5.10 Hurricane and storm shutters shall be installed by Declarant and maintained by Owner.
- 5.11 All swimming pools and pool decks constructed on a Lot must be in ground pools fenced or screened in with a type of fencing or screening approved by the Association and the appropriate municipal authority if screening or fencing is required by the municipality. No above ground pools shall be permitted to be constructed on any Lot. This provision shall not be waived or amended by the Association after the Declarant no longer owns any Lot(s) in the Subdivision.
- 5.11.1 No pool deck, pool fencing, deck fencing, pool screening and/or deck screening shall be constructed on any Lot so as to encroach into any regulated setback. Deck fencing and pool fencing shall only be Five (5) foot black vinyl chain link or white aluminum picket fencing unless municipality or county requires otherwise.

- 5.12 No sheds or other means of outside storage may be constructed upon any Lot.
- 5.13 Only central air conditioning is permitted to be installed in any Improved Lot. No window, wall, portable or other individual air conditioning unit is permitted to be installed.
- 5.14 Motorcycles are not permitted, except with the prior written consent of the Association which shall require that they be parked inside garages, and may require appropriate noise muffling equipment so that the operation of same does not create an annoyance to the residents of the Subdivision.
- 5.15 No garage sales are permitted without prior written consent of the Association. Said consent may be arbitrarily withheld. In any event no Lot Owner may hold more than one sale per year not to exceed 48 hours in duration.
- 5.16 No modification to garage doors may be made without the prior written consent of the Association. Said consent may be arbitrarily withheld.
- 5.17 All mailboxes shall be uniform and maintained by Owner. Single Family Residencies shall have stand alone mailboxes of "like kind" approved by the Association and appropriate postal authority. Replacement of any mailboxes shall be with the same style and appearance as was initially installed by Declarant.
- 5.18 Declarant shall provide a uniform system of water supply to the sprinklers installed. No sprinklers may be run off the lakes or canals within subdivision other than as installed by Declarant. Owner's shall be responsible for all maintenance of these sprinklers.
- 5.19 In addition to any other remedies available to the Association for the violation of the foregoing use restrictions and any other restriction in this Declaration, the Association shall impose a monetary fine and/or the Association may impose an assessment as is set forth in Article 8 hereinafter. Failure to pay said fine and/or assessment shall result in a lien in favor of the Association against the Improved Lot of the violating Lot Owner in the same manner as set forth herein. The Owner shall be entitled to notice and a hearing as set forth in Article 8.

ARTICLE 8
LIVESTOCK, POULTRY AND ANIMALS

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Improved Lot, except that a total of no more than two (2) dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and provided further that they are kept so as not to be an annoyance or nuisance to anyone in the Subdivision. An Owner's 2 dogs

cannot exceed 150 pounds. Dogs must be kept on a leash when outside of the residence. Any Owner shall be required to immediately pick up any animal waste deposited by his or her pet on any portion of the Subdivision. No pets may be left outside at night between the hours of 9:30 p.m. and 7:00 a.m. The Association may require any pet to immediately and permanently be removed from the Subdivision due to a violation of these rules. A pet may not be left unattended or unsupervised outside for more than one hour at a time (outside meaning within the Improved Lot).

ARTICLE 7 **PROPERTY RIGHTS**

7.1 **OWNER'S RIGHTS:** Every member of the Association shall have the right to enjoyment in and to the Common Areas and any and all improvements thereon subject to the rules established by the Association. The Declarant shall retain legal title to the Common Areas for the development period, but in no event later than as provided for in Article 2.6.1, when if the DECLARANT has not previously done so, it shall convey the Common Area to the Association free and clear of all liens and encumbrances, except taxes for the year of conveyance and reservations, restrictions, covenants and easements of record, including those contained in this Declaration.

7.2 **DECLARANT'S RIGHTS:** It is acknowledged that the performance by the Association of the duties hereunder, and the exercise of its rights for the benefit of the Owners of the Lots subject to these restrictions, as well as for the benefit of the Declarant. Accordingly, if the Association shall fail or refuse to fulfill its obligations hereunder, or to exercise its rights, Declarant, in its name or in the name of the Association, shall have the right, but not the obligation, to perform any of the Association's duties and to exercise any of the performance of such duties and Declarant shall not be liable in any way for exercising any rights under this section.

7.3 **GRANT AND RESERVATION OF EASEMENT** . Declarant hereby reserves and grants the following perpetual, nonexclusive easements over and across the Property, but not beneath any Homes, as covenants running with the property for the benefit of the Owners, the Association, and Declarant as hereinafter specified for the following purposes:

- A. **Utility and Services Easements**. All of the property shall be subject to an easement or easements to provide for: (a) installation, service, repair and maintenance of the equipment required to provide

utility services to the Association Property and the Lots, including, but not limited to, power, electric transmission, light, telephone, cable television, gas water, sewer and drainage, and (b) governmental services, including, but not limited to, police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purpose for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

B. Easement for Encroachment. All of the property shall be subject to an easement or easements for encroachment in favor of each Owner in the event any portion of his or her Home or appurtenant Improvements such as a fence now or hereafter encroaches upon any other Lot as a result of minor inaccuracies in survey or construction or due to settlement or movement or roof overhang as hereinafter described. Such encroaching Improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvements in favor of the Owner thereof or his or her designees.

C. Easement to Enter Upon Lots. An easement or easements for ingress and egress in favor of the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the PALM BEACH PLANTATION Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Association Property and to maintain any Lot in the event the owner thereof fails to do so.

D. Easement Over Association Property. An easement of enjoyment in favor of all Owners, their family members, guests, invitees and lessees in and to the Association Property which shall be appurtenant to and shall pass with title to every Lot in the Property, subject to the following:

(1) the right of the Association to suspend the right of any owner to use the Association property for any period during which Assessments against his or her Lot remain unpaid, subject to the Notice and Hearing provisions herein and subject to any such Owner's right of access to his or her Lot;

(2) The right of the Association to grant permits, licenses and easements over the

Association Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; and

(3) all provisions set forth in the PALM BEACH PLANTATION Documents.

- E. Zero Lot Line Easement and Easement for Roof Overhang for Patio Homes . An easement or easements to provide for the roof overhang of a Home or dwelling in favor of the Owner thereof, including rights of access for persons or equipment necessary to maintain, repair and replace such roof overhang. Except for some dwellings located on the corner of an intersection of two streets, all dwellings are intended to be constructed so as to about a side yard boundary line (commonly referred to as a "Zero lot line" side yard setback). There us hereby created a three foot easement upon each lot which is adjacent to a Zero lot line, running parallel to, and for the entire length of, the boundary line of such lot. This shall be a perpetual easement running with the land for the benefit of the dwelling upon which the dwelling is constructed abutting said zero lot line, for the purposes and uses of drainage, roof overhang, utilities and access to the rear of the adjacent dwelling and for maintenance of the dwelling constructed upon the boundary line. Further this easement shall also be in favor of Florida Power and Light Company for the installation and maintenance of its cables, lines, meters and other apparatus for the provision of the electrical service to the dwellings.
- F. Drainage and Irrigation Easement. An easement for the drainage, flowage and irrigation over, under and upon the Property, including each of the Lots in favor of the Association and each of the Owners, including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair the Drainage System, including, but not limited to, flowage pipes and irrigation pipes.
- G. Drainage Systems Encroachment Easement. An easement for the encroachment over, under and upon the drainage easements located within the Lots, as designated on the Plat and any Ancillary Plat, Additional Plat or Replat, in favor of (i) the Owner of the Lot upon which the drainage easement is located for the existence of any driveway and/or sidewalk or irrigation system or part thereof, and (ii) the Association for the reasonable rights of access for persons and equipment to

construct, install, maintain, alter, inspect, remove, relocate and repair any driveway and/or sidewalk, or irrigation system or part thereof installed or located thereon. In the event the Association requires access to any Drainage System Improvements within a drainage easement located within a Lot upon which any such driveway and/or sidewalk or irrigation system encroaches, the Association has the obligation, at its own cost expense, to remove and replace any such encroachment, and to return it to its condition immediately preceding such removal and replacement once access to the drainage easement is no longer required.

- H. Easement for Pedestrian and Vehicular Traffic. Easements are provided for pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist upon the Common Areas and be intended for such purpose; and for pedestrian and vehicular traffic and parking over, through, across and upon such portions of the Common Area as may from time to time be paved and intended for such purposes, same being for the use and benefit of the Owners and the residents of the Subdivision, and their guest and invitees.
- I. Easements and Restrictions of Record. The property is subject to restrictions, reservations, dedications and easements which have been placed of record prior to the recording of this declaration, including but not limited to the Plat of DIAMOND "C" RANCH.

ARTICLE 8 **ASSESSMENTS AND LIEN**

- 8.1 Authority of Association. The Association, through its Board of Directors, shall have the power and authority to make and collect Assessments as Hereinafter set forth. All Assessments made by the Association shall be collected by the Association or such agent as shall be designated by the Association for collection of Assessments.
- 8.2 General Assessments. General Assessments shall be determined annually for the purpose of maintenance and management of the Association, the Common Area and maintenance of that portion of the Lots outside of the Units, as hereinafter set forth, and for the purpose of promoting the safety and welfare of the Owners. Without limiting the foregoing, general Assessments shall be used for payment of: operation, maintenance and management of the Association and the

Common Area; property taxes and assessments against and insurance coverage for the Common Area; legal and accounting fees; maintenance of any Streets dedicated or reserved to the Association, if any; management fees; normal repairs and replacements; charges for utilities used upon the Common Area; cleaning services; the creation of such reserve accounts as may be required from time to time by the Board of Directors; expenses and liabilities incurred by the Association in the enforcement of its rights and duties against the Members or others; maintenance of vacant property; maintenance of that portion of the Lots outside of the Units as hereinafter set forth and all other expenses deemed by the Board of Directors of the Association to be necessary and proper for management, maintenance, repair, operation, enforcement and for the promotion of the safety and welfare of the Owners.

- 8.3 Basis and Collection of General Assessments.** The Association shall annually estimate the Common Expenses it expects to incur and the period of time involved therein and shall assess its Members sufficient monies to meet this estimate. All Lots, except Unimproved Lots, shall be assessed at a uniform rate to be determined by the Association, so that all Lots (except Unimproved Lots) subject to a general Assessment shall be assessed equally. Should the Association at any time determine that the Assessments made are insufficient to pay the Common Expenses, the Board of Directors shall have the authority to levy additional general Assessments to meet such needs. General Assessments shall be payable in advance on a monthly basis.
- 8.4 Special Assessments.** The Association shall have the power and authority to levy and collect a special Assessment from each Member for payment of the following: the acquisition of property by the Association; the cost of construction of capital improvements to the Common Area; the cost of construction, reconstruction, unexpected repair or replacement of the Common Area or any capital improvement, and including the necessary fixtures and personal property related thereto; including, without limitation, such costs resulting from an Act of God, hurricane, flood or freeze damage; the expense of indemnification of each Director and Officer of the Association; and any other expenses included in the budget adopted annually by the Association. All Lots, except Unimproved Lots, shall be assessed at a uniform rate. A special Assessment shall be collectible in such manner as the Board of Directors shall determine. If a special Assessment shall exceed FIVE HUNDRED (\$500.00) per Lot, it shall require the approval of the Members of the Association, to be obtained at a duly convened regular or special meeting at which a Quorum exists and which is called at least in part to secure this approval. Approval shall be by an affirmative vote of at least fifty-one percent (51%) of the votes present in person or by proxy.
- 8.5 Emergency Special Assessment.** The Association may levy an emergency special Assessment

when, in the sole determination of the Board of Directors, there is potential danger of damage to persons or property. Emergency special Assessments may be utilized to pay for improvements, repairs or replacements. Events justifying emergency special Assessments include, but are not limited to, hurricanes, floods, fires. Emergency special Assessments shall be collected in such manner as the Boards of Directors shall determine.

8.6 Individual Assessments. The Association shall have the power and authority to levy and collect an individual Assessment against a particular Lot for the cost of maintenance, repairs or replacements to the Common Area, or any other property to be maintained by the Association, necessitated by the negligent or willful acts of an owner or his invitees, licensees, family or guests, or for the cost of maintenance, repairs or replacements within or without the Lot, which the Owner thereof has failed or refused to perform. The Association shall have the right to enter into and onto each Lot to perform necessary maintenance, repairs and replacements, including the right to abate or eliminate any nuisance. The individual assessment may include an administrative fee charged by the Association in an amount to be determined by the Board of Directors, in its discretion, from time to time. All individual Assessments shall be collected in such manner as the Board of Directors shall determine.

8.7 Special Assessments for Non-Compliance: In addition to all other remedies provided in this Declaration, the Board of Directors, in its sole discretion, may levy a Special Assessment or reasonable fine against an Owner for failure of the Owner, his family, guests, invitees, or employees, to comply with any provision in this Declaration or the Articles, By-Laws, rules and regulations or traffic regulations of the Association, provided that the following procedures are followed:

8.7.1 Notice. The Association shall notify the Owner of the infraction or infractions. Included in the Notice shall be the date and the time of the next Board of Directors Meeting at which the Owner shall present testimony as to why the Special Assessment should not be imposed. A fine or suspension may not be imposed until an owner has been provided at least 14 days notice.

8.7.2 Hearing. The non-compliance shall be presented to the Board of Directors at the time and place provided in the Notice, at which meeting a hearing shall be conducted for purposes of obtaining testimony as to the levying of a Special Assessment in the event that it is determined that a violation has in fact occurred. Written decision of the Board of Directors shall be submitted to the Owner no later than ten (10) days after the hearing.

8.7.3 Amount of Special Assessment. The Board of Directors may impose the following Special Assessments against the Owner in the event a violation is found.

8.7.3.1 First Non-Compliance for Violation: A Special Assessment in an amount not in excess of \$100.00.

8.7.3.2 Second Non-Compliance for Violation: A Special Assessment in an amount not in excess of \$500.00.

8.7.3.3 Third and Subsequent Non-Compliance Violation or violations which are of a Continuing Nature: A fine in an amount not in excess of \$1,000.00.

8.7.4 Due Date of Special Assessment. A Special Assessment as provided in this Article shall be due and owing not later than Thirty (30) days after the written decision as provided in Section 8.7.2 above.

8.8 Effect of Non-Payment to Assessment. All notices of Assessments from the Association to the Members shall designate when the assessment is due and payable. If an Assessment is not paid on the date when due, it shall then become delinquent and shall bear interest at the maximum rate allowed by law (and in the absence of such law, at such interest rate as the Board of Directors of the Association may decide from time to time) from the date when due until paid. Once an assessment becomes delinquent, in addition to any other fees that may be set forth herein, repayment thereof shall also include a late fee of \$25.00 (Twenty Five) dollars for each 30 day period in which the assessment remains delinquent. The Assessment, together with interest thereon and the costs of collection thereof, including attorneys' fees shall be a continuing lien against the Lot owned by the Member against whom the assessment is made and shall also be the continuing personal obligation of the Owner thereof and such personal obligation shall pass to a successor in title to a Lot until such time as the Assessment is paid as provided for herein. The Association shall also record a claim of lien in the Public Records of the County setting forth the amount of the unpaid assessment, the rate of interest due thereon and the cost of the collection thereof. If any Assessment or any installment thereof shall not be paid within Thirty (30) days following the due date, the Association may declare the entire unpaid Assessment immediately due and payable. The Association may at any time thereafter bring an action to foreclose the lien against the Lot and/or Owner assessed in the manner in which mortgages on real property are foreclosed and a suit on the personal obligation of the Owner. A suit to collect unpaid Assessments may be prosecuted by the Association without waiving the lien securing such unpaid Assessments, costs, and attorneys' fees. There shall be added to the amount of the Assessment the cost of such action, including attorneys' fees, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and costs, including attorneys' fees, incurred by the Association. Any successor in title to a Lot shall be held

to constructive notice of the records of the Association to determine the existence of any delinquency in the payment of Assessments.

8.9 Additional Assessments. Any charges or costs which may be levied against the Lots by any government entity, including, without limitation, trash collection charges which may be levied by Palm Beach County. Such charges or costs shall be the sole responsibility of the Owners of the Lots and are not included in the Assessments.

8.10 Certificate of Assessments. The Association shall prepare a roster of the Members, their respective Lots and Assessments applicable thereto, which shall be kept in the office of the Association or at the Office of the appointed management company, and shall be opened to inspection by all Members at reasonable business hours. At the request of an Owner, the Board of Directors shall prepare a Certificate of Assessments signed by an officer of the Association, or an agent or management company, if one exists, setting forth whether the Owner's Assessments have been paid and the amount which is due as of the date of the Certificate. As to parties without knowledge or error who rely thereon, such Certificate shall be presumptive evidence of payment or partial payment of any Assessment therein stated as having been paid or partially paid. The Association and/or Management Company may charge a reasonable fee for providing said Certificate.

8.11 Subordination of Lien to Mortgage. Regardless of the effective date of the Lien of any Assessments made by the Association, such Assessment lien shall be subordinate and inferior to the lien of the mortgage of any Mortgagee. Such subordination shall, however, apply only to the Assessments which have become due and payable prior to a final sale or transfer of a mortgaged Lot pursuant to a decree of foreclosure or in any other proceeding or conveyance in lieu of foreclosure of the mortgage. No such sale or other transfer shall relieve any Lot from liability for any Assessment becoming due thereafter, nor from the lien of any such subsequent Assessment. Any delinquent Assessments which are eliminated against a Lot pursuant to a sale or transfer in connection with the foreclosure of a mortgage, or any proceeding or deed in lieu of foreclosure, may be reallocated and assessed to all Owners as a Common Expense. The written opinion of the Association that the Assessment lien is subordinate to a mortgage lien shall determine any question of subordination.

8.12 Payments by Declarant. Notwithstanding any provision that may be contained to the contrary in this instrument, for so long as Declarant is the owner of any Lot, the Declarant shall not be liable for Assessments against such Lot, provided that Declarant funds any deficit in operating expenses in excess of assessments billed and initial capital contribution collected from the

Association.

Declarant may at any time commence paying such assessments as to Lots that it owns and thereby automatically terminate its obligation to fund subsequent deficits in the operating expenses of the Association. In any event, any funding of Association deficits shall be treated as loans from the Declarant to be repaid by the Association at a market rate of interest.

8.13 Exempt Property. The following property shall be permanently exempt from the payment of all Assessments by the Association:

- 8.13.1 All property dedicated or reserved to or owned by the Association.
- 8.13.2 All property dedicated to or owned by the water management district, water control district or other party responsible for maintenance of the water management system within the subdivision.
- 8.13.3 Any portion of the Property dedicated to the County.
- 8.13.4 Any portion of the Property exempted from ad valorem taxation by the laws of the State of Florida.
- 8.13.5 Any Unimproved Lots.

8.14 Initial Capital Contribution and Other Payments Due at Closing. In addition to all of the foregoing Assessments, Owners shall also be required to pay, at the time of the closing of their Lots, a sum equal to three (3) months general Assessments, assessed against a Lot by the Association, which sums shall be paid to the Association as an initial contribution to the working capital of the Association. This initial contribution shall not relieve Owner of Owner's responsibility to pay all prepaid monthly installments of the general Assessments assessed against Owner's Lot, as well as all subsequent Assessments. The contribution is a one-time contribution to be made by the initial purchasers of Lots from Declarant. All capital contributions received by the Association shall be for the use and benefit of the Association and the Owner's. Notwithstanding the foregoing, the Declarant, for so long as it controls the Board of Directors, shall have the right to use the Initial Capital Contributions to pay for any ordinary expenses and purposes of the Association. Regular maintenance/assessments may also be required to be pre-paid at closing by initial purchasers in Declarant's sole discretion.

ARTICLE 9
MAINTENANCE

9.1 RESPONSIBILITY OF ASSOCIATION AND OTHER THIRD PARTY RESPONSIBILITIES

- (a) The Association shall have the perpetual responsibility for maintaining, repairing and operating the Common Areas, except as set forth below. In addition to the Common Areas defined herein, which the Association shall maintain in perpetuity, the Association shall also maintain in perpetuity the following Tracts and Easements which are dedicated and/or Reserved for the Association on the Plat of DIAMOND "C" RANCH.

The Common Area includes but are not limited to the entrance monument, signage, entrance landscaping, any pumps operating the Common Area irrigation, Common Area landscaping and irrigation, security gate, community clubhouse, fitness room, cabana, pool, "tot lot", (2) lakes, the water feature(s), the street lights (unless operated by Florida Power and Light Company), curbs, sidewalks, and all Streets and private roadways dedicated or reserved to the Association on the Plat. Common Areas also include but are not limited to all landscape easements located within the Subdivision, any other walls, berms, landscape buffers and park areas constructed for the Subdivision. The South Florida Water Management District shall not be liable or responsible for maintaining any of the aforesaid Common Areas including but not limited to the two (2) lakes, all pumps, and any water features(s).

Maintenance and operation within the meaning of this sub-paragraph shall include but not be limited to mowing, irrigating, trimming, edging, painting, fertilizing, cleaning, spraying and necessary repairs. The Association may do such other things and make such other actions as may reasonably be necessary to promote the health, safety and welfare of its members.

- (b) Surface Water Management: The surface water management system, located on the Common Areas for the Property shall be perpetually operated and maintained by the Association, and/or any applicable governmental agency in accordance with all permits and approvals issued by any controlling governmental authority. Furthermore, the surface water management system shall not be interfered with, changed or altered, except pursuant to permits and with the prior approval issued by the controlling governmental authority.

9.1(b)1 Any and all Owners of a Lot(s) are notified herein that their Lot may contain or be adjacent to wetlands preservation or mitigation areas and upland buffers which are protected under conservation easements.

9.1(b)2 The Association accepts the responsibility for perpetual maintenance of the conservation easement (preserved/restored/created wetland areas and upland buffer zones) and agrees to take action against Lot Owners as necessary to enforce the conditions of the conservation easement(s) and of this permit. A Conservation Easement is defined in Article 1, definitions, Section u.

9.1(b)3 Any and all Owners of a Lot(s) are notified herein that the wetlands and upland buffers may not be altered from their natural/permitted condition with the exception of: exotic or nuisance vegetation removal, or restoration in accordance with the restoration plan included in the conservation easement. Exotic vegetation may include, but is not limited to, melaleuca, Brazilian pepper, Australian pine, and Japanese climbing fern or any other species currently listed by the Florida Exotic Pest Plant Council. Nuisance vegetation may include cattails, primrose willow, grape vine and torpedo grass.

9.1(b)4 The Association shall notify any and all Owners of a Lot(s) of any mitigation/ monitoring and/or financial assurances for which the Association is responsible.

9.1(b)5 Any and all Owners of a Lot(s) are notified herein that they are responsible for the perpetual maintenance of any signage required by the permit.

9.1(b)6 The Association in its budget will make provision to ensure that it will be able to accomplish the required perpetual maintenance of the conservation areas.

9.1(b)7 A maintenance and monitoring plan for the conservation areas is included as Exhibit B to the Declaration of Covenants and Restrictions. The Association is responsible for the maintenance and monitoring of conservation areas in accordance with the District permit and the use restriction will be enforced by the Association.

9.1(b) a-h Further Association Responsibilities Regarding Water Management

- a) The Association has accepted responsibility for the operation and maintenance of the Surface Water Management ("SWM") System, described in South Florida Water Management District ("SFWMD" or "District") permit # 50-05711-W.
- b) The SWM System is owned by the Association, and are Common Areas.
- c) The Association is responsible for assessing and collecting fees for the operation, maintenance, and if necessary, replacement of the SWM system.
- d) Any amendment proposed to this Declaration which would affect the SWM System, conservation areas or water management portions of the Common Areas will be submitted to the District for a determination of whether the Amendment necessitates a modification of the SFWMD permit. If a

modification is necessary, the District will advise the permittee.

- e) The rules and regulations shall remain in effect for a minimum of twenty-five (25) years and shall be automatically renewed thereafter.
- f) If wetlands mitigation or monitoring is required the Association shall be responsible to carry out this obligation. The rules and regulations state that it shall be the Association's responsibility to complete the task successfully, including meeting all (permit) conditions associated with wetlands mitigation, maintenance and monitoring.
- g)(1) The SFWMD Permit No. 50-05711 W is attached to this Declaration as Exhibit "B".
- g)(2) Copies of the permit and any future SFWMD permit actions shall be maintained by the Association's Registered Agent for the Association's benefit.
- h) The District has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the surface water management system facilities or in mitigation or conservation areas under the responsibility or control of the Association.
- (c) Utility Services. The Association shall maintain all utility services not owned by any governmental authority or utility company, except for utility services located within any Lot, which serve only the Lot.
- (d) Other Property. The Association shall have the right to maintain such other areas within the Subdivision as the Board determines from time to time is in the best interest of the Owners, and the cost of any such maintenance shall be a Common Expense.
- (e) The Association shall provide basic cable television service to each Improved Lot.
- (f) The Association shall be responsible for maintaining the lawns and trees on each Lot. However, the Owner shall be responsible for maintaining any landscaping installed by an Owner, i.e., flowers on the Lot. The Association shall also be responsible for maintaining, controlling, and operating the "sprinkler" irrigation system and for paying all water meter utility bills. The Association shall repair or replace its irrigation system unless breakage is induced or caused by the negligence of the Owner. Furthermore, no landscaping whatsoever may be installed by an Owner on a Lot without the prior approval of the Architectural Control Committee as set forth in Article 6 herein. Any landscaping installed by an Owner after Owner has obtained said approval shall be perpetually maintained by Owner. Any consequential damages to the Owner's landscaping or property while the irrigation system is not operating for any reason is the sole responsibility of the Owner at all times.

- (g) In the event an Owner fails to properly maintain any property that the Owner is required to maintain, the Association shall have the right to make any repairs or replacements as it deems necessary. In such event, the Association shall have the right to individually assess the Owner involved for all costs incurred in making such repairs or replacements as proved for herein.
- (h) The declarant, and after turnover the Association agree to abide by the terms and conditions of that certain Right-of-Way Consent Agreement between Florida Power & Light Company, Palm AFC Holdings, Inc., and Town & Country Builders, Inc., which is attached hereto and made a part hereof as Exhibit C. Said Agreement provides for specific maintenance obligations as well as prohibited uses regarding such things including but not limited to landscaping, lighting, use of machinery, sprinklers, etc....within said Right-of-Way.

9.2 RESPONSIBILITY OF LOT OWNER.

- (a) Exterior Building Maintenance. The Owner of each Single Family Residence shall maintain the exterior of all buildings and driveways. Such maintenance shall include, but is not limited to the maintenance, retiling or pressure cleaning of the roof, repainting of doors, fascia boards, exterior walls, shutters, trim and eaves..
- (b) Other Maintenance The Owner shall have the responsibility for the care and maintenance of his private driveway so that the driveway is kept free from excessive oil and grease stains and deposits.
- (i) No Owner shall interfere in any way with the walls, fences and landscaping which serve as a buffer between the Subdivision and the adjoining properties, lakes and roadways. No trees or hedges shall be removed from the landscape buffers or planting strips or park area.
- (c) Negligence. An Owner shall be liable and shall be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness.
- (d) Responsibility of an Owner for Occupants, Tenants, Guests and Invitees.
- Each Owner shall be responsible for, indemnify and hold the Association harmless for any and all

acts and omissions, whether negligent or willful, or any person residing in his Improved Lot, and for all guests and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association, the Owner shall be assessed for same as in the case of any other assessment. Furthermore, any violation of any of the provisions of this Declaration, of the Articles, or the By-Laws, by any resident of any Improved Lot, any guests or invitee of an Owner or an resident of an Improved Lot, shall also be deemed a violation by the Owner and shall subject the Owner to the same liability as if violation was that of the Owner.

(e) Right of Association to Evict Tenants, Occupants, Guests and Invitees. With respect to any person present in any Improved Lot or any portion of the Subdivision, other than an Owner and the members of his immediate family permanently residing with him in the Improved Lot, if such person shall materially violate any provisions of this Declaration, the Articles, or the By-Laws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents by person or pet of the Subdivision, or shall willfully damage or destroy any Common Area or personal property of the Association, then upon written notice by the Association, such person shall be required to immediately leave the Subject Property and if such person does not do so, the Association is authorized to commence an action to compel the person to leave the Subject Property and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against such person as was present on the Subject Property, and the Association may collect each assessment and have a lien for same as elsewhere provided. The foregoing shall not be deemed to limit, modify, or affect any other rights or remedies available to the Association, or any rights or remedies the Association may have with respect to similar actions by an Owner or a member of his immediate family residing with him in the Improved Lot.

(f) Further responsibilities of Owners are set forth elsewhere in this Declaration.

ARTICLE 10
NUISANCES AND REMOVAL THEREOF

All Improved Lots and the Common Areas shall be kept free from nuisances, noxious conditions and in a clean and tidy condition and free of conditions offensive to the eye and/or ear or permitting foul or obnoxious odors, and all structures and improvements built on such Improved Lots, including the Common Area and appurtenances thereto, shall be kept in good condition, repair and appearance by the Owners of each Improved Lot and by the Association for the Common Areas. No Improved Lot shall be used in such manner as to cause noise which will disturb the peace, quiet, comfort or serenity of the occupants of surrounding properties and such activity may be enjoined by the Declarant, the Association or the Owners of any Improved Lot. Assessments and/or fines may also be levied as set forth herein.

ARTICLE 11
SETBACK RESTRICTIONS
OTHER RESTRICTIONS

Subject to the exceptions mentioned hereinabove, no building or any part thereof, may project beyond the setback lines, as set forth in the prevailing zoning regulations, or Plat of DIAMOND "C" RANCH.

ARTICLE 12
CANALS AND LAKES

All waterfront Lots are not permitted to construct docks or any other structures which abut the canals or lakes which are located on or within the boundaries of the Subdivision.

ARTICLE 13
BUDGET AND SPECIAL ASSESSMENTS

The annual budgets of the Association shall be prepared by the Association and circulated to the Association members at least thirty (30) days prior to its adoption.

The amount of the initial assessment against each Improved Lot described herein shall be determined in accordance with an estimated budget to be proposed by the Association. Said assessment in the amount determined as above shall be payable in advance on or before the first day of each month of each and every month thereafter, which amount is subject to change by the Association from time to time as said Association may deem necessary to carry out its responsibilities and services as set forth herein. The Association shall have the right to impose upon the Owner a reasonable penalty for late payment of the monthly assessment in accordance with Section 8.8. The assessment in effect at the time of the conveyance of any Improved Lot from Declarant to a purchaser thereof shall be paid by the Purchaser to the Association at the time of closing pro rata for the balance of the month in which closing takes place or if Declarant determines for the balance of that calendar quarter and/or for the next quarter as well.

Declarant in partial consideration of its conveying to the Association the Common Areas, shall not be subject to the foregoing assessment for any Lot or Improved Lot owned by Declarant.

Each Owner agrees to pay to the Association all court costs and reasonable attorneys' fees incurred by the Association in enforcing the provisions hereof against such Owner.

- (a) Special Assessment for Repairs, etc. In order to assure that the Association will be maintained as a community of high standards, quality and beauty, each owner is required to maintain the exterior of the Lot Owner's home and yard area in such a manner as to prevent the same from falling into a state of disrepair. If, in the opinion of the majority of the Association, the Lot Owner has failed to maintain the home as provided herein, the Association shall mail to said Lot Owner written notice of hearing as provided in Article 8, Section 8.7.1 and 8.7.2 to the property address or the last known address of the Lot Owner. Failure of the Lot owner to correct the violation(s) within twenty (20) days of mailing of a notice from the Association that the Association has determined the Owner to be in violation of said provisions shall give the Declarant,

its successors or assigns or the Association, the right, but not the obligation, to enter upon the premises and correct the violation, or contract to have the necessary repairs or maintenance done. The Declarant, its successors or assigns or the Association, shall have the further right to assess the Lot Owner for the full cost of any services performed pursuant to this paragraph. For the purpose of enforcing the provisions of this section, an entry upon the premises of a Lot by Declarant, the Association or by designated contractors or agents, shall not be deemed to be a trespass or an invasion of privacy.

ARTICLE 14 **INSURANCE**

Insurance, other than title insurance, that shall be carried on the Common Area shall be governed by the following provisions.

14.1 Authority to Purchase/Named Insured. All insurance policies upon the Common Area shall be purchased by the Association and shall be placed in a single agency or company, if possible. The named insured shall be the Association for itself and as agent for the Members without naming them as agent for Mortgagees. Provisions shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to any such Mortgagees. The Policies shall provide that payment by the insurer for losses shall be made to the Association for the benefit of the Members and Mortgagees, as their interests may appear. The Owners of each Single Family Residence shall purchase insurance on their individual Lots, which Lots shall be insured at their maximum insurable replacement costs; provided, however, all other variables of insurance coverage on the respective Lots may be as each Owner deems appropriate. The insurance policies to be obtained by each Owner shall include but not be limited to hazard, flood, personal property and liability.

14.2. Coverage

14.2.1 Casualty Insurance All insurable Improvements on the Common Area shall be insured for fire and extended coverage perils, excluding foundation and excavation costs, at their maximum insurable replacement cost and all personal property owned by the Association shall be insured for its full insurable value, all as determined annually by the Board of Directors of

the Association. The casualty insurance policy must provide for at least ten (10) days written notice to the Association before the insurer can cancel or substantially modify the policy.

14.2.2 Public Liability Insurance The Association shall obtain public liability and property damage insurance covering all of the Common Area, and insuring the Association, the Members and Mortgagees as their interests may appear in such amounts and providing such coverage as the Board of Directors of the Association may determine from time to time; including without limitation, coverage for bodily injury and property damage resulting from operation, maintenance or use of the Common Area and any legal liability arising in connection with employment contracts to which the Association is a party provided that the minimum amount of coverage shall be \$500,000.00 each person and \$1,000,000.00 each incident. The liability insurance shall include, but not be limited to, hired and non-owned automobile coverage. The liability policy must provide for at least ten (10) days written notice to the Association before the insurer can cancel or substantially modify the policy.

14.2.3 Workmen's Compensation Insurance The Association shall obtain Workmen's Compensation Insurance in order to meet the requirements of law, if necessary.

14.2.4 Flood Insurance The Association shall obtain flood insurance if required to meet the requirements of federal, state or local law.

14.2.5 Other Insurance The Board of Directors of the Association shall obtain such other insurance as it shall determine from time to time to be desirable.

14.2.6 Subrogation Waiver If available, the Association shall obtain policies which provide that the insurer waives its right to subrogation as to any claim against Members, the Association and their respective servants, agents and guests.

14.3 Premiums The cost of insurance premiums and other incidental expenses incurred by the Association in administering and carrying out any of the provisions of this Article shall be a Common Expense.

14.4 Shares of Proceeds The Association shall not be liable for the sufficiency of policies nor the failure to collect any insurance proceeds. The duty of the Association shall be to receive such proceeds as are paid and to hold the proceeds in trust for the purposes elsewhere stated herein for the benefit of Members and Mortgagees in the

following shares, which shares need not be set forth on the records of the Association.

14.4.2 Common Area Proceeds on account of damage to Common Area shall be an equal undivided share for each Member.

14.4.3 Mortgages In the event a Mortgage endorsement has been issued regarding an Improvement, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged Improvement shall be reconstructed or repaired, nor any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distribution of such proceeds made to the Owner and Mortgagee pursuant to the provisions of this Declaration.

14.5 Distribution of Proceeds Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Members in the following manner:

14.5.2 Reconstruction or Repair If the damage for which proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost of such, as hereinafter provided. Any proceeds which remain after defraying such costs shall be distributed to the members and Mortgagees as their interests may appear.

14.5.3 Failure to Reconstruct or Repair If it is determined in the manner hereinafter provided that the damage for which proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Member and Mortgagees as their interests may appear. There shall be no distribution of remaining proceeds until all debris, remains and residue have been cleared and removed and the damaged area had been properly landscaped. In the event of loss or damage to personal or real property belonging to the Association and should the Board of Directors of the Association determine not to replace such personal or real property as may be lost or damaged, the proceeds shall be distributed to the Members and Mortgagees as their interests may appear.

14.6 Association's Power to Compromise Claim The Board of Directors of the Association

is hereby irrevocably appointed agent for each Member and for each Mortgagee or other lien holder, for the purpose of compromising and settling all claims arising under insurance policies purchased by the Association and to execute and deliver releases therefore upon payment of claims.

ARTICLE 15
RECONSTRUCTION OR REPAIR AFTER CASUALTY

- 15.1 Determination to Reconstruct or Repair If any part of the Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:
- 15.1.1 Common Area If the damaged improvement is part of the Common Area, the damaged Improvement shall be reconstructed or repaired unless it is determined by the Members of the Association that it shall not be reconstructed or repaired.
- 15.1.2 Lot If the damaged property is improved on Lots, the damaged improvement shall be reconstructed or repaired unless all affected Owners and Mortgagees, the Association and the Architectural Control Committee agree that the damaged Improvements shall not be reconstructed or repaired.
- 15.2 Plans and Specifications Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements; or, if none, then according to plans and specifications approved by the Board of Directors of the Association and the Architectural Control Committee.
- 15.3 Estimates of Costs Immediately after a determination is made to rebuild, replace or repair damage to property for which the Association has the responsibility of construction, replacement or repair, the Association shall obtain reliable and detailed estimates for the cost to rebuild, replace or repair. Such costs may include professional fees and premiums for such bonds as the Board of Directors may require.
- 15.4 Special Assessments Unless the damage was caused by the gross negligence or willful act of a Member, in which case such Member shall be liable, the amount by which an award of insurance proceeds is reduced on account of a deductible clause in an insurance policy shall

be assessed equally against all Members as a Special Assessment. If the proceeds of such special Assessment and of the insurance are not sufficient to defray the estimated costs of reconstruction, replacement and repair by the Association or if at any time during reconstruction, replacement and repair, or upon completion of the costs of reconstruction, replacement and repair are insufficient, special Assessments shall be made against the Members in sufficient amounts to provide funds for the payment of such costs.

15.5 Construction Funds The funds for the payment of costs of reconstruction, replacement and repair after casualty, which shall consist of proceeds of insurance held by the Association and funds collected by the Association from special Assessments against Members, shall be distributed in payment of such costs in the following manner:

15.5.1 Association The proceeds of insurance collected on account of a casualty, and the total special Assessments made by the Association in order to provide funds for payment of reconstruction, replacement and repair, shall constitute a construction fund which shall be held by the Association and thereafter disbursed in payment of the costs of reconstruction, replacement and repair in the following manner and order.

16.5.2 Association – Lesser Damage If the amount of the estimated costs of reconstruction, replacement and repair that is the responsibility of the Association is less than Twenty-Five Thousand Dollars (\$25,000.00), the construction fund shall be disbursed in payment of such costs upon the order of the Association.

15.5.3 Association – Major Damage If the amount of the estimated costs of reconstruction, replacement and repair that is the responsibility of the Association is Twenty-Five Thousand Dollars (\$25,000.00) or more, then construction funds held by the Association shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association, and upon approval by an architect or general contractor qualified to practice in Florida and employed by the Association to supervise the work.

15.5.4 Surplus It shall be presumed that the first monies disbursed in payment of costs of reconstruction, replacement and repair, shall be from insurance proceeds. If there is a balance in the construction fund after payment of all costs of the reconstruction, replacement and repair for which the fund is established, such balance shall be distributed equally to the Members. Any distribution will be made within one-year and may be an offset to the next

years budget amount.

ARTICLE 16
COVENANTS IN FAVOR OF INSTITUTIONAL LENDERS

In order to induce Institutional Lenders, as herein defined, to make individual mortgage loans upon Lots, the Association's right to assess a Lot, or to impress a lien upon a Lot, the title to which has been acquired by an Institutional Lender as a result of foreclosure or deed in lieu of foreclosure, shall be abated with respect to that portion of the assessment relating to the operation and maintenance of the Common Area so long as said Institutional Lender retains said title. Upon disposal in any manner of a Lot acquired by an Institutional Lender by foreclosure or deed in lieu of foreclosure, or when such Lot is under Lease, the Association's right to make full assessments, including assessments relating to the operation and maintenance of the Common Areas, against such Lots and its right to impress a lien thereon shall be fully restored (except that no such assessment or lien shall be for the purposes of defraying the cost of any work or services with respect to the operation or maintenance of the Common Areas undertaken by the Association during the period of time or prior to the time title to said Lot was held by an Institutional Lender) and the Association's duties and obligations with respect to said Lot shall be restored.

ARTICLE 17
NOTICES

A. NOTICE TO DECLARANT OR ASSOCIATION:

Notice to the Declarant or Association or requests for approval of plans, specifications and locations of buildings or signs shall be in writing and delivered or mailed to the Declarant or Association at its principal place of business as shown by the records of the Secretary of State of Florida.

B. NOTICE TO UNIT OWNER

Notice to any Owner of a violation of any of these restrictions shall be in writing and shall be sufficient when delivered or mailed, postage prepaid, to the Owner at the address shown on the records of the Declarant or Association.

ARTICLE 18
CONVEYANCE OF COMMON AREAS

The Declarant shall convey its full right, title and interest in and unto the Common Areas to the Association in the manner and time as set forth hereinabove.

ARTICLE 19
SELECTION AND APPOINTMENT OF INITIAL
BOARD OF DIRECTORS

The Declarant hereby reserves the right to select and appoint the members of the initial Board of Directors of the Association. The DECLARANT shall select and appoint the members of the initial Board of Directors prior to the turnover as set forth hereinabove.

ARTICLE 20
NON-LIABILITY OF THE DECLARANT

The Declarant herein shall not in any way or manner be held liable or responsible for any assessments, fees, costs or expenses or subject to any liens except as herein provided.

ARTICLE 21
INDEMNIFICATION OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS

Every Director, Officer and Committee Member of the Association shall be indemnified by the Association against all expenses and liability, including attorneys' fees, incurred by or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been a Director, Officer or Committee Member whether or not he is a Director, Officer or Committee Member at the time such expenses are incurred, except in such cases where the Director, Officer or Committee Member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided however, that in the event of any claim for reimbursement or indemnification the indemnification herein shall apply only if the

Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Officer, Director or Committee Member may be entitled.

ARTICLE 22
CIVIC SITE

22.1 Civic Site Release. The Civic Site shown on the Plat of DIAMOND "C" RANCH, shall be released from any and all rights, powers, and obligations set forth in this Declaration other than as set forth hereinbelow.

22.2 Civic Site Buffer Maintenance. In addition to any other maintenance responsibilities of the Association set forth in the Declaration, the Association shall also be responsible for regularly maintaining the plantings and water system that will be installed on the buffers surrounding the Civic Site shown on the Plat of DIAMOND "C" RANCH.

ARTICLE 23
LYONS ROAD DISCLOSURE

23.1 Lyons Road Disclosure. Pursuant to condition No. E-9 of Zoning Resolution No. R-2000-899 of Palm Beach County, prospective Owners, Owners and their successors and/or assigns are hereby notified that Lyons Road is a planned thoroughfare roadway through this property. Lyons Road shall ultimately be a 4 lane thoroughfare roadway through this property.

ARTICLE 24
GENERAL PROVISIONS

24.1 Assignment All of the rights, powers, obligations, easements and estates reserved by or granted to Declarant or the Association may be assigned by Declarant or the Association, as the case may be. After such assignment, Declarant or the Association as the case may be, shall be relieved and released of all obligations with respect to such right, power, obligation, easement or estate.

24.2 Amendment This Declaration may be amended from time to time by recording among the

Public Records of the County, an instrument executed by the President or a Vice President and attested to by the Secretary of the Association, indicating (if required pursuant to the terms hereof) that a meeting called for purposes of amendment was held and that the requisite number of Members formally approved the amendment, subject, however, to the following provisions.

24.2.1 Except as provided herein below, an amendment initiated by any party other than Declarant must obtain the approval of at least eighty percent (80%) of the votes of Members; provided that until such time as the Declarant relinquishes control of the Association, all amendments must include the joinder of Declarant.

24.2.2 Subject to the requirements of the Declaration, as long as Declarant owns any property within the Property, the Declarant shall have the absolute and unconditional right to alter, modify, supplement, change, revoke, rescind or cancel any or all of the provisions contained in this Declaration including, but not limited to provisions relating to the addition of property subject to this Declaration, use restrictions and Assessments, without the joinder and consent of the Owners, the Association or any other individual or entity and the foregoing parties hereby waive any right to consent to such changes. Such changes may affect the entire property or only specific portions of the Property, but shall be subject to applicable government approvals. Further, the Declarant may amend this Declaration at any time for the purpose of subjecting additional real property within the Subdivision to this Declaration, without the joinder and consent of any other Owners, the Association, Mortgagees or any party. Declarant's right to amend the Declaration shall not survive the turnover of control. No amendment that withdraws property from the terms of the Declaration shall be recorded unless approved in writing by the County Attorney's Office. No amendment inconsistent with the requirements of this section shall be recorded unless approved in writing by the County Attorney's Office. Nothing contained herein shall create an obligation on the part of the County Attorney's Office to approve any amendment.

24.2.3 In addition to other government approvals which may be required, any amendment to this Declaration which would affect the surface water management system, including the water management portions of the Common Area, must have the prior approval of the South Florida Water Management District.

- 24.2.4 No portion of any plat of the Property containing open space may be vacated in whole or in part unless the entire plat is vacated; provided, however, that portions of a plat containing open space may be vacated if the effect of such violation would not reduce the total open space within the Property below the requirements of the City zoning code.
- 24.2.5 Any duly adopted amendment to this Declaration shall run with and bind the Property for the same period and to the same extent as do the covenants and restrictions set forth herein.
- 24.3 Duration All of the covenants, restrictions and other provisions of this Declaration shall run with and bind the Property for a term of fifty (50) years from the date of recordation of this Declaration after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument executed by at least eighty percent (80%) of the votes of the Members then existing and by all Mortgagees, has been recorded agreeing to change or terminate these covenants and restrictions.
- 24.4 Covenants Running with the Property The agreements, covenants, conditions, restrictions, Assessments, liens and other provisions contained herein shall constitute a servitude upon the Property and each portion thereof, shall run with the Property, shall be binding upon the Owners of any portion thereof and shall inure to the benefit of Declarant, the Association and the Owners of Lots within the Property.
- 24.5 Enforcement Enforcement of the covenants, restrictions, conditions, obligations, reservations, rights, powers, Assessments, liens and other provisions contained herein shall be by a proceeding at law or in equity against any person or entities violating or attempting to violate same and against the Property subject hereto to enforce any lien created by this Declaration. In the event that Declarant and the Association fail to enforce the terms of the Declaration then any Member may do so. The failure or refusal of Declarant, the Association or any Member to enforce any of the provisions of this Declaration shall in no event be deemed to constitute a waiver of the right to do so thereafter.
- 24.6 Declarant's Rights For so long as Declarant owns or has any used rights to any property subject to this Declaration, Declarant shall have the right to transact any business necessary to consummate sales of property throughout the Subdivision, including, but not limited to the right to maintain office(s) on the Property, in location(s) to be selected by Declarant, to have employees in such offices, to construct and maintain sales agency offices on the Property and

such other structures or appurtenances which are necessary or desirable for the development or sale of property throughout the Subdivision, including without limitation, sales models and parking lots, to post and display a sign or signs on any Lots owned by Declarant or on the Common Area; and to use the Common Area and to show Lots. Sales office signs and all other structures and appurtenances pertaining to the sale or development of property within the Subdivision shall not be considered Common Area and shall remain the property of the Declarant.

24.7 Notices Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly given when mailed, postage paid, to the last known address of the person who appears as an Owner on the records of the Association as of the time of such mailing. Notices to Mortgagees shall be deemed to have been properly given when mailed postage prepaid, to the last known address of the Mortgagee on the records of the Association at the time of such mailing. Each Owner shall notify the Association of all mortgages encumbering a Lot and any transfer thereof, the amount of such mortgages and the recording information for the mortgages. The holder of a mortgage encumbering a Lot may notify the Association of existence of such mortgage and upon receipt of that notice, the Association shall register in its records all pertinent information pertaining to the mortgage. The Association shall not be liable to any party for failure to obtain from any Owner information regarding a mortgage encumbering a Lot or for failure to provide any party with notice of such information.

24.8 Plats. In addition to this Declaration, the Property shall be subject to the additional covenants, restrictions, reservations and other terms and provisions set forth in the dedication or shown on the Plat of the Property, which is recorded or to be recorded in the public records of Palm Beach County.

24.9 Non-Condominium

24.09.1 The Association is not intended to be a condominium association and is not being created in accordance with Florida Statutes, Chapter 718, in existence as of the date of recording this Declaration.

24.09.2 The Common Area is not intended to be condominium property under Florida Statute, Chapter 718, in existence as of the date of recording this Declaration and is not part of the

common elements of any condominium.

- 24.10 **Gender and Number** The use of the singular herein shall include the plural and the use of any gender shall include all genders.
- 24.11 **Caption** The captions used in this Declaration and the exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text of this Declaration or any exhibits hereto.
- 24.12 **Dissolution of the Association** Any owner may petition the Circuit Court for appointment of a Receiver to manage the affairs of the Association in the event of dissolution of the Association.
- 24.13 **Severability** Invalidation of any one of the covenants or restrictions contained herein by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect.
- 24.14 **Effective Date** This Declaration shall become effective upon its recordation in the Public Records of Palm Beach County, Florida.

IN WITNESS WHEREOF, Town & Country Builders, Inc., a Florida Corporation, has caused this instrument to be executed in its Corporate name by its duly authorized officers, and its corporate seal to be affixed this 27th day of October, 2003.

Town & Country Builders,
Inc., a Florida corporation

By: [Signature]
Timothy R. Kelly,
President

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

BEFORE ME, personally appeared Timothy R. Kelly, to me well known to be the individual described in and who executed the foregoing instrument as President of Town & Country Builders, Inc., a Florida Corporation, and that he acknowledged to and before me that he executed such instrument as such President of said Corporation and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and official seal this 27th day of October, 2003.

Cathy Zawala
Notary Public, State of Florida

My Commission Expires:



Cathy Zawala
Commission # DD 044375
Expires July 23, 2005
Bonded Thru
Atlantic Bonding Co., Inc.

This is not a certified copy

EXHIBIT "A"

All of the Plat of DIAMOND "C" RANCH,
according to the Plat thereof, as recorded in Plat Book 99,
Pages 173 through 179, inclusive, of the Public Records
of Palm Beach County, Florida.

This is not a certified copy



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 • TDD (561) 697-2574
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

EXHIBIT B

CON 24-06

Application No.: 020807-4
General Permit No.: 50-05711-W

November 14, 2002

PALM AFC HOLDINGS INC
901 DULANEY VALLEY RD, SUITE 400
TOWSON, MD 21204

Dear Permittee:

SUBJECT: General Water Use Permit No.: 50-05711-W
Project: DIAMOND C RANCH
Location: PALM BEACH COUNTY, S5,6/T44S/R42E
Permittee: PALM AFC HOLDINGS INC

This letter is to notify you of the District's agency action concerning your Notice of Intent to Use Water. This action is taken pursuant to Chapter 40E 20, Florida Administrative Code (F.A.C.) Based on the information provided, District rules have been adhered to and a General Water Use Permit is in effect for this project subject to:

1. Not receiving a filed request for Chapter 120, Florida Statutes, administrative hearing and
2. The attached Limiting Conditions.

The purpose of this application is to obtain a Water Use Permit for dewatering water supply. Withdrawals are from the On-site Borrow Pit(s) via two proposed withdrawal facilities. All dewatering discharge shall be retained on-site.

A copy of the permit, its limiting conditions, and dewatering plan is required to be kept on site at all times during dewatering operations by the lead contractor or site manager.

The Permittee is advised that this permit does not relieve any person from the requirement to obtain all necessary federal, state, local and special district authorizations.

EXHIBIT C

RIGHT-OF-WAY CONSENT AGREEMENT

FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is P.O. Box 14000, Inno Beach, Florida 33408-0420, Attn: Corporate Real Estate Department, hereinafter referred to as "Company", hereby consents to PALM AFC HOLDINGS, INC., whose mailing address is 901 Dulany Valley Road, Suite 400, Towson, Maryland 21284, hereinafter referred to as "Licensee", and TOWN & COUNTRY BUILDERS, INC., whose mailing address is 2295 NW Corporate Boulevard, Suite 117, Boca Raton, Florida 33431, hereinafter referred to as "Contract Purchaser", using an area within Company's right-of-way granted by that certain agreement recorded in Official Record Book 699, at Page 534, Public Records of Palm Beach County, Florida. The said area within Company's right-of-way, hereinafter referred to as "Lands", is more particularly described on Exhibit "A" attached hereto. The use of the Lands by Licensee, shall be solely for the purpose of dry retention as shown on the plans and specifications submitted by Licensee, attached hereto as Exhibit "B".

In consideration for Company's consent and for the other mutual covenants set forth below, and for Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Licensee agrees to obtain all necessary rights from the owners of the Lands in the event Licensee does not own said Lands; to obtain any and all applicable federal, state, and local permits required in connection with Licensee's use of the Lands; and at all times, to comply with all requirements of all federal, state, and local laws, ordinances, rules and regulations applicable or pertaining to the use of the Lands by Licensee pursuant to this Agreement.

2. Licensee understands and agrees that the use of the Lands pursuant to this Agreement is subordinate to the rights and interest of Company in and to the Lands and agrees to notify its employees, agents, and contractors accordingly. Company specifically reserves the right to maintain its facilities located on the Lands; to make improvements; add additional facilities; maintain, construct or alter roads; maintain any facilities, devices, or improvements on the Lands which aid in or are necessary to Company's business or operations; and the right to enter upon the Lands at all times for such purposes. Licensee understands that in the exercise of such rights and interest, Company from time to time may require Licensee, to relocate, alter, or remove its facilities and equipment, including parking spaces and areas, and other improvements made by Licensee pursuant to this Agreement which interfere with or prevent Company, in its opinion, from properly and safely constructing, improving, and maintaining its facilities. Licensee agrees to relocate, alter, or remove said facilities, equipment, parking spaces and areas, and other improvements within thirty (30) days of receiving notice from Company to do so. Such relocation, alteration, or removal will be made at the sole cost and expense of Licensee and at no cost and expense to Company; provided however, should Licensee, for any reason, fail to make such relocation, alteration, or removal, Company retains the right to enter upon the Lands and make said relocation, alteration, or removal of Licensee's facilities, equipment, parking spaces and areas, and other improvements and Licensee hereby agrees to reimburse Company for all of its costs and expense incurred in connection therewith upon demand.

3. Licensee agrees that it will not use the Lands in any manner which, in the opinion of Company, may tend to interfere with Company's use of the Lands or may tend to cause a hazardous condition to exist. Licensee agrees that no hazardous substance, as the term is defined in Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601 (14)), petroleum products, liquids or flammables shall be placed on, under, transported across or stored on the Lands which restricts, impairs, interferes with, or hinders the use of the Lands by Company or the exercise by Company of any of its rights therein. Licensee agrees further that in the event it should create a hazardous condition, then upon notification by Company, Licensee shall, within seventy-two (72) hours, at its sole cost and expense, correct such condition or situation; provided however that the Company retains the right to enter upon the Lands and correct any such condition or situation at any time and, by its execution hereof, Licensee hereby agrees to indemnify and hold harmless Company from all loss, damage or injury resulting from Licensee's failure to comply with the provisions of this Agreement.

4. Licensee hereby agrees and covenants to prohibit its agents, employees, and contractors from using any tools, equipment, or machinery on the Lands capable of extending greater than fourteen (14) feet above existing grade and further agrees that no dynamite or other explosives shall be used within the Lands and that no alteration of the existing terrain, including the use of the Lands by Licensee as provided herein, shall be made which will result in preventing Company access to its facilities located within said Lands. Notwithstanding otherwise provided herein, Licensee agrees to maintain a forty (40) foot wide setback, twenty (20) feet on each side, from Company's facilities.

5. Trees, shrubs, and other foliage planted or to be planted upon the Lands by Licensee are not to exceed, at maturity, a height of fourteen (14) feet above existing grade. Licensee hereby agrees to maintain the height of all vegetation on the Lands at a height not to exceed fourteen (14) feet above existing grade.

6. Outdoor lighting installed or to be installed upon the Lands by Licensee are not to exceed a height of fourteen (14) feet above existing grade and all poles or standards supporting light fixtures are to be of a non metallic material.

7. Sprinkler systems installed or to be installed by Licensee upon the Lands are to be constructed of non-metallic material and sprinkler heads are to be set so the spray height does not exceed fourteen (14) feet above existing grade and does not make contact with any Company's facilities. Aboveground systems shall not be installed within or across Company patrol or finger roads and underground systems crossing said patrol and finger roads are to be buried at a minimum depth of one (1) foot below existing road grade.

8. Licensee agrees to warn its employees, agents, contractors and invitees of the fact that the electrical facilities and appurtenances installed or to be installed by Company within the Lands are of high voltage electricity and agrees to use all safety and precautionary measures when working under or near Company's facilities.

9. Licensee agrees, at all times, to maintain and keep the Lands clean and free of debris. Except as provided herein, Licensee further understands and agrees that certain uses of the Lands are specifically prohibited; such uses include but are not limited to recreational purposes, hunting and camping, and Licensee agrees to notify its employees, agents, contractors, and invitees accordingly.

10. The use of the Lands by Licensee shall be at the sole risk and expense of Licensee, and Company is specifically relieved of any responsibility for damage or loss to Licensee or other persons resulting from Company's use of the Lands for its purposes.

11. Notwithstanding any provision contained herein, Licensee agrees to reimburse Company for all cost and expense for any damage to Company's facilities resulting from Licensee's use of the Lands and agrees that if, in the opinion of Company, it becomes necessary as a result of Licensee's use of the Lands for Company to relocate, rearrange or change any of its facilities, to promptly reimburse Company for all cost and expense involved with such relocation, rearrangement or change.

12. Licensee agrees it will exercise its privileges hereunder at its own sole risk and agrees to indemnify and save harmless Company, its parent, subsidiaries, affiliates, and their respective officers, directors, agents and employees (hereinafter referred to as FPL Entities), from all liability, loss, cost, and expense, including attorney's fees, which may be sustained by FPL Entities to any person, natural or artificial, by reason of the death of or injury to any person or damage to any property whether or not due to or caused by the negligence of FPL Entities, arising out of or in connection with the herein described purposes by Licensee, its contractors, agents, or employees; and Licensee agrees to defend at its sole cost and expense and at no cost and expense to FPL Entities any and all suits or action instituted against FPL Entities, for the imposition of such liability, loss, cost and expense.

13. Licensee shall, during the period of this Agreement, maintain at its sole expense a liability policy with minimum limits of \$1,000,000 for bodily injury or death of person(s) and \$1,000,000 for property damage arising out of a single occurrence. Said policy shall be endorsed to insure against obligations assumed by Licensee in the indemnity (Paragraph 12). A certificate of insurance shall be furnished to Company evidencing that said policy of insurance is in force and will not be cancelled or materially changed so as to affect the interests of FPL Entities until ten (10) days written notice has been furnished to Company. Upon request, copies of policies will be furnished to Company. Licensee understands and agrees that the use of the Lands for the purposes described herein is expressly contingent upon acceptance and compliance with the provisions contained herein.

14. This Agreement will become effective upon execution by Company and Licensee and will remain in full force and effect until completion of Licensee's use of the Lands pursuant to this Agreement, unless earlier terminated upon ninety (90) days written notice by Company to Licensee, or at the option of Company, immediately upon Licensee failing to comply with or to abide by any or all of the provisions contained herein.

15. The use granted herein as shown on Exhibit "B" shall be under construction by Licensee within one (1) year of the effective date of this Agreement and the construction shall be diligently pursued to completion. Licensee shall give Company ten (10) days prior written notice of its commencement of construction. "Under construction" is the continuous physical activity of placing the foundation or continuation of construction above the foundation of any structure or improvement permitted hereunder. Under construction does not include application for or obtaining a building permit, a site plan approval or zoning approval from the appropriate local government agency having jurisdiction over the activity, purchasing construction materials, placing such construction materials on the site, clearing or grading the site (if permitted) in anticipation of construction, site surveying, landscaping work or reactivating construction after substantially all construction activity has remained stopped for a period of two (2) months or more. Licensee acknowledges that failure to have the use under construction within the one (1) year time period will result in immediate termination of this Agreement in accordance with Paragraph 14 herein for failing to comply with the provisions contained herein unless Licensor grants a written extension for a mutually agreed upon time. Any request for an extension of time shall be submitted in writing by Licensee no later than thirty (30) days prior to the expiration of the one (1) year period for the project to be under construction.

16. The term "Licensee" shall be construed as embracing such number and gender as the character of the party or parties require(s) and the obligations contained herein shall be absolute and primary and shall be complete and binding as to each, including its successors and assigns, upon this Agreement being executed by Licensee and subject to no conditions precedent or otherwise.

17. Should any provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. In the event of any litigation arising out of enforcement of this Consent Agreement, the prevailing party in such litigation shall be entitled to recover its full costs of litigation.

18. Licensee may assign its rights and obligations under this Agreement to a solvent party upon prior written consent of the company, which consent shall not be unreasonably withheld.

19. The Company, the Licensee and the Contract Purchaser hereby acknowledge and agree that all rights and obligations under this Agreement shall be assigned automatically to the Contract Purchaser of the subject property at the closing pursuant to the Contract for Purchase and Sale, dated December 26, 2001, by and between Licensee and Contract Purchaser (the "Closing"). Effective immediately at the Closing, the Contract Purchaser shall be deemed the exclusive Licensee under this Agreement and shall thereafter have all rights and obligations under this Agreement. In the event the Contract Purchaser fails and/or refuses to go to Closing and the subject contract is canceled and/or terminated, then the Contract Purchaser shall have no rights and obligations under this Agreement and, instead, the Licensee shall remain Palm AFC Holdings, Inc.

20. This Agreement includes and is subject to the provisions described on the attached Addendum.

The parties have executed this Agreement this _____ day of _____, 20__.

Witnesses:

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

Witnesses:

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

Witnesses:

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

CCC/DGE
3740#RW. Con (4C)

FLORIDA POWER & LIGHT COMPANY

By: _____
Its: _____
Print Name: _____

PALM AFC HOLDINGS, INC.

By: _____
Its: _____
Print Name: _____

(Corporate Seal)

TOWN & COUNTRY BUILDERS, INC.

By: [Signature]
Its: DICE PRESIDENT
Print Name: STEPHEN B. CILLER

(Corporate Seal)

