

PREPARED BY
RETURN TO KEFTA L. BERRYMAN
7406 MAIN ST
JACKSONVILLE FL 32208

VOL 7904, PGO 695

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COVENANTS AND RESTRICTIONS
FOR
BAY HARBOUR

WHEREAS, BERRYMAN ENTERPRISES, INC., a Florida corporation, the address of which is 7406 MAIN STREET JACKSONVILLE, Florida 32208 is the owner and developer ("Developer") of all the property in Duval County, Florida more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof (the "Property"); and

WHEREAS, the Developer, in developing the Property, is desirous of placing certain covenants and restrictions upon the use of all of the Property as subdivided and sold in parcels or portions (hereinafter referred to as "Lots") as shown on the Plat of Bay Harbour recorded in Plat Book 49, pages 11, 11A - 11B, 11C, current public records of Duval County, Florida (the "Plat"), and is desirous that the covenants and restrictions shall run with the title to and touch and concern the Property hereby restricted;

NOW, THEREFORE, the Developer, for itself and its successors and assigns, does hereby restrict the use, as hereinafter provided, of all of the Property, and the Developer does hereby place upon the Property the following covenants and restrictions to run with the title to and touch and concern the Property, and the grantee of any deed conveying any Lot or Lots, parcels or tracts or any parts or portions thereof shall be deemed by the acceptance of such deed to have accepted same subject to these covenants and restrictions, and to have covenanted to observe, comply with and be bound by all such covenants and restrictions as follows:

1. Definitions.

(a) "Association" shall mean the Bay Harbour Homeowners Association, a Florida corporation not for profit to be established by Developer, its successors and assigns.

(b) "Board" or "Board of Directors" shall mean the Association's Board of Directors.

(c) "Common Areas" shall mean all property from time to time owned by the Association or designated for ownership by the Association (as established by Developer) for the common use and enjoyment of all Lot Owners, together with all improvements, fixtures, and tangible personal property now or hereafter situated thereon and all appurtenant easements.

(d) "Legal Documents" shall collectively mean this Declaration of Covenants and Restrictions, and any supplemental or amendatory declarations made in accordance herewith, as amended from time to time, and the Association's Articles of Incorporation (the "Articles") and the Association's By-Laws (the "By-Laws"), as same may be amended from time to time.

(e) "Mortgage" shall mean any mortgage or other instrument validly creating a lien upon any Lot, as security for performance of an obligation. The term "Mortgage" does not include judgments, involuntary liens, or liens arising by operation of law. "First Mortgage" means any Mortgage constituting a lien prior in dignity to all other Mortgages encumbering the same property.

(f) "Mortgage" shall mean the Person(s) named as the obligee under any Mortgage, or the successor in interest to any such Person.

(g) "Owner" shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot, including contract sellers, but excluding contract buyers and any Person holding such fee simple title merely as security for the performance of an obligation. Developer is an Owner as to each Lot owned by the Developer.

(h) "Person" shall mean any natural person or artificial entity having legal capacity.

(i) "Regulations" shall mean any rules and regulations regarding the use of the Property duly adopted by the Association in accordance with the Legal Documents.

(j) "Unit" shall mean a single family detached dwelling located on a Lot.

(k) The "Work" shall mean the initial development of all or any portion of the Property as a residential community by the construction and installation of streets, utility systems, drainage systems, Common Area landscaping, community facilities, buildings, and other improvements, and the sale, lease, or other disposition of the Property in parcels, but does not include the construction of individual residential Units by Persons other than Developer. This term is to be broadly construed to include any and all activities, uses, structures, and improvements necessary, convenient, or desirable to accomplish such construction and disposition.

2. Membership. Every Owner of a Lot shall be a member of the Association, and is entitled to one membership for each Lot owned. Each membership is appurtenant to the Lot upon which it is based and is transferred automatically by conveyance of title to that Lot whereupon the membership of the previous Owner automatically terminates. No Person other than an Owner may be a member of the Association, and a membership in the Association may not be transferred or encumbered except by the transfer of title to a Lot; provided, however, the foregoing does not prohibit the assignment of membership and voting rights by an Owner who is a contract seller to his vendee in possession.

3. Classification. The Association shall have two classes of voting membership;

(a) Class A. So long as there is Class B membership, Class A members are all Owners except Developer. Class A members are entitled to one vote for each Lot Owned. Upon termination of Class B membership, Class A members are all Owners, including Developer so long as Developer is an Owner.

(b) Class B. The Class B member is Developer, who is entitled to three (3) votes for each Lot owned. The Class B membership will cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs first; (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or (ii) five (5) years from the recording date of this Declaration (July 29th, 1994).

4. Amplification. The members of the Association shall elect a Board of Directors of the Association, who shall manage the affairs of the Association. The Board of Directors shall elect officers of the Association to administer the operation of the Association. The provisions of this paragraph and of paragraphs 2 and 3 hereof are amplified by the Association's Articles and By-Laws, but no such amplification shall alter or amend substantially any of the rights or obligation of the Owners set forth in this paragraph and in paragraphs 2 and 3 hereof. Developer intends that the provisions of this Declaration and the Articles and By-Laws to be established be interpreted and enforced to avoid inconsistencies or conflicting results. If any such conflict necessarily results, however, Developer intends that the provisions of this Declaration control anything in the Articles or By-Laws to the contrary.

5. Rights and Obligations of the Association.

(a) The Common Area.

i) General. Subject to the rights of the Developer and the Owners, as set forth in this Declaration, the Association has exclusive management and control of the Common Areas, and all of its improvements, fixtures, furnishings, equipment, and other related personal property. The Association shall keep the foregoing in a safe, clean, attractive, sanitary, and serviceable condition, and in good order and repair. The Association's duties with respect to the Common Areas and other property of the Association, include the management, operation, maintenance, repair, replacement, and renewal of all improvements, equipment, and tangible personal property installed by Developer as part of the Work, and any replacements or additions thereto made in accordance with the provisions of the Legal Documents.

ii) Insurance. To the extent insurance can be obtained, the Association shall keep any improvements located on the Common Areas and fixtures and personal property of the Association, insured to the maximum insurable replacement value, excluding foundation and excavation costs, as determined by the Board of Directors. The insurance shall provide coverage against loss or damage by fire or other hazards covered by a standard extended coverage endorsement and such other risks as from time to time are customarily covered with respect to similar improvements, including vandalism and malicious mischief, and flood and water damage, if the improvements are at any time located in a federally designated flood area. The Association shall carry public liability insurance in amounts and with coverage as determined by the Board of Directors. To the extent from time to time available, the Association's insurance must provide for waiver of subrogation by the Association's insurer against any Owner because of unintentional acts or omissions.

b) Water Access Community Park. The Association shall be responsible for management and maintenance of the water access community park (if any) established on the Property, including any entry way, privacy walls, and small capacity boat ramp which may be situated or constructed thereon. Every Owner, his family members, guests, invitees and lessees shall have a non-exclusive right and easement of enjoyment in and to said

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park; provided, however, the Association shall have the right (and in its sole discretion, change from time to time) the hours during which such park shall be open. Neither the Developer nor the Association, nor any of their respective shareholders, directors, officers, successors or assigns, shall be liable for any injury to persons (including injuries resulting in death) or damage to or loss of property sustained by any Owner or his family members, guests, invitees or lessees, or any other person, resulting from or in any way relating to any of such individuals' presence at or use of the park; and each Owner, by acceptance of a deed or other conveyance of record title to a Lot, whether or not it is so expressed in such deed or conveyance, is deemed to covenant and agree to indemnify and hold and save the Developer and the Association, and their respective shareholders, directors, officers, successors and assigns, harmless from and against any and all claims, causes of action, damages and expenses resulting from or in any way relating to any such injury to persons (including injuries resulting in death) or damage to or loss of property.

(c) Unit Exterior and Lot Maintenance. If an Owner of any Lot shall fail to maintain, repair or restore the exterior of his Lot and Unit, including the landscaping located thereon, in the manner required by the Legal Documents within thirty (30) days following notice by the Association specifying the maintenance or repair item, then the Association, after approval by not less than seventy-five percent (75%) of the members of the Board of Directors, shall have the right, through its agents and employees, to enter upon the Lot and perform such repair, maintenance or restoration. The cost of such exterior maintenance shall be assessed to the Owner of the Lot and shall become due and payable in all respects, together with interest and fees and costs of collection, as provided for other assessments of the Association. Additionally, the Association shall have a lien for all unpaid costs and interest against the Lot, and such costs and interest shall be the personal obligation of the Person who owned the Lot at the time the notice was given by the Association, in the same manner as herein provided for other assessments of the Association. These rights shall be in addition to those reserved by Developer.

(d) Rules and Regulations. The Association from time to time may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Lots and the Common Areas so long as such rules and regulations are consistent with the rights and duties established by the Legal Documents. The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property as a residential community. The rules and regulations initially shall be promulgated by the Board of Directors and may be amended by a majority vote of the Board of Directors, or may be amended or rescinded by a majority of both classes of membership present and voting at any regular or special meeting convened for such purpose. No regulation, decision, amendment or other action that reasonably may have the effect of waiving, lessening or otherwise interfering with the scope or enforcement of any restriction imposed on the Property by this Declaration will be valid without the written approval of the Developer for so long as Developer is a member of the Association. The Association's procedures for enforcing its rules and regulations at all times shall provide the affected Owner with reasonable prior notice and opportunity to be heard, in person or through representatives of the Owner's Choosing. Wherever any provisions of this Declaration prohibit any activity, condition or structure within the Property, except as permitted by the Association's Regulations such restriction or prohibition in self executing unless and until the Association issues Regulations expressly permitting the same.

(e) Implied Rights. The Association may exercise any right, power or privilege given to it expressly by the Legal Documents and every other right, power or privilege reasonably necessary, convenient or desirable to the exercise of any right, power or privilege so granted.

(f) Access by Association. The Association has a right of entry onto each Lot to the extent reasonably necessary to exercise any right granted or to discharge any duty imposed by the Legal Documents, or for any other purpose reasonably related to the Association's performance of any duty imposed, or exercised of any right granted, by the Legal Documents. Such right of entry must be exercised in a peaceful and reasonable manner at reasonable times and upon reasonable notice whenever circumstances permit, except in the event of an emergency and only then to the extent necessary to prevent personal injury or property damage. No Owner shall withhold consent arbitrarily to entry by the Association for the purpose of discharging any duty or right if such entry is upon reasonable notice, at a

reasonable time, and in a peaceful and reasonable manner OFFICIAL RECORDS Association's right of entry may be exercised by its agents, employees, contractors, and managers.

(g) Restriction on Capital Improvements. All capital improvements to the Common Areas, except for replacement or repair of those items installed by Developer as part of the Work, and except for personal property related to the Common Areas, must be approved by two-thirds (2/3) of each class of those members present in person or by proxy and voting at a meeting duly convened for such purpose.

(h) Reserves. The Association shall establish and maintain an adequate reserve fund for the repair and replacement of improvements and personal property that the Association is obligated to maintain under the provisions of the Legal Documents, including the surfacewater management system. Reserves, as determined from time to time by the Board of Directors, shall be funded from the annual maintenance assessment described in subparagraph 6.(b) hereof.

6. Covenants for Assessments.

(a) Assessments Established. For each Lot within the Property, Developer covenants, and each Owner by acceptance of a deed or other conveyance of record title to a Lot, whether or not it is so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association:

- i) An annual maintenance assessment, as defined in subparagraph 6.(b); and
- ii) Special assessments, as defined in subparagraph 6.(c); and
- iii) Special assessments for property taxes levied and assessed against the Common Areas or the Association's property, as defined in subparagraph 6.(d); and
- iv) Specific assessments against a particular Lot that are established pursuant to any provisions of the Legal Documents, as provided in subparagraph 6.(e); and
- v) All excise taxes, if any, that from time to time may be imposed upon all or any portion of the assessments established by this paragraph and by paragraph 6.

(b) Annual Maintenance Assessments.

i) General. The annual maintenance assessments levied by the Association must be used exclusively to promote the recreation, health, safety, and welfare of the residents and occupants within the Property, and for the operation, management, maintenance, repair, renewal and replacement of the Common Areas and the Association's property, including the payment of taxes and insurance, and for the performance of the Association's duties under the Legal Documents. The annual assessment shall be used to pay all expenses of the Association incurred in the administration of the powers and duties granted under the Legal Documents and pursuant to law, including the maintenance of adequate reserve accounts.

ii) Amount.

a) Until January 1 of the year immediately following the commencement of annual assessments as set forth in sub-subparagraph 6.(b)iii), the maximum annual maintenance assessment shall be Two Hundred Dollars (\$200.00) for each full assessable Lot. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

b) Commencing with the fiscal year beginning January 1 of the year immediately following the commencement of annual assessments as set forth in sub-subparagraph 6.(b)iii), and each year thereafter, the Board of Directors, at its annual meeting next preceding such date, and each respective January 1 thereafter, shall set the amount of the maximum annual maintenance assessment for the following year for each Lot, provided that the maximum annual maintenance assessment may not be increased more than fifteen percent (15%) above the maximum annual maintenance assessment for the previous year unless approved by two-thirds (2/3) of each class of those members present in person or by proxy at a duly convened meeting. The amount of the annual maintenance assessment shall be fixed by the Board of Directors at least thirty (30) days before the beginning of each fiscal year and shall be payable in one or more installments as determined by the Board of Directors without interest so long as not more than thirty (30) days delinquent. Written notice of such assessment shall be given to every Owner, but the failure to give such notice will not invalidate an otherwise proper assessment. In the absence of Board action, the annual maintenance assessment then in effect will continue for the next fiscal year.

iii) Commencement of Annual Assessment. The annual assessment begins as to all Lots within the Property on the first day of

the month following the recording in the public records of the transfer of title of any Lot upon which a Unit has been constructed to a Unit Owner. For purposes of the preceding sentence, a "Unit Owner" means any Owner other than Developer or a Person in the business of constructing residences who acquires a Lot with the intent to construct thereon a Unit for resale purposes. The first annual assessment against any Lot shall be prorated according to the number of months then remaining in the fiscal year.

lv) Working Capital Fund. The Association shall establish a working capital fund to provide for unforeseen expenditures, which will be funded as set forth in this subparagraph. Upon the initial transfer of title of a Lot to an Owner other than the Developer or a Person who acquires the Lot for purposes of constructing a Unit for resale purposes, the transferee shall pay to the Association a working capital contribution of One Hundred Dollars (\$100.00). This capital contribution shall not be considered as an advance payment of the annual maintenance assessment. Each Person who acquires the Lot for purposes of constructing a Unit for resale purposes agrees to collect the working capital contribution at the closing of the sale of the improved Lot to an Owner other than Developer and to promptly pay the same to the Association.

(c) Special Assessments. The Association may levy special assessments payable in one or more installments applicable to that year only for the purpose of defraying, in whole or in part, any expense that is not reasonably expected to be incurred on a regular basis, including the expense of performing for any delinquent Owner the obligations of such Owner as provided herein (including, without limitation, the obligations set forth in subparagraph 5.(c)), or the cost of any purchase of addition real property for the use and benefit of Owners, or construction, reconstruction, renewal, repair, or replacement of a capital improvement upon the Common Areas, provided that such assessment is approved by two-thirds (2/3) of each class of those members present in person or by proxy and voting at a meeting duly convened for such purpose.

(d) Property Taxes. The Association shall timely pay all ad valorem real estate taxes, special assessments and other taxes, if any, levied on the Common Areas, and shall assess each Owner for the cost thereof. The amount of the assessment shall be determined by dividing the amount of such taxes by the number of Lots within the Property. At the Board's discretion, such assessment may be payable in a lump sum within thirty (30) days after notice or all or any portion thereof may be assessed as a part of the annual maintenance assessment described above. Each year the Board shall determine, within forty-five (45) days after receiving notice of the amount of taxes due, whether such assessment shall be levied, and its amount.

(e) Specific Assessments. Any indebtedness of an Owner to the Association arising under any provision of the Legal Documents, including any indemnity, or by contract, express or implied, or because of any act or omission of the Owner or any occupant of such Owner's Lot, or arising by reason of any Owner's failure to properly maintain those portions of the exterior of his Lot as herein provided, also may be assessed by the Association against the Owner's Lot after the Owner fails to pay it when due and the default continues for thirty (30) days after written notice.

(f) Uniformity of Assessments. The annual maintenance assessment and any special assessments for the Common Areas must be uniform throughout the Property, except that the annual maintenance assessment against any Lot in which Developer owns any interest, or which is owned by a Person to whom Developer has assigned in whole or in part its rights and obligations under this subparagraph 6.(f), and which is not being occupied as a residence, may be fixed by the Board of Directors in an amount equal to twenty-five percent (25%) of the amount of the annual maintenance assessment against Lots owned by the Class A members of the Association then in effect; provided that Developer, and any such Person to whom Developer may have assigned its rights under this paragraph, shall have agreed to fund the deficits, if any, between the aggregate amount assessed all Owners, and the total expenses of the Association during the applicable period. Developer and such assignees shall be obligated to fund such deficits only as they are actually incurred by the Association. The Developer shall cease to pay any portion of the deficit of the annual operating expenses of the Association under the provisions of this paragraph when Developer and such assignees are no longer entitled to elect a majority of the Board of Directors of the Association, or whenever they elect to pay the full assessment against their Lots, whichever first occurs. This provision is not and shall not be construed as a guaranty or

representation as to the level of assessment imposed unOFFICIAL RECORDS
of this paragraph 6.

(g) Certificate of Payment. The Association shall furnish to any interested Person a certificate signed by an officer of the Association setting forth whether assessments against a specific Lot have been paid and, if not, its unpaid balance. To defray its costs the Association may impose a reasonable, uniform charge for issuing such certificates. A properly executed certificate of the Association as to the status of assessments on a Lot is binding on the Association as of the date of Issuance.

(h) Lien for Assessments. All sums assessed to any Lot, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are secured by a continuing lien on such Lot in favor of the Association. Each such assessment, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, also is the personal obligation of the Person who was the Owner of such Lot when such assessment fell due. The personal obligation for delinquent assessments does not pass to an Owner's successors in title, however, unless assumed expressly in writing. Except as provided in subparagraph 6.(k) hereof, all lienors acquiring liens on any Lot after this Declaration is recorded are deemed to consent that their liens are inferior to the lien established by this Declaration, whether or not such consent is specifically set forth in the instrument creating the lien. The Association may record a notice of lien as to any Lot against which any assessment is more than thirty (30) days delinquent.

(i) Remedies of the Association.

1) Personal Obligation. Any assessment not paid within thirty (30) days after its due date bears interest from the due date, at the rate established from time to time by the Board of Directors, not to exceed the maximum lawful rate from time to time permitted under the laws of the State of Florida, nor to be less than ten percent (10%) per annum. The Association may bring an action at law against any Owner personally obligated to pay such assessment, or foreclose its lien against the Lot. No Owner may waive or otherwise escape liability for the Association's assessments by nonuse of the Common Areas or by abandonment of such Owner's Lot, or for any other reason except as determined by a court of competent jurisdiction. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving, or otherwise impairing the Association's lien, or its property.

ii) Foreclosure. The Association's lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In any such foreclosure, the Owner is required to pay all costs and expenses of foreclosures, including reasonable attorneys' fees, and any assessments against the Lot that become due during the period of foreclosure. All such costs and expenses and assessments are secured by the lien foreclosed. The Association has the right to bid at the legal sale to acquire the Lot foreclosed, or to acquire such Lot by deed or other proceeding or conveyance in lieu of foreclosure, and thereafter to hold, convey, lease, encumber, and otherwise deal with such Lot as an owner, but for purposes of resale only.

(j) Homesteads. By acceptance of a deed or other conveyance of title to any Lot, the Owner is deemed to acknowledge that the assessments established by this paragraph 6 are for the improvement and maintenance of any homestead thereon and that the Association's lien has priority over any homestead right.

(k) Subordination of Lien. The lien for the assessments provided in this paragraph 6 is subordinate to the lien of any First Mortgage. Sale or transfer of any Lot does not affect the assessment lien, except that the sale or transfer pursuant to a First Mortgage foreclosure or any proceeding or conveyance in lieu thereof, extinguishes the assessment lien as to payment that became due before such sale or transfer, unless such assessment was secured by a claim of lien for assessments that is recorded prior to recording of said First Mortgage. Any assessment extinguished by the foreclosure of a First Mortgage or conveyance in lieu thereof shall be deemed to be an expense of the Association collectible from all Owners (including the foreclosing first mortgagee) in accordance with the association's normal assessment procedures. No such sale or transfer relieves such Lot from liability for assessments thereafter becoming due, or from the Association's lien. The Association shall report to any First Mortgagee of a Lot any assessments remaining unpaid for more than thirty (30) days and shall give such First Mortgagee thirty (30) days

in which to cure such delinquency before instituting proceedings against such Lot, provided the First Mortgage Association written notice of its mortgage, designating by a proper legal description the Lot encumbered and stating the address to which notices shall be given.

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7. Single Family Residence Only; 35-Foot Limit. No structure shall be erected, altered or permitted to remain on any Lot other than for use as a single family residence. The height of the main residence on each Lot shall be not more than thirty-five (35) feet above the normal surface of the ground. No building situated on any Lot shall be rented or leased separately from the rental or lease of the entire property. Nothing herein contained shall be construed as permitting any Lot Owner to use any Lot for road purpose or easements to any lands not contained within the property.

8. Motorists' Vision to Remain Unobstructed. The Developer shall have the right, but no obligation, to remove, or require the removal of any fence, wall, hedge, shrub, bush, tree or other thing, natural or artificial, placed or located on any Lot, if the location of same will, in the sole judgment and opinion of the Developer, obstruct the vision of the motorist upon any of the streets located on the Property.

9. Minimum Square Footage for Any Principal Residence. No residence shall be erected or allowed to remain on any Lot unless the square foot area thereof, exclusive of screened porches, garaged, and storage rooms, shall equal or exceed 1700 square feet.

10. Other Structures. The following building, structures and objects may be erected and maintained on the Lot, subject to the provisions of paragraph 13, only if the same are located wholly away from, and not within the view of, any street; houses for pets, above-ground storage of construction materials, washing and drying equipment, laundry rooms, tool and workshops, servants' quarters, detached garages, hothouses, greenhouses, guest houses, bathhouses, children's playhouses, summerhouses, outdoor fireplaces, barbecue pits, swimming pools or installation in connection therewith, or any other structure or objects of an unsightly nature or appearance. Each such object shall be walled, fenced or sufficiently landscaped, using materials with height and design, and in such a manner that such objects shall be obstructed from view from the outside of the Lot. Utility yard wall or fence shall not exceed six (6) feet in height without the approval of the Developer. Upon written approval from developer only, air conditioning units may be installed at the side of the residence provided the noise from same will not disturb neighboring homeowners. Each such unit must be adequately and ornamentally screened.

11. Set Back for All Structures.

(a) No building or any type or kind of permanent structure (except drives and walks), or any part of any of same, shall be erected, placed or allowed in the area of any Lot lying between (i) the front building restriction line as shown on the Plat, and (ii) the street on which the Lot abuts; or nearer than seven and one-half (7.5) feet to any interior side line of the Lot.

(b) No building, fence, wall or similar structure or any type or kind of permanent structure excepting a boathouse and/or pier shall be placed on any waterfront Lot nearer than thirty-five (35) feet to the back Lot line as shown on the Plat.

12. Fences. Fences or walls may not be built or maintained on any portion of any Lot except on the rear except as provided in paragraph 11 hereof, or interior side Lot line and no closer to the front of the Lot than the front line of the main residence; nor closer than twenty (20) feet to a side street, when the residence is situated on a corner Lot. No fence or wall shall be executed higher than six (6) feet from the normal surface of the ground. No fence or wall shall be erected until the quality, style, color, materials and design shall have been first approved by the Developer or its duly appointed representative.

13. All Structures to Be Approved By Developer. For the purpose of further ensuring the development of the Property as a residential area of highest quality and standards, and in order that all improvements on each Lot shall present an attractive and pleasing appearance from all sides of view, the Developer reserves the exclusive power and discretion to control and approve all of the buildings, structures, and other improvements on each Lot in the manner and to the extent set forth herein. No residence or improvements, regardless of size or purpose, whether attached to or detached from the main residence, shall be commenced, placed, erected or allowed to remain on any Lot, nor shall any additions to or exterior change or alteration be made until specifications covering same, showing the

nature, kind, shape, height, size, materials, floor plans, schemes, location and orientation on the Lot and square footage, construction schedule, and such other information as the Developer shall require, including, if so required, plans for the grading and landscaping of the Lot showing any changes proposed to be made in the elevation or surface contours of the land, have been submitted to and approved by the Developer in writing. The Developer shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and Lot-grading and landscaping plans which are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons and reasons connected with future development of said land or contiguous lands. In passing upon such building plans, the Developer may take into consideration the suitability and desirability of proposed construction and of the materials of which it is proposed to erect the same, the quality of the proposed workmanship and materials proposed to be used as the Developer shall specify or require. Developer reserves the right to establish a Planning Review Board ("PRB") to act in its place and stead. In all cases, the exteriors of all homes must be of brick or other masonry construction. No exposed concrete shall be permitted.

14. Location and Size of Garage. All garages shall have capacity for at least two (2) automobiles and shall be (i) located so that the doors and entrances shall not be visible from any street or (ii) shall be equipped with electric garage door openers and closers which may be activated from automobiles and shall be closed at all times when the garage space is not being actively utilized by a member of the Owner's family. No carports shall be constructed on any Lots.

15. No Parking of Vehicles, Boats, Etc. No wheeled vehicles of any kind, boats or any other offensive objects may be kept on the paved road or parked between the paved road and the residential structures except automobiles or other wheeled vehicles of temporary guests or visitors of residents. Such wheeled vehicles or objects may be kept completely inside a garage attached to the main residence or within the rear yard provided each object is sufficiently screened to be obstructed from view from outside of the Lot. Private automobiles of the occupants bearing no commercial signs may be parked in the driveway on the Lot from the commencement of use thereof in the morning to the cessation of use thereof in the evening. Private automobiles of guests of the occupants may be parked in such driveways, and other vehicles may be parked in such driveways during the times necessary for pickup and delivery service and solely for the purpose of such service. No wheeled vehicle or boat shall be kept or parked in the front or side yard of any Lot. No travel trailers, trailers or motor homes shall be maintained or kept on any Lot.

16. Window Air Conditioners. Unless the prior approval of the Developer has been obtained, no window air conditioning units shall be installed in any side of a building wall visible from any street.

17. No Overhead Wires. All telephone, electric and other utilities lines and connections between the main utilities lines and the residence and other buildings shall be located underground so as not to be visible. Electric service is provided by the Jacksonville Electric Authority, Jacksonville, Florida, through underground primary service lines running to transformers.

18. Garbage Cans. Garbage cans and trash shall only be placed out for collection on the day collection is scheduled by the City of Jacksonville.

19. Completion of Commenced Construction. When the construction of any building is begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. The main residence and all related structures shown on the plans and specification approved by the Developer must be completed within eight (8) months after the start unless such completion is rendered impossible as the direct result of strikes, fires, national emergencies, or natural calamities. Prior to completion of construction, the property Owner shall install at his expense a suitable concrete driveway from the paved portion of the abutting street only at the driveway to a Lot. Such vehicles shall not be parked at any time on the street or upon the Property other than the Lot on which the construction is proceeding.

20. No Picnic Areas Prior to Construction. No picnic areas and no detached outbuildings shall be erected or permitted to remain on any Lot prior to the start of construction of a permanent residence thereon.

21. No Sheds, Shacks or Trailers. No shed, shack, trailer, travel trailer, tent or other temporary or movable building or structure of any kind shall be erected or permitted to remain on any Lot. Any contractor or

sales person may maintain a trailer or portable construction shack of attractive design on any Lot used in connection with the construction or sale of houses being built in this subdivision for no longer than twelve (12) months.

22. Residing Only in Residence. No trailer, garage, or any outbuilding of any kind other than a guest house or servants' quarters, even if otherwise permitted hereunder to be or main on a Lot, shall be at any time used as a residence either temporarily or permanently.

23. Size of Signs. No signs of any character shall be displayed or placed upon any Lot except "FOR RENT" or "FOR SALE" signs, which signs may refer only to the particular premises on which displayed, and shall be of materials, size, heights, and design specified by the Developer. The Developer may enter upon any Lot and summarily remove any signs which do not meet the provisions of this paragraph.

24. Commercial Signs. Nothing contained in these covenants and restrictions shall prevent the Developer or any person designated by the Developer from erecting or maintaining such commercial and display signs and such temporary dwelling, model houses and other structures as the Developer may deem advisable for development purposes.

25. Aerials and Antennas. No radio or television aerial or antenna nor any other exterior electronic or electric equipment or devices of any kind shall be installed or maintained on the exterior of any structure located on a Lot or on any portion of any Lot occupied by a building or other structure, unless the same shall have been approved by the Developer.

26. Mail Boxes. Mail boxes or paper boxes or other receptacles of any kind for use in the delivery of mail or newspapers, or magazines or similar material, shall be well receptacles attached to the residence unless the U.S. Postal Service shall cease home delivery, or require otherwise, and shall be of a material, size, height and design specified by Developer.

27. Pets. Not more than two (2) dogs, two (2) cats or four (4) birds (excluding parrots) may be kept on a single Lot for the pleasure and use of the occupants (but not for any commercial or breeding use or purpose). If, in the sole opinion of the Developer, the animal or animals become (s) dangerous or create (s) any annoyance or nuisance in the neighborhood or nearby property, or become (s) destructive of wild life, it/they may not thereafter be kept on the Lot. Birds shall be kept caged at all times.

28. No Offensive Activities. No illegal, noxious or offensive activity shall be permitted or carried on any part of the Property, nor shall anything be permitted or done thereon which is or may become a nuisance or a source of embarrassment, discomfort or annoyance to the neighborhood. No trash, garbage, rubbish, debris, waste material, or other refuse shall be deposited or allowed to accumulate or remain on any part of the Property nor upon any land or lands contiguous thereto. No fires for burning of trash, leaves, clippings, or other debris or refuse shall be permitted to be on any part of the Property or road right-of-ways.

29. Sewage. No individual sewage disposal system shall be permitted on any homesite upon any of said property unless the system is designed, located and constructed in accordance with the rules and regulations of the State and City Board of Health. Approval of such system as installed shall be obtained from such Authorities. No sewage or refuse shall be discharged onto the open ground or into any river, pond, park, ravine, drainage ditch or canal access way.

30. Utility and Future Expansion Easements on Sides and Rear of Lots. The Developer, for itself and its successors and assigns, hereby reserves and is given a perpetual, alienable, and releasable easement, privilege and right on, over and under the ground to erect, maintain and use electric and telephone wires, cables, conduits, water mains, drainage lines or drainage ditches, sewers and other suitable equipment for drainage and sewage disposal purposes or for the installation, maintenance, transmission and use of electricity, gas, telephone, lighting, heating, water, drainage, sewage and other conveniences, as well as for future phase addition, allowing for vehicular passage and roadways through said easement sufficient to meet city and county code and regulation. The Developer shall have the unrestricted and sole right and power of alienating and releasing the privileges, easements and rights referred to in this paragraph. The Owner of the Lot subject to the Privileges, rights and easements referred to in this paragraph shall acquire no right, title, or interest in or to any wires, cables, conduits, pipes, lines, roads, or other equipment or facilities placed on, over or under the property which is subject to said privileges, rights and easements.

31. **Weed Control.** The Owner of each Lot, whether improved or unimproved, shall keep such Lot free of tall grass, undergrowth, dead trees, dangerous dead tree limbs, weeds, trash and rubbish, and shall keep such Lot at all times in a neat and attractive condition. In the event the Owner of any Lot fails to comply, Developer reserves the right to go upon such Lot and to cut and remove tall grass, undergrowth and weeds and to remove rubbish and any unsightly or undesirable things and objects therefrom, and to do any other things and perform and furnish any labor necessary or desirable in its judgment to maintain the Property in a neat and attractive condition, all at the expense of the Owner of such Lot, which expense shall be payable by such Owner to the Developer on demand. Should Developer use roadside swells for retention for water rather than retention ponds or retention pits, Lot Owners must keep that roadside swell free of debris. The swells cannot be filled so as to create a backup of water flow. The swells shall be grassed in and kept mowed by Lot Owners.

32. **Landscaping.** In connection with the construction of Improvements on any vacant Lot, complete landscaping plans must be submitted and approved with the plans and specifications. The front and side yards of each Lot shall be sodded, and each Lot shall contain at least one (1) tree that is at least two (2) inches in diameter at two (2) feet above ground. In addition, each Lot shall contain at least ten (10) shrubs. Each Lot shall be landscaped so as to preserve as much natural vegetation as possible. No hedges or hedge-like grouping of plants exceeding four (4) feet in height shall be permitted without the written approval of the Developer or the PRB.

33. **Combining of Lots.** In event a person becomes the owner of two or more adjoining and adjacent Lots, he may combine the adjoining Lots into a single Lot (the "Combined Lot") and these Covenants and Restrictions shall apply to the Combined Lot as a single Lot and not as separate and individual Lots.

34. **Developer May Correct Violations.** Wherever there shall have been built or there shall exist on any Lot any structure, building, thing or condition which is in violation of these covenants and restrictions, the Developer shall have the right, but no obligation, to enter upon the property where such violation exists and, without liability, summarily to abate, correct or remove the same, all at the expense of the Owner of such property, which expense shall be payable by such Owner to the Developer, on demand, and such entry and abatement, correction or removal shall not be deemed a trespass or make the Developer liable in any way for any damages on account thereof.

35. **Approval of Developer.** Wherever in these covenants and restrictions the consent or approval of the Developer is required to be obtained, no action requiring such consent or approval shall be commenced or undertaken until after a request in writing seeking the same has been submitted to and approved in writing by the Developer. Such request shall be sent to Developer by certified mail with return receipt requested. In the event that the Developer fails to act on any such written request within thirty (30) days after the same has been submitted to the Developer as required above, the consent or approval of the Developer to the particular action sought in such written request shall be presumed; however, no action shall be taken by or on behalf of the person or persons submitting such written request which violates any of the covenants and restriction herein contained.

36. **Title to Common Areas and Owner's Easements of Enjoyment.** The Developer will convey or cause to be conveyed to the Association, at such time as in its sole discretion it deems appropriate, the title to the Common Areas, subject to taxes for the year of conveyance, restrictions, conditions, and limitations of record, and easements for drainage and public utilities. Every Owner, his family members, guests, invitees and lessees has a non-exclusive, right and easement of enjoyment in and to the Common Areas that is appurtenant to, and passes with, the title to every Lot, subject to the provisions of the Legal Document and to the following:

(a) **Dedication.** The Association's right to sell, convey, mortgage, dedicate or otherwise transfer all or any part of the Common Areas to any person for such purpose and subject to such conditions as may be agreed to by the member of the Association. Any such mortgage or transfer must be approved by a least two-third (2/3) of each class of the members of the Association at a meeting duly convened for such purpose and shall be evidenced by a recorded certificate of the Association.

(b) **Easements.** The right of the Board of Directors, without further consent from Owners or their Mortgagees, to grant permits, licenses

and easements over all or any part of the Common Areas to OFFICIAL RECORDS agency, authority or utility company for the purpose of providing utility or cable television service to the Property and the right of the Board to acquire, extend, terminate or abandon such easement.

(c) Rules and Regulations. The Association's right to adopt, alter, amend, rescind, and enforce reasonable Regulations governing the use of the Common Areas, as provided herein.

(d) Suspension. The right of the Association to suspend the voting rights by an Owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations.

(e) Legal Requirements. The provisions of applicable laws and all construction, water quality, environmental protection and other permits issued in connection with the development of the Property. The foregoing easement is limited to using the Common Areas for their intended purposes in a reasonable manner, and with respect to any particular use or activity, it is limited to those portions of the Common Areas from time to time improved or otherwise suitable for such use or activity.

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

38. Amendment.

(a) Developer. The Developer reserves and shall have the sole right, without the joinder or consent of any Owner, the Association, the holder of any mortgage, lien or other encumbrance affecting the Property, or any other Person, to amend this Declaration and the other Legal Documents: (i) for so long as Developer owns nine (9) or more Lots; or (ii) to comply with any requirements of a governmental agency, institutional First Mortgagee, or other Person willing to make, insure, guaranty, or purchase mortgage loans secured by a Lot; or (iii) to cure any ambiguity or scrivener's error or any inconsistency between these provisions and the other Legal Document or the Plat.

(b) Owners. Subject to specific provisions of this Declaration which shall supersede the provisions of this paragraph, this Declaration may be amended: (i) on or before forty (40) years from the date it is recorded by an instrument executed by the Association with the formalities from time to time required of a deed under the laws of the State of Florida and signed by not less than sixty-seven percent (67%) of all Owners.

39. Other Approvals. All of the following actions require the prior approval of the Developer (so long as Developer holds one or more Lots for sale in the ordinary course of business) and the holders of sixty-seven percent (67%) of the First Mortgages within the Property. (i) amendment of this Declaration, except as expressly provided in subparagraph (a) of the last preceding paragraph; (ii) alienation or encumbrances of all or any portion of the Common Areas, except as permitted under paragraph 36 of this Declaration; and (iii) the merger, consolidation, or dissolution of the Association.

40. Additional Restrictions by Individual Owners. No property Owner, without the prior written consent and approval of the Developer, may impose any additional covenants and restrictions on any part of the Property.

41. Restrictions Effective Period. The covenants and restrictions numbered 1 through 40, as amended and added to from time to time as provided for herein, shall be subject to the provisions hereof and, unless released as herein provided, be deemed to be covenants and restrictions running with the title to the Property and shall remain in full force and effect until the first day of January, A.D. 2033, or within six (6) months preceding the end of any such successive twenty-five (25) year period, as the case may be, a written agreement executed by the then Owners of a majority of the Lots shall be placed on record in the Office of the Clerk of Circuit Court of Duval County, Florida, or its successor, in which written agreement any of the covenants, restrictions, reservations, and

OFFICIAL RECORDS

County, Florida, or its successor, in which written agreements, covenants, restrictions, reservations, and easement provided for herein may be changed, modified, waived or extinguished in whole or in part as to all or any part of the Property then subject thereto, in the manner and to the extent provided in such written agreement. In the event that any such written agreement shall be executed and recorded as provided for above in this paragraph, then these original covenants and restrictions as therein modified shall continue in force for successive periods of twenty-five (25) years, unless and until further changed, modified, waived or extinguished in the manner provided in this paragraph.

42. Legal Action on Violation. If any person, firm or corporation, or other entity shall violate or attempt to violate any of these covenants and restrictions, it shall be lawful for the Developer, the Association, or any person or persons owning any Lot on said land (a) to prosecute proceedings at law for the recovery of damages against those so violating or attempting to violate any such covenants and restrictions, and/or (b) to maintain a proceeding in equity against those so violating or attempting to violate any such covenants and restrictions, for the purpose of preventing or enjoining all or any such violations or attempted violations. The remedies contained in this paragraph shall be construed as cumulative of all other remedies now or hereafter provided by law. The failure of the Developer, its successors or assigns, to enforce any covenant or restriction or any obligation, right, power, privilege, authority, or reservation herein contained, however long continued, shall in no event be deemed as a waiver of the right to enforce the same thereafter as to the same breach or violation thereof occurring prior to or subsequent thereto. Lot Owners found in violation of these restrictions shall be obliged to pay attorneys' fees to the successful plaintiff in all actions seeking to prevent, correct or enjoin such violations or in damage suits thereon. Restrictions herein contained shall be deemed several and independent, and the invalidity of one or more or any part of one shall in no wise impair the validity of the remaining restriction or part thereof.

43. Developer may further develop property adjacent to that property encumbered hereby, in which case any additional Lots created thereby shall be subject to these Covenants and Restrictions, shall increase the Developer's holdings for purposes of establishing and maintaining the Developer's rights hereunder, and shall subject all Lot Owners within said development phase to the same rights and obligations set forth herein. As set forth in paragraph 30, supra, any Lot in the original phase of development shall be subject to an easement in favor of Developer for future development. Any Lot, open or otherwise, shall be subject to the same easement.

IN WITNESS WHEREOF, these Covenants and Restrictions have been executed on the 29 day of July, A.D. 1994, by Developer.

Signed, sealed and delivered in the presence of:

Walter J. Key Jr.
Witness' Signature

WALTER J. KEY JR.
Printed Name of Witness

Michael Dodge
Witness' Signature

MICHAEL DODGE
Printed Name of Witness

BERRYMAN ENTERPRISES, INC.
By: Keith Berryman
Name: Keith Berryman
President

(CORPORATE SEAL)

STATE OF FLORIDA, COUNTY OF DUVAL.

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Keith Berryman, President of BERRYMAN ENTERPRISES, INC., a Florida corporation, known to me to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same for the purposes and consideration therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this 29 day of July, 1994.

Cheryl D. Key
Notary Public, State and County last aforesaid.
My Commission Expires:

CHERYL D. KEY
MY COMMISSION # CC366223 EXPIRES
APRIL 24, 1998
BOUNDED TYPED TRUST FIDELITY INSURANCE, INC.

94-0112914
OFFICIAL RECORDS
DUVAL COUNTY, FLORIDA

94 JUL 29 PM 12:30
RECORD VERIFIED
Clerk of Circuit Court