

July 3, 1997

DECLARATION OF RESTRICTIONS  
AND PROTECTIVE COVENANTS



CFN 97120019 07-14-97 11:10 am  
OR Book/Page: 3689 / 4413

for

CAPE GARDENS OWNERS ASSOCIATION, INC.

This Declaration of Restrictions and Protective Covenants is made this 3rd day of July, 1997, by William Bennix, Trustee, the Owner of the property who declares that the real property described in Article 1, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens as set out herein. The Restrictions and Covenants are to run with the land and shall be binding upon all parties, entities, and all persons owning lots or units in Cape Gardens or claiming an interest under them.

If the owners of such lots or any of them, or heirs, or assigns, shall violate any of the covenants hereinafter set out, it shall be lawful for any other person owning real property situated in such subdivision to prosecute any proceedings at law or in equity against the person or persons violating any of such covenants, and either to prevent him/her from so doing or to recover damages for such violations or both.

ARTICLE I

PROPERTY SUBJECT TO THIS DECLARATION.

1. LEGAL DESCRIPTION: The real property, which is and shall be held, transferred, sold, conveyed, and occupied, subject to this Declaration is located in the City of Cape Canaveral, Brevard County, Florida, and is more particularly described as:

SEE ATTACHMENT "A"

ARTICLE II

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

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**Sandy Crawford**

Clerk Of Courts, Brevard County

#Pgs: 18 #Names: 2  
Trust: 9.50 Rec: 73.00 Serv 0.00  
Deed: 0.00 Excise: 0.00  
Mtg: 0.00 nt Tax: 0.00

A. "Owner's Association" shall mean and refer to CAPE GARDENS OWNER'S ASSOCIATION, INC., a Florida Not-for-Profit Corporation. Also known as Cape Gardens OA, Inc.

B. "Properties: shall mean and refer to all such existing properties and additions thereto as are subject to this Declaration.

C. "Common Areas" or "Access Areas" shall mean and refer to certain real property and improvements thereto as described in Exhibit "A" attached hereto and incorporated herein by the reference. "Common Areas" are intended to be conveyed in fee simple of the Association, subject to the provisions of this Declaration.

D. "Lot" shall mean and refer to certain real property and improvements thereon as described in Exhibit "A". Lots are intended to be conveyed to Owners in fee simple, subject to the provisions of this Declaration.

E. "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to any lot or unit..

F. "Member" shall mean, and refer to all those Owners who are members of the association, as provided in Article III, Paragraph 2 hereof.

G. "Developer" shall mean and refer to WILLIAM BENNIX, TRUSTEE, his heirs or assigns.

H. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

I. "CAPE GARDENS" shall mean and refer to the development which is described in Attachment "A"

J. "Unit" shall mean and refer to a lot that has a building constructed on it.



## ARTICLE III

### CAPE GARDENS OWNER'S ASSOCIATION

1. ESTABLISHMENT: There shall be established an "Association" composed of record owners of each lot. The Association shall be Cape Gardens Owner's Association, Inc., a Florida Not-for-Profit Corporation. The Association shall administer the operation, repair, and maintenance of the "Common Areas" of the Development known as Tract A and Tract B and Tract C. Tract C is not listed on the original recorded Plat, but is the remaining area of Cape Gardens Lot 11 which is East of the 28 foot frontage on King Neptune Lane. The beginning point is the dividing line between Cape Gardens Lot 10 and 11 including the private sewer system.

POWERS: The Association will manage, operate and administer Cape Gardens Owner's Association for the maintenance and upkeep of the common landscaped areas in the development including the planting, care, replacement of trees, flowers and shrubs, and the necessary pumps, sprinkler system, water and electric necessary for the beautification of the project. This includes retention and swale areas, and the payment of liability insurance in accordance with the terms, provision, conditions and authorizations as set forth in Declaration of Restrictions and Protective Covenants, Articles of Incorporation, by-laws and all other Agreements and Deed Restrictions.. In order to do this the Association will collect from the owners of the lots and units the necessary amounts to pay for these services.

For four calender years starting with 1997, should the expenses exceed the income, the Developer will pay the difference.

The Association shall have all the powers as granted by the laws of the State of Florida to Corporations Not for Profit.

2. MEMBERSHIP: Every person or entity, who is a record owner of a fee or undivided interest in any lot or unit, shall be a member of this Association. Whenever a member, shall cease to be a record owner, such member shall automatically be terminated. Notwithstanding anything else to the contrary set forth in this Declaration, any such person or entity who holds such interest merely as security for the performance of any obligation, shall not be a member of the Association.

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**Class-A:** Class A members shall be all of those Owners as Defined in Article III, Paragraph 2, with the exception of the Developer. Class A members shall be entitled to one (1) vote for each lot or unit in which they hold an interest required by membership. When more than one person holds such interest or interests in any lot or unit, all such persons shall be members, and the vote for such lot or unit shall be exercised by one such member as specified in the Articles of Incorporation and/or the by-laws of the Association, but in no event shall more than one (1) vote be cast with respect to any such lot or unit

**Class B:** The Class B member shall be the Developer or his assigns. The Class B member shall be entitled to one (1) vote for each lot or unit in which it holds the interest required for membership by Paragraph 3, provided however: and notwithstanding any provision to the contrary, the Developer shall have the right to elect the Board of Directors of the Association until such time as fifty (50%) of the lots or units subject to this Declaration, have been sold or until the Developer voluntarily relinquishes control, whichever occurs first.

4. **VOTING LIMITATIONS:** Although each part owner of lot or unit is defined as a Member of the Association, when counting votes by the membership, each lot or unit is entitled to just one (1) vote. In the event that lot owners or unit owners are unable to arrive at or determine which member is the voting member, then such lot or unit shall relinquish its vote until such time as a member is designated as the voting member.

## **ARTICLE IV**

### **PROPERTY RIGHTS IN THE COMMON AREAS**

1. **Membership easements:** Each member of the Association and each tenant, agent, and invitee of such Member shall have a permanent and perpetual easement for the use of all common areas in common with all other Members of the Association, their tenants, agents, and invitees, subject to the following:

(a) The right and duty of the Association to levy assessments against each lot or unit for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration.

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These common areas shall include all common areas indicated on the plat, and the eastern portion of Tract C as shown on Page 3.

The right of Owners to use and enjoyment of the Common Areas and facilities thereon shall extend to the members of his or her immediate family who reside with him or her, subject to the regulations, from time to time adopted by the Association in its lawfully adopted and published rules and regulations.

2. EASEMENTS APPURTENANT: The easement provided in Article IV, Paragraph I, shall be appurtenant to and shall pass with the title to each lot or unit.

3. As shown on recorded Plat, King Neptune Lane is a private roadway starting at A1A and going west to the western property line.

4. William Bennix, Trustee owns the undeveloped acreage going west from the western property line (which becomes the eastern property line of the undeveloped acreage) to the Banana River.

5. King Neptune Lane will be extended to take in this undeveloped acreage so the perpetual easement for ingress and egress from A1A also applies to the undeveloped land when it becomes a new Subdivision to be known as King Neptune Subdivision.

6. Maintenance and upkeep of King Neptune Lane shall be equally shared by lot owners of said street and also by the lot owners of King Neptune Lane.

3. UTILITY AND INGRESS AND EGRESS EASEMENTS: Easements for installation and maintenance of utilities and for ingress and egress are reserved as shown on Plat and Site Plan of the Properties, Exhibit "A" Within these easements, no structure, planting, or other materials may be placed or permitted to remain that will unreasonably interfere with the vehicular traffic or prevent the maintenance of utilities.



4. PUBLIC EASEMENTS: Fire, police, sanitation or other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Properties.

5. ASSOCIATION EASEMENTS: For the purpose of performing its duties, the Board of Directors and the Association through its duly authorized agents or employees or independent contractors, shall have the right, after reasonable notice to the Owner, to enter upon any lot or unit at reasonable hours. In the event of any emergency, such right of entry shall exist without notice.

6. ESTABLISHMENT OF ANNUAL ASSESSMENTS: There shall be a yearly assessment of \$100.00 for each and every lot or unit owned payable on or before July 7, 1997 for 1997, \$100 each year on January 3, 1998 and January 3, 1999, and a yearly assessment of \$200 each year payable on Jan 3, 2000 and January 3, 2001, \$300 payable on January 3, 2002, and \$400 on January 3, 2003 and \$400 each year for each lot or unit owned.

This yearly assessment includes all lots or units whether sold or still owned by the developer.

There shall be a one time initial capital contribution of \$300 for each lot in the Development paid to the Owner's Association on or before July 7, 1997.

The use of the funds for these assessments are explained on Page 3 under POWERS.

## ARTICLE V

### MAINTENANCE ASSESSMENTS

1. CREATION OF A LIEN AND PERSONAL OBLIGATION FOR THE ASSESSMENTS: Each owner of any lot or unit, by the acceptance of deed; therefore, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments and charges for the maintenance of the common areas, sewer, water, electric systems, and the roadway including such reasonable reserves as the

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Association may deem necessary, and, special assessments, if any, are to be fixed, established and collected from time to time as herein provided.

The annual and special assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the lot and land and shall be continuous made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided shall also be the personal obligation of the person who was the owner of the lot or unit at the time when the assessment fell due.

All assessments, both regular and special by the Association shall be against all lots or units subject to the jurisdiction equally.

2. PURPOSE OF ASSESSMENTS: The assessments levied by the Association, shall be used for maintenance of the common areas, for capital improvements, to provide insurance, to employ personnel, such as accountants, to enforce the provisions of this Declaration and to carry out the purposes of this Declaration.

3. CAPITAL IMPROVEMENTS: Funds necessary for capital improvements relating to the common areas under the ownership of the Association may be levied by such Association as special assessments, upon approval of the Board of Directors of the Association and upon the approval of a majority of the Owners either at a meeting or in writing.

4. MAINTENANCE RETENTION AREAS, ETC. PAID BY OWNER'S ASSOCIATION.: The Cape Gardens Owner's Association, Inc. is only responsible for the maintenance replacement and upkeep of the common areas known as Tracts A, B, and C . the retention areas of front, side, and rear lots where applicable, and the swales

In these areas, the Cape Gardens OA, Inc. has the responsibility of cutting the grass and replacement when necessary, planting, the upkeep and replacements of flowers, bushes, shrubs, and trees.

5. MAINTENANCE OF LOT OR UNIT AND IMPROVEMENTS THEREON BY THE LOT OR UNIT OWNER: Each lot or unit owner shall comply with the provisions of this Declaration, which include landscaping his land and keep it in a good condition condition., in an



appearance conforming to the provisions of this Declaration and meeting standards that may be enacted by the Board of Directors. Each lot or unit Owner acknowledged by his acquisition of an interest in a lot or unit that he agrees that the Properties in their use and maintenance are to be oriented towards a clean, orderly, and genial residential community.

Each Owner shall be responsible for the cost, maintenance, repair and replacement of the structures located on his or her lot or unit.

If the Owner fails to maintain his lot and building as required, he or she shall be notified in writing by the Board of Directors and given five (5) days to bring his/her lot or unit into conformance with the standards maintained by the Association. In the event the Owner fails to maintain his property as required, the Association shall have the right to maintain the property as would have been required of the Owner and to assess the Owner for the cost of such maintenance or upkeep.

If all such sums due from the Owner are not paid by said Owner in ten (10) days after being provided with written notice and the demand for payment from the Association of such costs, the same shall become a lien upon Owner's lot or unit until paid and may be collected by the Association in the same manner together with additional similar costs and interest that may be incurred by a lot or unit Owner in failing to pay other assessments.

**7. THE EFFECT OF NON-PAYMENT OF ASSESSMENT: THE PERSONAL OBLIGATION OF THE OWNERS: THE LIEN: REMEDIES OF THE ASSOCIATION.** The Association shall have a lien on each lot or unit for the unpaid assessment, interest thereon, advances, costs, and reasonable attorney's fees incurred by the Association incident to the collection of such assessment or enforcement of such lien against the Owner of such lot or unit.

The lien shall be effective from and after the time of recording in the Public Records of Brevard County Florida, showing the claim of lien describing the lot or unit, the record owner's and the amount due and the date when due.

The Lien shall continue in effect until all sums secured by the Lien shall have been fully paid. Such Claims of lien shall be signed and





verified by an officer or agent of the Association.

All such liens shall be subordinated to the lien of a mortgage or other lien recorded prior to the time of the recording of the Claim of Lien.

The Board of Directors may take such actions as it may deem necessary to collect assessments by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if it deems to be in the best interest of the Association.

A delinquent owner shall pay all costs, including reasonable Attorney's fees incurred by the Association incident to the collection of such assessment, together with all sums advanced and paid by the Association pertaining to such lot, or unit, such as for taxes, mortgage and insurance.

The Lien shall be deemed to cover additionally said costs and advances. The filing of one action shall not be a bar for the filing of other actions.

The Association through its Board of Directors will be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien; and it may apply as a cash credit against its bid and all sums due the Association covered by the lien being enforced, and to acquire, hold, lease, mortgage, and convey the same.

In case of the foreclosure of an assessment lien, the Owner shall be required to pay a reasonable rental for the unit. The Plaintiff in such foreclosure action will be entitled to the appointment of a receiver to collect the same from the Owner or Occupant, or both. A suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same.

Assessments and installments not paid when due shall bear interest from the date when due until paid at the rate of 12% per annum.

8. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessment provided for in this Article V shall be subordinated to the lien of any first mortgage recorded prior to the recordation of a Claim of Lien for unpaid assessments.



A mortgage in possession, receiver, a purchaser of a foreclosure sale or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to liability and lien of any assessment becoming due after such foreclosure or conveyance in lieu of foreclosure.

Any unpaid assessments which cannot be collected as a lien against any lot or unit by reason of the provisions of this Paragraph shall be deemed to be an assessment divided equally among, payable by, and a lien against all lots or units subject to assessment by the Association, including the lots or units as to which the foreclosure ( or conveyance in lieu of foreclosure) took place.

9. EFFECT ON DEVELOPER: Notwithstanding any provision that may be contained to the contrary in this instrument, for as long as the Developer is the owner/owners of any lot or unit, the Developer is liable for assessment against such lot or unit.

10. DUTIES OF THE BOARD OF DIRECTORS Except for the original assessment, the Board of Directors of the Association will notify each owner of every lot or unit the amount of the assessment against each lot or unit subject to the Association's jurisdiction for each assessment period, at least thirty (30) days in advance of such date or period. Written notice of the assessment shall thereupon be sent to each Owner, subject thereto.

The Association shall upon demand within a reasonable time, furnish to an Owner or a Mortgagee of a lot or unit, or both, a certificate in writing, signed by an Officer of the Association, setting forth the assessments for the respective lot or unit and the status of their payments. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

The Association through the action of the Board of Directors, shall have the power, but not the obligation, to enter into an agreement from time to time with one or more persons, firms, or associates for management services. The Association shall have all other powers provided in the Articles of Incorporation.



## ARTICLE VI

### GENERAL RESTRICTIVE COVENANTS

1. APPLICABILITY: Provisions of this article shall be applicable to all lots or units situated within the Cape Gardens Subdivision.

2. LAND USE: Each lot or unit until sold can be used for storage of Association equipment, and for those uses as approved by Zoning Board of Cape Canaveral. Temporary uses for model home, parking lots, and/or sales office shall be permitted until Developer has sold all lots or units.

3. ARCHITECTURAL CONTROL: No building, wall, fence or other structure or improvement of any nature 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 shall have been approved by the Board of Directors of the Association.

Each building, wall, fence, or other structural improvement of any nature, together with the landscaping shall be erected, placed or altered upon the premises in accordance with the plans and specifications and plot plan, or in accordance with the plans and specifications and plot plan, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Board of Directors seem sufficient.

Any change in the exterior appearance of any building, wall, fence, or other structure or improvement, and any change in the appearance of the landscaping shall be deemed an alteration requiring approval. The Board of Directors shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Paragraph.

4. EXTERIOR APPEARANCE AND LANDSCAPING: The paint, coating, stains, and other exterior finishing colors on all buildings and fences shall be maintained by the Owner. The Owner shall also maintain, as originally installed by the Developer, the landscaping, including without limitation the tree, shrubs, lawn, flower beds, walkways, and ground elevations unless the prior approval for any



substantial change is authorized by the Board of Directors.

Aluminum foil or reflective materials may not be placed on windows of glass doors.

5. NUISANCES: No noxious or offensive activity shall be carried on upon the property, nor shall anything be done thereon which may be or may become an annoyance of nuisance to the neighborhood or any lot or unit Owner.

6. TEMPORARY STRUCTURES: No structure of a temporary character shall be permitted on any lot, temporarily or permanently, without the prior written consent of the Board of Directors of the Association.

7. SIGNS: No sign of any kind shall be displayed to the public view on the Properties, except one sign of not more than one square foot used to indicate the name of the resident, or after the Developer has sold all of the lots, on sign of not more than five square feet advertising the property for sale.

This sign restriction shall not apply to the Developer until it has sold all its lots, or a sign identifying the properties as approved by the Board of Directors.

8. LEASING: The Lessee shall hold tenancy subject to all of the provisions of this Declaration and any and all rules and regulations of the Board. It shall be the responsibility of the Owner that his Lessee complies therewith.

9. VEHICLES: All vehicles shall be kept in designated parking areas and shall be maintained in working condition. There shall be no storage of boats, boat trailers, recreational vehicles or the like on the premises.

## ARTICLE VII

### PARTY WALLS

1. GENERAL: Each wall built as part of the original construction upon the Properties and placed on the dividing line

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between the lots thereof, shall constitute a party wall and each Owner shall own that portion of the wall which stands on his own lot with a cross easement of support of the other portion.

2. SHARING OF REPAIRING MAINTENANCE: The cost of the usual repair and maintenance of a party wall shall be shared equally by the Owners, who make use of the wall.

3. DESTRUCTION BY FIRE OR OTHER CASUALTY: If the party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore the same, but no greater dimension of said party wall, or of any extension, or restoration thereof, shall be placed upon the land of the other owner then existing prior to such fire or other casualty without the written consent of the other owners.

If the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice and under any rule of law, regarding liability for negligent or willful acts of omissions.

4. WEATHERPROOFING: Notwithstanding any other provisions of this Article, any owner, who by his negligence or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

5. RIGHT TO CONTRIBUTION RUNS WITH LAND: The right of any Owners to contributions of any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

6. DISPUTES AND ARBITRATION: In the event of any dispute arising concerning a party wall or under the provisions of this Article, the parties shall appeal to the Board of Directors. The Board, if the Board so desires, may hold a special meeting to attempt to arrive at a compromise solution.

If one party does not agree with the Board's decision, or if the Board decides not to consider the dispute, then each party shall choose one Arbitrator and such Arbitrators shall choose one additional Arbitrator and the decision of a majority of all the Arbitrators shall be final and conclusive of the question involved.



7. LIENS: Amounts owed under this Article shall be enforceable by lien as provided in these Restrictions and Covenants.

## ARTICLE VIII

### SURFACE WATER AND STORM WATER MANAGEMENT SYSTEM

1. DEFINITIONS: "Surface Water or Storm water Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system. as permitted pursuant to Chapters 40C-40, or 40C-42. F. A. C.

2. USE OF PROPERTY; SURFACE WATER OR STORM WATER MANAGEMENT SYSTEM: The Association shall be responsible for the maintenance, operation and repair of the surface water or storm water management system. Maintenance of the surface water or storm water management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. John Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or storm water management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District.

3. AMENDMENT: Any amendment to the Covenants and Restrictions which alter the surface water or storm water management system, beyond maintenance in its original condition, including the water management portions of the common areas, shall have the prior approval of the St. Johns River Water Management District.

4. ENFORCEMENT: The St. Johns River Water Management District shall have right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water of storm water management system.



## ARTICLE IV

### GENERAL PROVISIONS

1. DURATION: The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit and be enforceable by the Developer, the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, their successors and assigns, for a term of 99 years from the date this Declaration is recorded, after which time said covenant shall be automatically extend for successive periods of ten (10) years each, unless an instrument, to the contrary, signed by the then Owners of two-thirds of the lots have been recorded.

All provisions of the Declaration are subject to amendment in accordance with the provisions of said Paragraph 5 of this same Article. Provided further that in the event the provisions herein are declared void by a Court of competent jurisdiction by reason of the period of time herein stated for which the same shall be reduced to the maximum term allowable by law.

2. NOTICE: Any notice required to be sent to any member or owner under the provisions of this Declaration, shall be deemed to be properly sent when personally delivered or mailed, postage prepaid, to the last known address of the person, who appears as member or owner on the rules of the Association at the time of such mailing.

3. ENFORCEMENT: Enforcement of these covenants and restrictions shall be at any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant of restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Developer and Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

4. SEVERABILITY: Invalidation of any one of these covenants or restrictions by judgment or Court Order shall in no way effect any other provision which shall remain in full force and effect.



5. AMENDMENTS: In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges, and liens of this Agreement may be amended, changed, added to, derogated, or deleted at any time from time to time upon the execution and recordation of any instruments executed by: (1) Developer, for as long as he holds title to at least 50% of the lots or units affected by this Declaration: or (2) by Owners holding at least 50% of lots or units in the Association, and the Developer.

6. EFFECTIVE DATE: This Declaration shall become effective on July 3, 1997

7. ATTORNEYS FEES AND COSTS: In connection with any litigation, including appellate proceedings arising out of this Declaration, the prevailing party shall be entitled to recover those fees and costs.

8. DISSOLUTION LANGUAGE: In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or storm water management system must be transferred to and accepted by an entity which would comply with Section 10C-42.027, F.A.C. and be approved by the St John River Water Management District prior to such termination, dissolution or liquidation.

9. EXISTENCE AND DURATION: Existence of the Association shall commence with the filing of these Articles of Incorporation with the Secretary of State, Tallahassee, Florida.

The Association shall exist in perpetually.





DECLARATIONS OF RESTRICTIONS AND PROTECTIVE COVENANTS  
CAPE GARDENS OWNERS ASSOCIATION, INC.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand  
and seal on the date indicated below.

Janeen Valencourt  
WITNESS; JANEEN VALLENCOURT

William Bennix, TR  
WILLIAM BENNIX, TRUSTEE

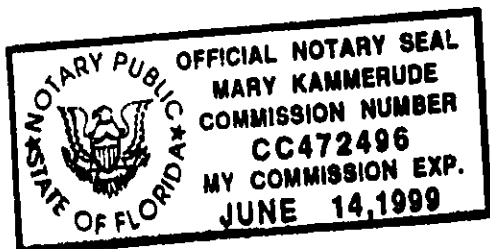
Mary Kammerude  
WITNESS: MARY KAMMERUDE

STATE OF FLORIDA )  
COUNTY OF BREVARD )

The foregoing instrument was acknowledged before me, this  
3rd day of July, 1997, by WILLIAM BENNIX, TRUSTEE, known to me  
to be the person making the above statement.

Mary Kammerude  
MARY KAMMERUDE - NOTARY PUBLIC  
NOTARY FOR STATE OF FLORIDA:

MY COMMISSION EXPIRES:



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EXHIBT "A"

LEGAL DESCRIPTION:

A PERMANENT AND IRREVOCABLE EASEMENT, 25.0 FEET IN WIDTH BEING 12.5 FEET ON EITHER SIDE OF THE FOLLOWING DESCRIPTION, LYING IN SECTION 23, TOWNSHIP 24 SOUTH, RANGE 37 EAST, TALLAHASSEE BASE MERIDIAN, CITY OF CAPE CANAVERAL, BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A CONCRETE MARKER MONUMENTING THE NORTHEAST CORNER OF THE PLAT OF CAPE CANAVERAL AS DESCRIBED IN PLAT BOOK 42, PAGE 15, PUBLIC RECORDS OF BREVARD COUNTY; THENCE S 29°06'34" E, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD A-1-A (A 100 FOOT RIGHT-OF-WAY AS PRESENTLY LOCATED), A DISTANCE OF 34.76 FEET TO THE POINT-OF-BEGINNING; THENCE S 68°03'54" W, A DISTANCE OF 54.74 FEET TO NON-TANGENT INTERSECTION WITH A RADIAL CIRCULAR CURVE, CONCAVE TO THE NORTH, HAVING A RADIUS OF 53.50 FEET AND A CENTRAL ANGLE OF 44°04'12"; THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 41.15 FEET (CHORD BEARING N 55°13'06" W) TO THE POINT-OF-COMPOUND CURVATURE OF A RADIAL CIRCULAR CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 543.67 AND A CENTRAL ANGLE OF 12°06'46"; THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 114.94 FEET TO A POINT-OF-TANGENCY; THENCE N 89°34'45" W, A DISTANCE OF 183.01 FEET TO THE TERMINUS OF THIS DESCRIPTION.

