

Berkley Square Rules & Regulations

ARTICLE VII **CERTAIN USE RESTRICTIONS**

Section 1. Applicability.

The provisions of this Article VII shall be applicable to all of The Properties but shall not be applicable to the Declarant or any of its designees or Lots or other property owned by the Declarant or its designees.

Section 2. Land Use and Building Type; Garages.

No Lot shall be used except for residential purposes. No building constructed on a Lot shall be used except for residential purposes, or as a related garage, if applicable. No **building** shall be erected, altered, placed or permitted to remain on any Lot other than one Home. Temporary uses by Declarant and its affiliates for model homes, sales displays, parking lots, sales offices and other offices, or any one or combination of such uses, shall be permitted until permanent cessation of such uses takes place. No changes may be made in buildings erected by the Declarant or its affiliates or independent homebuilders (except if such changes are made by the Declarant or such a homebuilder) without the consent of the Architectural Control Committee.

The foregoing shall not prohibit the conduct of business activities within a Home for so long as same are of a limited nature such that those activities do not generate non-social visitors, customers, clients or excessive deliveries and the party conducting such business holds a valid Indian River County Home Occupation License.

The garage included within each Home shall be used for the parking of an automobile and the storage of only such volume and type of materials which do not interfere with such use. It is understood that parking within The Properties has been designed and calculated in reliance upon each Owner's or Member's Permittee complying with this requirement at all times. All garage doors shall be kept closed except when a vehicle is ingressing or egressing the garage or while cleaning or other usual and customary activities are being conducted within or around the garage. Without limiting the generality of Article VI, Section 1 hereof, all garage door openers, locks and other hardware and equipment related to the garage door shall be the sole maintenance, repair and replacement obligation of the applicable Owner.

Section 3. Opening Blank Walls; Removing Fences.

Without limiting the generality of Section 12 of this Article, no Owner shall make or permit any opening to be made in any blank wall (except as such opening is initially installed) or masonry wall or fence. Further, no such building wall or masonry wall or fence shall be demolished or removed without the prior written consent of Declarant (so long as it owns any portion of The Properties) and the Architectural Control Committee.

Section 4. Easements.

Easements for installation and maintenance of utilities are reserved as shown on the recorded plat of The Properties and as provided herein. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot, except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company, the Association, and the Declarant and its affiliates, and their respective successors and assigns, shall have a perpetual easement for the installation and maintenance, all underground, of water lines, sanitary sewers, storm drains, and electric, telephone and other telecommunication lines, cables and conduits, under and through the utility easements as shown on the plats.

Section 5. Nuisances.

Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the neighborhood. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

Section 6. Temporary Structures; Gas Tanks; Other Outdoor Equipment.

Except as may be approved or used by the Declarant during construction and/or sales periods, no structure of a temporary character, or trailer, mobile home or recreational vehicle, shall be permitted on any Lots within The Properties at any time or used at any time as a residence, either temporarily or permanently. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any Home or on or about any ancillary building, except for one (1) gas cylinder (not to exceed 20 lbs. capacity) connected to a barbecue grill and such other tank designed and used for household purposes as shall be approved by the Architectural Control Committee described in Section 11, below, such tank to be installed underground unless physical conditions dictate otherwise, in which case the following sentence shall apply. Any outdoor equipment such as, but not limited to, pool pumps and water softening devices shall be reasonably screened from the view of anyone not standing on the Lot by the use of landscaping or other means (in any event, as approved by the Architectural Control Committee); provided, however, that the use of such screening shall not obviate the requirement that the installation of any such equipment nevertheless be approved by the Architectural Control Committee.

Section 7. Signs.

No sign of any kind shall be displayed to the public view on any Lot except by a Builder.

Section 8. Hurricane Shutters.

Any Owner desiring to make use of hurricane shutters shall follow the procedure set forth in Section 13 of this Article for the approval thereof with respect to type, color and other relevant attributes. Once approved by the hurricane shutters shall be used only in accordance with the following requirements:

(a) In the case of shutters which are not permanently installed on the Home (e.g., panels as opposed to "accordion" shutters), same shall be stored out of sight.

(b) No hurricane or other storm shutters shall be placed on a Home, and no permanently affixed shutters shall be closed (except when servicing same), except upon the issuance of tropical storm or hurricane watch or warning by the National Weather Service with a projected landfall in the area of the properties no earlier than forty-eight (48) hours from the time of the installation or closing of the shutters.

(c) All shutters shall be opened/removed within twenty-four (24) hours of either (a) the "lifting" or cancellation of the aforesaid watch or warning or (b) in the event of an actual tropical storm or hurricane, the final passage of same.

(d) Without limiting the specific time restrictions set forth above, at no time shall any hurricane shutters be used to "board up" a home in the absence of the Owner or occupant thereof, it being the sole responsibility of the Owner or occupant to provide any other desired security measures with respect to the Home in a manner which does not have a negative esthetic impact on a Home or surrounding properties.

Section 9. Flags and Banners.

Only those flags and banners specifically required to be permitted by the Association per the Act may be placed on Lots or Homes and then only to the limited extent required by the Act. All flags and banners, including poles, shall be maintained in a good, neat, attractive and respectful condition.

Section 10. Oil and Mining Operation.

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in The Properties, nor on dedicated areas, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in The Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

Section 11. Pets, Livestock and Poultry.

No animals, reptiles, wildlife, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any neighbor by reason of barking or otherwise. No dogs or other pets shall be permitted to have excretions on any Common Areas, except areas designated by the Association, if any, and Owners shall be responsible to clean-up any such excretions. For purposes hereof, "household pets" shall mean dogs, cats and other animals expressly permitted by the Association, if any. **ALL PETS SHALL BE KEPT ON A LEASH WHEN NOT IN THE APPLICABLE HOME OR A FENCED-IN YARD, IF ANY.** Pets shall also be subject to all applicable rules and regulations. Nothing contained herein shall prohibit the keeping of fish or domestic (household-type) birds, as long as the latter are kept indoors and do not become a source of annoyance to neighbors.

Section 12. Visibility at Intersections.

No obstruction to visibility at street intersections or Common Area intersections shall be permitted; provided that the Association shall not be liable in any manner to any person or entity, including Owners and Members Permittees, for any damages, injuries or deaths arising from any violation of this Section.

Section 13. Architectural Control.

No building, wall, fence or other structure or improvement of any nature (including, but not limited to, pools, screen enclosures, patios (or patio extensions), hedges, other landscaping, exterior paint or finish, play structures, awnings, shutters, hurricane protection, basketball hoops, decorative plaques or accessories, birdhouses, other pet houses, swales, asphaltting, sidewalk/driveway surfaces or treatments or other improvements or changes of any kind, even if not permanently affixed to the land or to other improvements) shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping or of the materials as may be required by the Architectural Control Committee (which shall be a committee appointed by the Board of Directors of the Association, absent such appointment the Board to serve in such capacity) have been approved, if at all, in writing by the Architectural Control Committee and all necessary governmental permits are obtained. **Conversions of garages to living space or other uses are hereby prohibited, even though same are not readily apparent from the exteriors of applicable Homes.** Each building, wall, fence or other structure, improvement or alteration of any nature, together with landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan approved by the Architectural Control Committee and applicable governmental permits and requirements. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Control Committee seem sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or

improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Control Committee shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. A majority of the Board may take any action the Board is empowered to take, may designate a representative to act for the Board and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Board, the remaining members shall have full authority to designate a successor. The members of the Board shall not be entitled to any compensation for services performed pursuant to this covenant, unless engaged by the Association in a professional capacity. The Architectural Control Committee shall act on submissions to it within forty-five (45) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved.

In the event that any new improvement or landscaping is added to a Home/Lot, or any existing improvement on a Lot is altered, in violation of this Section, the Association shall have the right (and an easement and license) to enter upon the applicable Lot and remove or otherwise remedy the applicable violation after giving the Owner of the Lot at least ten (10) days prior written notice of, and opportunity to cure, the violation in question. The costs of such remedial work and a surcharge of a minimum of Twenty-Five and No/100 Dollars (\$25.00) (but in no event more than thirty-five percent (35%) of the aforesaid costs) shall be a special assessment against the Lot, which assessment shall be payable upon demand and secured by the lien for assessments provided for in this Declaration.

The approval of any proposed improvements or alterations by the Architectural Control Committee shall not constitute a warranty or approval as to, and neither the Association nor any member or representative of the Architectural Control Committee or the Board of Directors shall be liable for, the safety, soundness, workmanship, materials or usefulness for any purpose of any such improvement or alteration nor as to its compliance with governmental or industry codes or standards. By submitting a request for the approval of any improvement or alteration, the requesting Owner shall be deemed to have automatically agreed to hold harmless and indemnify the aforesaid members and representatives, and the Association generally, from and for any loss, claim for damages connected with the aforesaid aspects of the improvements or alterations.

The Architectural Control Committee may, but shall not be required to, require that any request for its approval be accompanied by the written consent of the Owners of the Lots [up to five (5)] adjoining or nearby the Lot/Home proposed to be altered as described in the request.

Without limiting the generality of Sections 1 and 27 hereof, the foregoing provisions shall not be applicable to the Declarant or its affiliates or to Builders meeting the requirements of Section 27 of this Article.

Section 14. Commercial Vehicles, Trucks, Trailers, Campers and Boats.

No trucks (other than those of a type, if any, expressly permitted by the Association) or commercial vehicles, or campers, mobile homes, motorhomes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on The Properties, nor in dedicated areas, except in (i) enclosed garages, and (ii) spaces for some or all of the above specifically designated by Declarant or the Association, if any. For purposes of this Section, "commercial vehicles" shall mean those which are not designed and used for customary, personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The prohibitions on parking contained in this Section shall not apply to temporary parking of trucks and commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services, nor to passenger-type vans with windows for personal use which are in acceptable condition in the sole opinion of the Board (which favorable opinion may be changed at any time), nor to any vehicles of the Declarant or its affiliates.

All Owners and other occupants of Homes are advised to consult with the Association prior to purchasing, or bringing onto The Properties, any type of vehicle other than a passenger car inasmuch as such other type of vehicle may not be permitted to be kept within The Properties.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations now or hereafter adopted may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

Section 15. Parking on Common Areas and Lots/Garages.

No vehicles of any type shall be parked on any portion of the Common Areas (including roadways) not specifically designed and designated for such purpose or any portions of a Lot other than its driveway and garage.

Section 16. Garbage and Trash Disposal.

No garbage, refuse, trash or rubbish (including materials for recycling) shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority or other company or association for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Containers must comply with all requirements of Indian River County. Such containers may not be placed out for collection sooner than twenty-four (24) hours prior to scheduled collection and must be removed within twelve (12) hours of collection. In the event the Association, in its sole discretion, provides depositories for recyclable materials, same shall be the only ones used on The Properties.

Section 17. Fences, Walls and Hedges.

No fence, wall or other structure shall be erected on any Lot, except as originally installed by Declarant or its affiliates or approved by the Architectural Control Committee. Further, no hedge shall be planted except any approved by the Architectural Control Committee. In considering any request for the approval of a hedge or other landscaping, the Architectural Control Committee shall give due consideration to the possibility of same obstructing the view from any adjoining Lot or Common Area and may condition its approval on the hedge or other landscaping being kept to a specific height by the Association.

Section 18. No Drying.

No clothing, laundry or wash shall be aired or dried on any portion of The Properties except on a portion of a Lot which is completely screened from the view of all persons other than those on the Lot itself.

Section 19. Lakefront Property.

As to all portions of The Properties which have a boundary contiguous to any lake or other body of water, the following additional restrictions and requirements shall be applicable:

(a) No boathouse, dock, wharf or other structure of any kind shall be erected, placed, altered or maintained on the shores of the lake unless erected by the Declarant or its affiliates, subject to any and all governmental approvals and permits that may be required.

(b) No boat, boat trailer or vehicular parking or use of lake slope or shore areas shall be permitted. No boats of any type shall be used on any lake.

(c) No solid or liquid waste, litter or other materials may be discharged into/onto or thrown into/onto any lake or other body of water or the banks thereof.

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(d) No landscaping (other than that initially installed or approved by the Declarant), fences, structures or other improvements (regardless of whether or not same are permanently attached to the land or to other improvements) shall be placed within any lake maintenance or similar easements around lakes or other bodies of water.

WITH RESPECT TO WATER LEVELS AND QUALITY AND OTHER WATERBODY-RELATED MATTERS, ALL PERSONS ARE REFERRED TO ARTICLE XIV, SECTION 12 HEREOF.

Section 20. Home Air Conditioners and Reflective Materials.

No air conditioning units may be mounted through windows or walls. No **building** shall have any aluminum foil placed in any window or glass door or any reflective substance or other materials (except standard interior window treatments) placed on any glass, except such as may be approved by the Architectural Control Committee for energy conservation purposes.

Section 21. Exterior Antennas.

No exterior antennas, satellite dishes or similar equipment shall be permitted on any Lot or improvement thereon unless approved by the Architectural Control Committee, except that Declarant and its designees shall have the right to install and maintain community antenna, microwave antenna, dishes, satellite antenna and radio, television and security lines.

Notwithstanding the foregoing, a satellite receiving dish may be installed on a Lot if, but only if, the installation of same is protected by the rules of the Federal Communications Commission, but only to the extent protected by those rules and subject to the approval of the Architectural Control Committee to the maximum extent lawful.

Section 22. Home Numbers.

The numbers placed on the exterior of a Home identifying the address thereof shall not be changed to a different material, type or style unless and except if the Association adopts a new uniform material, type or style in connection with the replacement of such numbers as the result of same wearing to the point of unsightliness.

Section 23. Renewable Resource Devices.

Nothing in this Declaration shall be deemed to prohibit the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, that same shall be installed only in accordance with the reasonable standards adopted from time to time by the Architectural Control Committee. Such standards shall be

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reasonably calculated to maintain the aesthetic integrity of The Properties without making the cost of the aforesaid devices prohibitively expensive.

Section 24. Driveway and Sidewalk Surfaces.

No Owner shall install on a Lot, and the Architectural Control Committee shall not approve, any sidewalk or driveway which has a surface material and/or color which is different from the materials and colors originally used or approved by the Declarant. Further, no Owner shall change any existing sidewalk or driveway in a manner inconsistent with this Section.

Section 25. Artificial Vegetation.

No artificial grass, plants or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Lot without the prior approval of the Architectural Control Committee.

Additionally, and as provided on the Plat of The Properties the following host plants for Caribbean fruit fly and Asian citrus psyllid (citrus greening) shall not be planted on Lots or Common Areas and shall be removed if any now or hereafter exists: cattley guava, common guava, loquat, rose apple, orange jasmine, Chinese box orange and Surinam cherry.

Section 26. Gate System Procedures.

All Owners shall be responsible for complying with and ensuring that their Members' Permittees and invitees comply with, all procedures adopted for controlling access to and upon The Properties through the gate system serving The Properties as well as overall Common Area roadways and other portions of the Common Areas, as such procedures and restrictions are adopted and amended from time to time. Without limiting the generality of the foregoing, in the event that an Owner fails to pay assessments as provided herein or violates any of the use restrictions contained in this Declaration or the rules and regulations of the Association, the right of such party to use an entry lane designated for residents in which an entry device is employed may be suspended until all sums due the Association are paid in full, any violation is corrected and any suspension of the use of the Common Areas as a result of a violation or failure to pay assessments has run its term.

ALL PERSONS ARE HEREBY NOTIFIED THAT DURING THE INITIAL STAGES OF THE DEVELOPMENT OF THE PROPERTIES, ANY GATE SYSTEM MAY NOT BE OPERATED AT ALL OR MAY BE OPERATED ONLY DURING CERTAIN HOURS AND/OR ON CERTAIN DAYS.

ALL OWNERS AND OTHER OCCUPANTS OF HOMES ARE ADVISED THAT ANY GATE SYSTEM, SERVING THE PROPERTIES ARE NOT LAW ENFORCEMENT OFFICERS AND ARE NOT INTENDED TO SUPPLANT SAME, SUCH PERSONS

BEING ENGAGED, IF AT ALL, ONLY FOR THE PURPOSE OF MONITORING ACCESS TO THE PROPERTIES AND OBSERVING ACTIVITIES THEREIN WHICH ARE READILY APPARENT BY SUCH PERSONS.

Section 27. Variances.

The Board of Directors of the Association shall have the right and power to grant variances from the provisions of this Article VII for good cause shown, as determined in the reasonable discretion of the Board. No variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article VII in any instance in which such variance is not granted.

Section 28. Exemption for Builders.

Any Builder shall be exempt from the provisions of this Article, as well as those of Article VI hereof, to the extent that the application of same would prevent or unreasonably interfere with the construction of a Home in a lawful manner; provided, however, that such Builder shall not be so exempt unless it is subject to restrictions imposed by the Declarant. Without limiting the generality of the foregoing, such exemption of Builders shall specifically extend to and include the architectural review and approval provided in Section 12 of this Article if the Declarant has the right to approve the Homes constructed by the Builder per a separate agreement with such Builder. Notwithstanding the foregoing, each such Builder shall keep its construction site in a neat, clean and orderly manner appropriate for such a site.

ARTICLE VIII
RESALE, LEASE AND OCCUPANCY RESTRICTIONS

Section 1. Estoppel Certificate.

No Owner may sell or convey his interest in a Lot unless all sums due the Association are paid in full and an estoppel certificate in recordable form to such effect shall have been received by the Owner. If all such sums shall have been paid, the Association shall deliver such certificate within ten (10) days of a written request therefor. The Owner requesting the certificate may be required by the Association to pay to the Association a reasonable sum to cover the costs of examining records and preparing the certificate.

Owners shall be obligated to deliver the documents originally received from the Declarant, containing this and other declarations and documents, to any grantee of such Owner.

Section 2. Leases.

No portion of a Lot and Home (other than an entire Lot and Home) may be rented. All leases shall be in writing and shall provide that the tenant shall comply with all of the

provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and its applicable rules and regulations or other applicable provisions of any agreement, document or instrument governing The Properties or administered by the Association. Leasing of Lots and Homes shall also be subject to the prior written approval of the Association, which approval shall not be unreasonably withheld and which shall be deemed given if the Association does not deny approval within fifteen (15) days of its receipt of a request for approval together with a copy of the proposed lease and all supporting information reasonably requested by the Association. No lease shall be approved for a term less than one (1) month and no Home shall be rented for more than three (3) times per calendar year.

Owners wishing to lease their Lots and Homes shall be required to provide a true, correct and complete copy of the executed Lease to the Association and to place in escrow with the Association a sum of up to One Thousand and No/100 Dollars (\$1,000.00) which may be used by the Association to repair any damage to the Common Areas or other portions of The Properties resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). The Association shall not be required to pay or remit any interest on any such escrowed funds. The Owner will be jointly and severally liable with the tenant to the Association for any amount in excess of such sum which is required by the Association to affect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant. Any balance remaining in the escrow account, less an administrative charge not to exceed Fifty and No/100 Dollars (\$50.00) and less any interest retained by the Association, shall be returned to the Owner within ninety (90) days after the tenant vacates the Home.

Section 3. Members' Permittees.

No Lot or Home shall be occupied by any person other than the Owner(s) thereof or the applicable Members' Permittees and in no event other than as a residence. For purposes of this Declaration, a Member's Permittees shall be the following persons and such persons' families, provided that the Owner or other permitted occupant must reside with his/her family: (i) an individual Owner(s), (ii) an officer, director, stockholder or employee of a corporate owner, (iii) a partner in or employee of a partnership owner, (iv) a fiduciary or beneficiary of an ownership in trust, or (v) occupants named or described in a lease or sublease, but only if approved in accordance with this Declaration. Under no circumstances may more than one family reside in a Home at one time. In no event shall occupancy (except for temporary occupancy by guests) exceed two (2) persons per bedroom and one (1) person per den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms, family rooms, country kitchens and the like). The Board of Director shall have the power to authorize occupancy of a Home by persons in addition to those set forth above. The provisions of this Section shall not be applicable to Homes used by the Declarant for model apartments, sales offices, management services or otherwise.

As used herein, "family" or words of similar import shall be deemed to include a spouse, children, parents, brothers, sisters, grandchildren and other persons permanently