

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
SUGAR MILL GARDENS RESIDENTIAL**

**KNOW ALL MEN BY THESE PRESENTS**, that the undersigned, **PROGRESSIVE BUILDERS, LLC**, a Florida limited liability company, being the owner of Lots 1 through 98, inclusive, and Tracts "D", "E", "F", "G", "H", "I", "J", "K" and "O", per plat of *SUGAR MILL GARDENS*, as recorded in Plat Book 54, pages 33 of the Public Records of Volusia County, Florida, makes the following declaration of covenants, conditions and restrictions covering Lots 1 through 98, inclusive and Tracts "D", "E", "F", "G", "H", "I", "J", "K" and "O" of *SUGAR MILL GARDENS* the real property included in the referenced plat. The restrictions hereunder shall constitute a covenant running with the land, shall be binding upon the undersigned and upon all persons dereigning title through the undersigned and shall inure to the benefit of and be a limitation upon all present and future owners of the real property.

**ARTICLE I  
DEFINITIONS**

Section 1. Unless otherwise identified herein "Association" shall mean and refer only to the **SUGAR MILL GARDENS RESIDENTIAL HOMEOWNERS' ASSOCIATION, INC.**, its successors and assigns. "Homeowners' association" or "association" means a Florida corporation responsible for the operation of a community in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Section 2. "Owner" shall mean and refer to a Lot Owner, whether one or more persons or entities, of a fee simple title to a Lot which is part of the Properties, but excluding those having such interest merely as security for the performance of an obligation, unless and until such interest has been acquired pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 3. "Properties" shall mean and refer to all existing parcels described in Exhibit "A", as amended and any additions, which currently are or which subsequently become subject to this Declaration.

Section 4. "Common Area" or "Common Properties" shall mean all real property (including improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area or Common Properties owned by the Association are described in Exhibit "B", attached hereto.

Section 5. "Developer" or "Builder" as used herein shall mean and refer to **PROGRESSIVE BUILDERS, L.L.C.**, its successors or assigns.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision of the Properties with the exception of the Common Area.

Section 7. "Member" shall mean and refer to a Lot Owner who is a member of the Association as provided in Article III herein.

Section 8. "Single Family" shall mean one or more persons related by blood, marriage, adoption, or guardianship, or not more than two (2) persons not so related, living in one household.

Section 9. "Structure" shall mean and refer to:

(a) any thing or object (other than trees, shrubbery, and landscaping) the placement of which upon any Lot may affect the appearance of such Lot, including, by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered patio, swimming pool, fence, curbing, paving, wall, signboard or any temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvements to such Lot; and

(b) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot.

Section 10. "Surface Water or Stormwater Management System" shall mean 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, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to chapters 40C-4, 40C-40, or 40C-42 F.A.C.

## **ARTICLE II PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every owner shall have the right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of a member for the non-payment of regular annual assessments that are delinquent in excess of ninety (90) days.

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and

subject to such conditions as may be agreed by the members. No such dedication or transfer shall be effective unless an instrument executed by the President and attested to by the Secretary of the Association indicating that at a meeting called for that purpose two-thirds (2/3) of the membership of the Association have approved such dedication or transfer, is recorded in the Public Records of Volusia County, Florida.

(c) The right of the Association, with the assent of two-thirds (2/3) of the membership, in accordance with its Articles and Bylaws, to borrow money for the purpose of acquiring or improving common Area and, in aid thereof, to mortgage said Properties.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Association's Bylaws, the right of enjoyment to the Common Area and facilities to the member's family, tenants, invitees or contract purchasers who reside on the Property. However, it is understood that the member may not delegate his/her responsibility for the conduct of those delegated the use of the Common Area and facilities.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or which is subject to assessment. Members shall all be Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for each Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 2. Voting Rights. There shall be one vote per Lot in Association balloting; only one person shall be entitled to cast each such vote. The vote attributable to a single Lot shall not be divisible. Such person shall be the Lot Owner and is referred to as the "Voting Member." If a Lot is owned by more than one person or entity, the owners of said Lot shall designate one of them as the "Voting Member." In the case of a corporate owner, the president of the corporation shall designate in writing an officer or employee thereof as the Voting Member. If a Lot is owned by a general or limited partnership, any partner, officer or employee of such partnership designated in writing by the managing general partner shall be the Voting Member. The total number of votes shall be equal to the total number of Lots in the Association. If one person or entity owns two or more Lots, such person or entity shall have one vote for each Lot owned. All voting shall be conducted in accordance with the provisions of the Bylaws.

### **ARTICLE IV THE SUGAR MILL COMMUNITY**

The land and improvements herein are also subject to the Sugar Mill Association's Declaration of Covenants, Conditions, and Restrictions recorded at Book 1745, Page 110 et seq, of

the Public Records of Volusia County, Florida, and as amended and restated in Official Records Book 4866, page 1171. All owners of Lots within *SUGAR MILL GARDENS RESIDENTIAL* will be members of The Sugar Mill Association, Inc., a not-for-profit corporation organized and existing under the laws of the State of Florida. The development of the Properties is subject to the Declaration of Covenants, Conditions, and Restrictions described above and as amended from time to time. The owners of Lots will be entitled to the benefit of all easements and the use of all common properties described in said Declaration, and will be subject to all covenants, conditions, and restrictions, including the annual assessments and special assessments, described therein.

Each Owner upon acquiring title to his or her Lot from the Developer shall pay to the Sugar Mill Association, Inc. an initial contribution of \$250.00. Said payment shall be in addition to any assessments paid by the Owner and shall not constitute a prepayment of assessments. Said amounts shall be deposited into a working capital fund maintained by the Sugar Mill Association, Inc. and utilized for such purposes as may be authorized by the Sugar Mill Association, Inc.

#### **ARTICLE V SUGAR MILL COUNTRY CLUB**

Sugar Mill Country Club, Inc. is the operator of the golf course and certain other recreational facilities contiguous to the Properties. Owners of Lots within the Properties are not automatically members of Sugar Mill Country Club. Membership in Sugar Mill Country Club is governed by the Sugar Mill Country Club, Inc. and its By-Laws.

#### **ARTICLE VI COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot within the Properties by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, (b) initial contribution, and (c) special assessments for maintenance, repairs, and capital improvements. Such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest costs, and reasonable attorneys fees shall be a continuing lien upon the Property against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was Owner of such Property at the time the assessment fell due. The personal obligations for delinquent assessments shall be in accordance with Section 7. (b), below.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, security and welfare of the residents in the Properties and in particular the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the

Common Properties and of the homes situated upon the Properties, including but not limited to legal fees, the payment of taxes and insurance on the Common Properties, utility expenses associated with the Common Properties and repair, replacement, and additions to the Common Properties, and for the cost of labor, equipment, materials, management and supervision thereof. Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements, and the maintenance, repair, and replacement of the perimeter and interior division walls originally installed by the Developer.

Section 3. Owner's Share of Common Expenses. Each Owner shall be initially responsible for one ninety-eighth (1/98<sup>th</sup>) of the common expenses of the Association. All assessments levied by the Association pursuant to the annual budget or special assessment will be in the Owner's proportional share of common expenses.

Section 4. Due Dates, Basis and Maximum of Annual Assessments. Assessments shall be collected by periodic installments as determined by the Board of Directors of the Association (but in no event less frequently than annually) in an amount no less than required to provide funds in advance for payment of all the anticipated current operating expenses. The due date of any special assessment under Section 5 hereof shall be fixed in the resolution authorizing such assessment.

(a) The annual assessment per Lot shall be determined by the Board of Directors of the Association at the time such assessments are imposed, provided, however, for the period beginning upon the recording of the Declaration in the Public Records of Volusia County, Florida and twelve (12) months thereafter the annual assessment shall total \$100.00 per Lot.

(b) At the discretion of the Board of Directors of the Association, the annual assessment may be increased annually provided, however, that such increase shall not be in excess of FIFTEEN PERCENT (15%) above the assessment for the previous year. The annual assessment may be adjusted by vote of the membership, as hereinafter provided, for the next succeeding year and the end of each such period of one year.

(c) The Association may change the maximum and basis of the assessments provided that any such change shall have the assent of two-thirds (2/3) of the vote of members who are voting in person or proxy, at a meeting duly called for this purpose. Written notice shall be sent to all members in accordance with the Bylaws, and shall set forth the purpose of the meeting, provided further that the limitations set forth herein shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article XI, Section (6) hereof.

Section 5. Special Assessment for Maintenance, Repairs, or Capital Improvements. In addition to the annual assessment referred to in this Article, the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any

acquisition of Common Area, construction or reconstruction of Common Properties or any improvements located thereon, unexpected maintenance, repair or replacement of the Common Properties or any improvements located thereon, including the necessary fixtures and personal property related to the Common Area or Common Properties, and extraordinary expenses for security, legal or emergency services. Any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members in accordance with the Bylaws.

Section 6. Notice and Quorum for any Action Authorized under Sections 4 or 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 5 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. The presence of members or of proxies entitled to cast Thirty percent (30%) of all votes shall constitute a quorum.

Section 7. Duties of the Board of Directors, Obligation of Association and Liability of Owners. The Board of Directors of the Association shall fix the "Date of Commencement" and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

(a) The Association shall, upon request, furnish to any owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(b) Each Owner of a Lot shall be liable personally for a proportionate share of all Assessments coming due while an Owner regardless of how title is acquired. In any transfer of ownership (whether voluntary, involuntary or by operation of law) the transferee shall be jointly and severally liable with the transferor to the Association for due and unpaid Assessments regardless of whether evidenced by a Claim of Lien. No person acquiring title to a Lot shall be entitled to possession thereof until all unpaid and due assessments to the Association are paid. The liability for Assessments may not be avoided by waiver of the use or enjoyment of the Property or the abandonment of the Lot for which Assessments are made.

Section 8. Effect of Non-payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association. If the annual or special assessments are not paid on the date when due (being the dates specified in Section 4 hereof), then such assessment along with a late fee in the amount of Twenty (\$20.00) Dollars shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hand of the owner, his/her/its heirs, devisees, personal representatives and assigns. The Owner agrees that he/she/it shall be liable for and promptly pay as and when due to the Association all assessments and special assessments as provided herein and in the Articles of Incorporation and Bylaws. The Owner agrees and understands

that in the event he/she/it fails to make payment as and when due, the Association shall have the right to record a lien against the Owner's Lot in the form set forth by the Board of Directors, signed by the President or other authorized agent of the Association in recordable form. The Association shall have the right to enforce the lien in the manner provided under Florida law for foreclosure of mortgage liens. The Owner shall pay interest on the amount owed at the highest rate permitted by law, as well as all court costs and attorneys' fees incurred in collection, including all costs and fees incurred in foreclosure of such lien. This lien shall be subordinate to the lien of mortgages recorded prior to the recording of the lien hereunder. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period. Provided, however, that no voluntary sale of any Lot shall be effective, nor shall any marketable title be conveyed unless and until the Seller has obtained from the proper officers of the Association a certificate, in recordable form attesting to the fact that the Seller has paid all assessments to date. If no such certificate is obtained and recorded, the Purchaser shall be conclusively presumed to have assumed such past due assessments and shall become forthwith liable therefore. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the highest rate permitted by law, and the Association may bring an action at law against the Property and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with all costs of the action.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such payments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Areas as defined herein; and (c) all properties exempted from taxation by the laws of the State of Florida, upon terms and to the extent of such legal exemption. Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Section 11. Guaranteed Assessment Level and Developers Share of Assessment. The Developer guarantees the level of assessments for the period beginning upon the recording of the Declaration in the Public Records of Volusia County, Florida and twelve (12) months thereafter. The Developer is therefore excused from the payment of its pro-rata share of assessments for the duration of this guarantee period and any extensions thereof. During this guarantee period, and any extensions thereof, the Developer is responsible for the payment of all expenses which exceed the amount of assessments collected from Lot Owners other than the Developer. The level at which the Developer is guaranteeing the assessments is \$100.00 per Lot, per year. Upon the expiration of the

stated Guarantee period as set forth above, the Developer reserves the right to extend said guarantee for one or more additional twelve (12) month periods.

Until expiration of the above guarantee period(s), or at such time as the Developer transfers control of the Association to the Owners, whichever event first occurs, the Developer will be responsible to pay assessments in the same manner as other Lot Owners in the community.

Section 12. City's Right to Enforce Provisions. The City of New Smyrna Beach shall have the right, but not the obligation to levy, collect and enforce assessments for maintenance of Common Properties in the same manner as set forth for the homeowners' association to levy, collect and enforce assessments and in any other manner provided by law.

Section 13. Annexation with Sugar Mill Association. The Developer has entered into an agreement with the Sugar Mill Association, Inc. whereby *SUGAR MILL GARDENS RESIDENTIAL HOMEOWNERS' ASSOCIATION, INC.* will be annexed into the Sugar Mill Association. As part of said agreement the Sugar Mill Association has agreed to maintain the Common Properties of *SUGAR MILL GARDENS RESIDENTIAL* and provide roving nighttime security patrol at such time as the Developer has conveyed Fifty percent (50%) of the Lots. Until such time as Developer has conveyed Fifty percent (50%) of the Lots, the Association or the Developer as the case may be, shall be responsible for maintenance of the Common Properties. Expenses associated with said maintenance and security will be paid by the Sugar Mill Association by way of its annual assessments, which Lot Owners in *SUGAR MILL GARDENS RESIDENTIAL* will be required to pay. (See Article IV above). Since said expenses will be paid through the Sugar Mill Association it is anticipated that the annual assessments for Sugar Mill Gardens Residential Homeowners' Association will be minimal and that is why the Developer has a minimum initial rate of \$100.00 per year.

Section 14. Initial Contribution. Each Owner upon acquiring title to his or her Lot from the Developer or any other persons or entity thereafter (whether by voluntary conveyance, involuntary conveyance or operation of law) shall pay to the *SUGAR MILL GARDENS RESIDENTIAL HOMEOWNERS' ASSOCIATION, INC.* an initial contribution of \$100.00. Said payment shall be in addition to any assessments paid by the Owner and shall not constitute a prepayment of assessments. Said amounts shall be deposited into a working capital fund maintained by the *SUGAR MILL GARDENS RESIDENTIAL HOMEOWNERS' ASSOCIATION, INC.* and utilized for such purposes as may be authorized by the said Association.

## ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. Pursuant to agreement with Owner, or upon determination by the Association that an Owner has failed to maintain the exterior of his/her/its vacant or improved Lot in accordance with general standards of the community then, after reasonable notice to the Owner specifying such failure and upon Owner's neglect or refusal to correct the same, the Association may provide exterior maintenance upon each such Lot as follows: paint, repair,

replacement and care of roofs, gutters, downpours, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. The cost thereof shall be assessed to the Owner and shall be due as described in Section 2 hereof.

Section 2. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Lot upon which such maintenance is done and shall be due and payable within 30 days after completion of the work. In the event such Lot Owner refrains from paying his/her due bill after 90 days it shall be a lien and obligation to the Owner and shall become due and payable in all respects as provided in Article VI hereof.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any improvement at reasonable hours on any day, except Sunday.

## **ARTICLE VIII ARCHITECTURAL CONTROL DESIGN REVIEW BOARD**

Section 1. Sugar Mill Association Design Review Board. No building, fence, wall, or other structure shall be commenced, or erected upon the Properties, nor shall any exterior addition to or change or alteration be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Sugar Mill Association Design Review Board (DRB). All plans and specifications submitted for approval by the Sugar Mill Association DRB shall contain statements that all submissions comply with all code and zoning laws, rules and regulations of all bodies having jurisdiction and shall otherwise be in form and content as required by the Sugar Mill Association Design Review Board. Fees, approvals, disapprovals and appeals of submissions to the Sugar Mill Association DRB shall be as set forth in the Sugar Mill Association Declaration of Covenants, Conditions and Restrictions.

## **ARTICLE IX GENERAL RESTRICTIONS - USE AND OCCUPANCY**

Section 1. General Restrictions. The following restrictions along with the Enforcement Provisions of ARTICLE XI, Section 4 shall apply to all Lots on the Properties:

a. General Prohibition. No dwelling, dwelling house, garage, outbuilding structure or appurtenance of any kind, including additions or substantial alterations thereto, shall be erected, placed or maintained on the Properties, or any portion thereof, that does not conform to applicable governmental regulations and to the standards, requirements, prohibitions and provisions of this Declaration, and all such construction or development shall be performed, completed, erected, placed and maintained only in accordance with the plans and specifications required herein as approved by the Sugar Mill Association DRB.

b. Only Residential Purposes. No Lot shall be used in whole or in part for anything other than residential purposes, except for model Living Units which may be maintained by a builder-only for purposes of sale of Lots and homes within the Properties. Other than conducting the sale of Lots and homes within the Properties, no trade, traffic, or business of any kind, whether professional, commercial, industrial, manufacturing or other nonresidential use, including parking of automobiles of clients, patients or customers, shall be engaged in or carried on upon the Properties or any part thereof; nor shall anything be done thereon which in the judgement of the Association's Board of Directors may be or which may become a nuisance, or which interferes with the right and easement of enjoyment by the Owners or the residents of the Properties. However, with the approval of the Board, an office in a home may be permitted so long as none of the prohibitions (i.e. nuisance or interfere with the right and easement of enjoyment) of this subsection or subsection (v) is violated.

c. Subdivision. No Lot shall be subdivided or split by any means whatsoever into any greater number of residential plots or units nor into any plot or unit of smaller size without express written consent of the Sugar Mill Association DRB. Likewise, no adjacent Lots can be combined without the consent of the said DRB. In the event a lot becomes jointly owned by the owners of the lots adjoining thereto, then in that event the annual dues of said jointly owned lot shall be divided between the owners as their interest may appear.

d. Removal of Buildings. No building or structure shall be moved from or upon the Properties or Lots without written consent of the Sugar Mill Association DRB.

e. Occupancy Before Completion. No building or structure upon the Properties shall be occupied until it is completed and complies with the terms and provisions of this Declaration, and a "Certificate of Occupancy" has been issued.

f. Maintenance and Repair. All dwellings, structures, buildings, outbuildings, walls, driveways, and fences placed or maintained on the Properties or any portion thereof, shall at all times be maintained in good condition and repair.

g. Completion of Construction. All exterior construction and paint and stain finishing for which plans and specifications are required herein to be submitted to the Sugar Mill Association DRB for approval, shall be completed within one year from the date of approval for said approval to remain in force, unless the Sugar Mill Association DRB shall grant a greater period of time to complete said constructions, or shall grant an extension of said one year period.

h. No temporary buildings. No tent, shack, house trailer, basement, garage or other outbuilding shall at any time be used on any Lot as a residence temporarily or

permanently; and no building or dwelling of a temporary character shall be permitted except as follows: buildings necessary for construction taking place on the Properties and not intended to be used as living accommodations during the course of construction; and sales and leasing offices, during the course of sales.

i. Ground Maintenance. (i) Grass, hedges, shrubs, vines and mass planting of any type on each Lot shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to maintain the same in a neat and attractive manner. (ii) No weeds, vegetation, rubbish, debris, garbage, waste materials, or materials of any kind whatsoever shall be placed or permitted to accumulate upon any Lot which would render it unsanitary, unsightly, offensive or detrimental to the Properties in the vicinity thereof or to the occupants of any property in the vicinity. (iii) No building material of any kind or character shall be placed or stored upon any Lot so as to be open to view by the public or neighbors, unless such material will be used and is used within three months after the construction of buildings or structures upon the Lot on which the material is stored.

j. Preservation of Existing Trees. No existing tree greater than four inches in diameter, measured four and one half feet above the ground shall be removed from any Lot for any reason except disease, imminent danger of falling or unless such tree directly interferes with the erecting or placing of the Living Unit on said Lot. In general, removal of trees must be done in conformity with existing City of New Smyrna Beach environmental regulations and at the owner's expense. In the event that the removal of certain trees is deemed necessary in the interest of public safety, this must be accomplished within 15 days of the receipt of written notice from the Association, and at owner's expense. As to designated specimen and/or historic trees per the City of New Smyrna Beach Land Development Code see Section 2, subparagraph h., below.

k. Fences, Walls, Hedges, Mass Planting of any Type. No hedge or mass planting of any type shall be planted, placed or maintained between the street and the front setback line of the Lot without the written consent of the Sugar Mill Association DRB. No fence, wall, hedge, mass planting of any type exceeding a height of four (4) feet above the finished graded surface of the ground upon which it is located, shall be constructed, planted, placed or maintained upon any Lot without the written consent and approval of the Sugar Mill Association DRB.

l. Animals, Birds and Fowl. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Dogs must be under owners' control at all times, and the City of New Smyrna Beach animal control ordinance shall be strictly observed. In the event of a dispute as to the reasonability of the number of such cats,

dogs or household pets kept upon the Properties, the decision of a majority of the Board of Directors of the Association shall control.

m. Laundry. No clothes, sheets, blankets or other articles shall be displayed in the side or front yards of any Lot except in a service yard or yard enclosed by a lattice, fence, wall or other screening device.

n. Aerials. No radio, television or other aerial, antenna, dish antenna, tower or transmitting or receiving aerial, or support thereof, shall be erected, installed, placed or maintained upon any Lot, or upon any building or structure, except under eaves or entirely within the enclosed portion of the individual dwelling unit or garage; and in no event shall such devices protrude above the highest point of the dwelling situated upon such Lot, or extend from overhang or wall. Dish antenna shall not exceed eighteen inches (18") in diameter.

o. Exterior Lighting. No exterior lighting fixtures shall be installed on any Lot without adequate and proper shielding of the fixture. No lighting fixture shall be installed that may become an annoyance to the residents of adjacent properties.

p. Boat and Vehicle Parking and Storage. (i) No commercial truck, recreational vehicle, travel trailer, camping trailer, truck camper, motor home, motor coach, trailer, golf cart, commercial van, utility vehicle, all-terrain vehicle, or boat shall be parked overnight outside the dwelling of a residential lot. (ii) No major repairs shall be performed on any motor vehicle or boat on, or adjacent to, any Lot. (iii) For purposes hereof the term "commercial truck" means any vehicle which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers. Said term includes what is commonly referred to as a "pick-up" truck whether used as a private vehicle or commercially and does not include sport utility vehicles or station wagons.

q. Utilities. (i) Wires and conduits for the transmission or distribution of electricity, telephone, cable television and other purposes, public sewers, land drain pipes, water and gas mains, or other pipes shall be placed beneath the surface of the ground, except that street light standards and similar electrical equipment may be placed on the surface after the Sugar Mill Association DRB has approved the design, location and, where needed, the proposed screening. (ii) Temporary poles used for the transmission of electricity, telephone and other purposes during the original period of dwelling construction may not be erected, placed, installed or maintained on any Lot or portion of the Properties after the construction of the dwelling has been completed, without the approval of the Sugar Mill Association DRB.

r. Excavations. No excavation for stone, gravel, sand, or dirt shall be made on any portion of the Properties, except for the construction of dwellings, walls,

fences, foundations, structures, landscaping, swimming pools and other appurtenances, plans or specifications for which excavations have been approved by the Sugar Mill Association DRB.

s. Oil and Mining Operations. No drilling or exploration for or development of oil, gas or other hydrocarbons, or refining, quarrying, or mining operations of any kind, shall be permitted upon or in any Lot, nor shall wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot and no derricks or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

t. Signs. No sign of any character shall be displayed or placed on any Lot except "for rent" or "for sale" signs, which signs may refer only to the particular premises on which displayed, shall not exceed one (1) square foot in size, shall not extend more than three feet above the ground, and shall be limited to one sign per Lot.

u. Refuse. No trash, garbage, rubbish, debris, waste materials or other refuse shall be deposited or allowed to accumulate or remain on any Lot. Containers shall not be placed at street side for removal of refuse prior to the evening before the announced pickup day. Said containers must be returned to utility yard or enclosure within eight hours after announced pickup time.

v. Nuisances. No noxious or offensive trade or activity loud and boisterous behavior, loud playing of radio, television or other sound equipment shall be permitted on any Lot, nor shall anything be done thereon which may be or may become an annoyance or repugnant and irritating to the residents of the neighborhood.

w. Preservation and Maintenance of Slopes, Banks, and Swales. No person shall construct, damage, destroy, open, reduce, remove, alter, modify or install anything or improvement within, over, or upon any bank, slope or swale within the Properties without first obtaining Sugar Mill Association DRB approval. No construction or excavation in the proximity of any canal, bank, slope or swale shall be permitted which, in the opinion of the Sugar Mill Association DRB, would impair the stability of the slopes in the said areas.

x. Wells. No water wells shall be dug on any Lot or on the Properties except for purposes of irrigation, landscaping or filling of swimming pools.

y. Open Burning. Open burning on unoccupied Lots of wooden materials or vegetation generated by land clearing operation or demolition of a structure shall be allowed only according to applicable government regulations. Open burning to reduce solid waste on occupied residential premises is not permitted.

z. Swimming Pools. Subject to Sugar Mill Association DRB approval, swimming pools may be constructed on any Lot provided that access to them from outside the Lot is controlled from all directions by fencing and the residential structure. If pools are protected by screens, such screens and their structures shall be approved by the Sugar Mill Association DRB.

aa. Irrigation. All landscaped areas shall be irrigated with a workable underground irrigation system except those areas left natural do not need to be irrigated. All irrigation systems must be maintained in perpetuity by the property owner, tenant, or agent. All irrigation systems will be installed with a rain sensor.

bb. Perimeter and Interior Division Walls. No person shall damage, paint, bore holes, destroy, open, reduce, remove, alter, modify, install or attach anything upon the perimeter and interior division walls within the Properties without first obtaining written approval of the Association.

Section 2. Construction Restrictions: The following construction restrictions shall apply to all Lots on the properties:

a. Square Footage of Dwelling. No single-family dwelling shall have less than eighteen hundred (1800) square feet of living area, exclusive of patios, porches and garages. The number of dwellings within *SUGAR MILL GARDENS RESIDENTIAL* with less than 2200 square feet of living area, exclusive of patios, porches and garages, shall not be more than thirty-five (35). All other dwellings shall be 2200 square feet or more of living area, exclusive of patios, porches and garages. All dwellings are to be constructed of concrete block with an exterior finish of stucco, brick, or other masonry materials as approved by the Sugar Mill Association Design Review Board.

b. Setbacks. No dwelling shall be erected nearer than 30 feet to the front lot line and the rear setback line shall not be less than 7.5 feet from the rear lot line. No dwelling shall be erected nearer than 7.5 feet to any side lot line. Corner lots which front on two streets shall provide a 30 foot front yard on one street frontage and a 15 foot front yard on the other street.

c. Intersections. No fence, wall, hedge or mass planting of any type that obstructs site lines at the intersection of any street, drive or alley pavement shall be permitted on any Lot.

d. Water Systems. No individual water supply system shall be permitted on any Lot. The prohibition against individual water supply systems does not restrict the right of any owner to install, operate and maintain a water well on the premises for supply of water only for swimming pools and irrigation purposes.

e. Screening and Pumps, Trash Cans, etc. from View. All exterior pumps, motors, air condition compressors, storage tanks, and other mechanical features and all trash and garbage cans shall be screened from view either by a decorative structure or landscaping materials approved by the Sugar Mill Association Design Review Board. The decorative structure or landscaping materials shall be no less than 36 inches in height.

f. Roofs. All roofs to be shingled with fiberglass, architectural-designer shingles, unless otherwise approved by the Sugar Mill Association Design Review Board.

g. Garages. Each dwelling shall have a minimum of a two (2) car garage containing no less than 425 square feet. Although not prohibited it is desirable that homes be designed and built in such a manner as to avoid the garage doors from facing the street.

h. Specimen/Historic Trees. Certain trees in *SUGAR MILL GARDENS RESIDENTIAL* have been designated by the City of New Smyrna Beach as "specimen and/or historic trees" and the same are identified on the "Tree Preservation Plan" attached hereto as Exhibit "D". All specimen and/or historic trees within Tracts D, E, F, G and H, as designated on the "Tree Preservation Plan" not specifically noted for removal during construction of subdivision improvements shall be preserved.

All specimen and/or historic trees within residential lots, not specifically noted to be preserved on the attached Tree Preservation Plan, shall only be removed upon approval of an individual lot plan as approved by the City of New Smyrna Beach, Building Department.

### Section 3. Easements and Conservation Areas:

a. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Provided, however, that the Developer reserves to itself, its successors and its assigns, the right to grant without liability new utility or drainage easements or modifying existing utility or drainage easements from time to time on property still owned by it, its successors or assigns at the time of the grant or modification. Within any easement, no structure, planting or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, change the direction of flow of drainage channels in the easements or obstruct or retard the flow of water through drainage channels in the easements. Failure of the developer, the Association, or the beneficiary of the easement grant to cause or direct removal of a structure, planting or other material in the easement area shall not be deemed a waiver of any right by the developer, Association or the beneficiary. In the event a planting, structure or other material is placed or permitted to remain in an easement

area, the developer, the Association or the beneficiary of the easement shall be permitted without liability to remove the planting, structure or other material placed or permitted to remain in the easement area. For purposes of this paragraph, beneficiary shall mean the party or entity to whom the easement is granted or the successors or assigns of the party or entity to whom the easement is granted. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the Lots, except those improvements for which a public authority, company, the Association or the Sugar Mill Association, Inc. is responsible.

b. Conservation Easement. Pursuant to the provisions of Section 704.06, Florida Statutes, Developer has granted to St. Johns River Water Management District (the "District") a conservation easement in perpetuity over the property described in the Conservation Easement recorded on 1-4-2007, in Official Records Book 5984, page 1166, Public Records of Volusia County, Florida. The Conservation Easement is attached hereto as Exhibit "C". Developer granted the Conservation Easement as a condition of permit number [REDACTED] issued by the District solely to offset adverse impacts to natural resources, fish and wildlife, and wetland functions. Said property is depicted as Tract "D" on the recorded plat.

1.) Purpose. The purpose of the conservation Easement is to assure that the Conservation Easement Area will be retained forever in its existing natural condition and to prevent any use of the Conservation Easement Area that will impair or interfere with the environmental value of this area.

2.) Prohibited Uses. Any activity in or use of the Conservation Easement Area inconsistent with the purpose of the Conservation Easement is prohibited. The Conservation Easement expressly prohibits the following activities and uses:

(i) construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

(ii) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.

(iii) Removing, destroying or trimming trees, shrubs, or other vegetation.

(iv) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.

(v) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.

(vi) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(vii) Acts or uses detrimental to such retention of land or water areas.

(viii) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

3.) Responsibilities. The Developer, its successors and assigns, are responsible for the periodic removal of trash and other debris which may accumulate in the Conservation Easement Area.

4.) Rights of District. To accomplish the purposes stated in the Conservation Easement, the Developer conveyed the following rights to the District.

(i) To enter upon and inspect the Conservation Easement Area in a reasonable manner and at reasonable times to determine if Developer or its successors and assigns are complying with the covenants and prohibition contained in the Conservation Easement.

(ii) To proceed at law or in equity to enforce the provisions of the Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Conservation Easement Area that may be damaged by any activity inconsistent with the Conservation Easement.

5.) The provisions of this subparagraph b. may not be amended without the prior written approval of the St. Johns River Water Management District.

c. Tract "D". Tract "D" as indicated on the recorded Plat consisting of a Conservation and Tree Preservation Area has been dedicated to the Sugar Mill Gardens Residential Homeowners' Association. The Sugar Mill Gardens Residential Homeowners' Association and after annexation, the Sugar Mill Association is responsible for said Tract. Said Tract is also subject to a Conservation Easement in favor of the St. Johns River Water Management District which is attached as Exhibit "C". It shall not be permissible to use said Tract in any way that is inconsistent with the terms and conditions of the said Conservation Easement. In addition, no trees, shall be removed from said Tract unless necessary in the interest of public safety.

d. Tract "E". Tract "E" as indicated on the recorded Plat consisting of a Landscape Buffer and Tree Preservation Area has been dedicated to the Sugar Mill Gardens Residential Homeowners' Association. The Sugar Mill Gardens Residential Homeowners' Association and after annexation, the Sugar Mill Association is responsible for the maintenance and operation of said Tract. It shall not be permissible to erect any temporary or permanent structures within Tract "E" other than necessary to enhance the landscape buffer. In addition, no trees, shall be removed from said Tract unless necessary in the interest of public safety.

e. Tract "F". Tract "F" as indicated on the recorded Plat consisting of a Landscape Buffer, Tree Preservation, Passive Recreation Ingress and Egress and Utilities Area has been dedicated to the Sugar Mill Gardens Residential Homeowners' Association. The Sugar Mill Gardens Residential Homeowners' Association and after annexation, the Sugar Mill Association is responsible for the maintenance and operation of said Tract. It shall not be permissible to erect any temporary or permanent structures within Tract "F" other than necessary to enhance the landscape buffer. In addition, no trees, shall be removed from said Tract unless necessary in the interest of public safety.

f. Tract "G" and "H". Tract "G" and "H" as indicated on the recorded Plat consisting of Tree Preservation Areas has been dedicated to the Sugar Mill Gardens Homeowners' Association. The Sugar Mill Gardens Residential Homeowners' Association and after annexation, the Sugar Mill Association is responsible for the maintenance and operation of said Tract. It shall not be permissible to erect any temporary or permanent structures within Tracts "G" and "H" other than necessary to enhance the landscape buffer. In addition, no trees, shall be removed from said Tract unless necessary in the interest of public safety.

g. Tracts "I", "K", and "O". Tracts "I", "K" and "O" as indicated on the recorded Plat consisting of dry and wet drainage retention areas have been dedicated to the Sugar Mill Gardens Residential Homeowners' Association. The purpose of

these areas is to maintain a surface water and stormwater management system to provide drainage, water storage, conveyance, or other surface water or stormwater management capabilities as permitted by the St. John's River Water Management District. The Sugar Mill Gardens Residential Homeowners' Association and, after annexation, The Sugar Mill Association, is responsible for maintenance, operation and repair of the surface water or stormwater management system located in or on tracts "I", "K" and "O". No Owner or other person shall obstruct, alter or in any way disturb improvements of natural or planted vegetation within said parcels. Further it shall not be permissible to erect any temporary or permanent structure within, or remove plant material from said parcels.

h. Tract "J". Tract "J" as indicated on the recorded Plat consisting of Ingress and Egress, Drainage, Utilities and Stormwater Management Area. The purposes of this area are as follows: (1) to provide pedestrian and golf cart access from *SUGAR MILL GARDENS RESIDENTIAL* to Sweet Bay Avenue; (2) to provide an easement for installation and maintenance of public utilities; (3) to provide a means of ingress and egress for emergency vehicles when required in the interest of public safety; and (4) to provide an area for dry and wet drainage retention to accommodate the surface water and stormwater management system as permitted by the St. John's River Water Management District. The Sugar Mill Gardens Residential Homeowners Association and, after annexation, The Sugar Mill Association, is responsible for the maintenance, operation, repair or reconstruction of the improvements located in or on Tract "J". No Owner or other person shall obstruct, alter or in any way disturb natural or planted trees or vegetation within said tract. Further, it shall not be permissible to erect any temporary or permanent structure within Tract "J", other than necessary for public utilities and an improved golf cart/walkway.

i. Easement for Access and Drainage. The Sugar Mill Gardens Residential Homeowners' Association and Sugar Mill Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the said Associations shall have the right to enter upon any portion of any lot which is a part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water, or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Associations shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

j. Easement for commercial area to use stormwater management system. There is hereby created a perpetual, non-exclusive easement in favor of the Sugar Mill Gardens Commercial Lot Owner's Association, Inc. for said Association and the

members thereof to connect to and use the *SUGAR MILL GARDENS RESIDENTIAL* Subdivision master stormwater management system as designed and permitted including, but not limited to, connecting to the wet detention pond (identified as pond B2) to provide storm water runoff for the commercial lots identified as C1, C2, C3, and C4 on the recorded plat of *SUGAR MILL GARDENS*.

k. Easement for access to maintain perimeter and interior division walls. There is hereby created a perpetual, non-exclusive easement in favor of the *SUGAR MILL GARDENS RESIDENTIAL HOMEOWNERS' ASSOCIATION, INC.* over all Common Areas and so much of each Lot as may be necessary to maintain, repair, or replace all or any part of the perimeter and interior division walls originally installed by the Developer.

## ARTICLE X HOMEOWNERS' ASSOCIATION

Section 1. Establishment. There shall be established a non-profit Homeowners Association, to be known as "Sugar Mill Gardens Residential Homeowners' Association, Inc.," to which all persons or entities purchasing or otherwise obtaining anyone of the designated 98 residential lots within *SUGAR MILL GARDENS RESIDENTIAL* shall automatically become and remain members, subject to all the rights and obligations described in the Articles of Incorporation, By-laws and Rules of the Association. No property in *SUGAR MILL GARDENS RESIDENTIAL* shall be sold, given or conveyed in any manner without binding a member's heirs, assigns or successors in interest to membership in the Association.

Section 2. Powers. By agreement, the Sugar Mill Association has agreed to maintain the common properties of *SUGAR MILL GARDENS RESIDENTIAL* and provide roving nighttime, security patrol (See Article VI, Section 13, above). If for any reason Sugar Mill Association should fail, refuse, or neglect to provide same, the Sugar Mill Gardens Residential Homeowners Association shall have the power and obligation to manage, operate, maintain and repair all of the common facilities and areas of *SUGAR MILL GARDENS RESIDENTIAL*, including but not limited to entrance signs, entrance medians, stormwater retention areas and facilities and areas enjoyed in common by the owners of *SUGAR MILL GARDENS RESIDENTIAL*. The Association shall have the power to enact reasonable rules for the operation and use of common facilities and areas, assess the property owners on a per lot basis for the costs of operation, maintaining and repairing the common facilities. Common areas shall be as shown on the recorded plat of *SUGAR MILL GARDENS*, and such other areas as may lawfully be made common areas. The City of New Smyrna Beach shall not be responsible for any maintenance of common areas.

Section 3. Surface Water or Stormwater Management System. The Sugar Mill Gardens Residential Homeowners Association and, after annexation, the Sugar Mill Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St.

Johns River Water Management District. The Sugar Mill Gardens Residential Homeowners' Association and, after annexation, the Sugar Mill Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District.

Section 4. Perimeter and Interior Division Walls. The *SUGAR MILL GARDENS RESIDENTIAL HOMEOWNERS ASSOCIATION, INC.* shall be responsible for the maintenance, repair, or replacement of the perimeter and interior division walls located on the Properties and originally installed by the Developer. The Sugar Mill Association shall have no responsibility for said walls.

Section 5. Developer Control. Developer has the right to appoint the initial Board of Directors and thereby control the Association until control is relinquished to the Lot Owners as provided for herein. Developer shall relinquish control of the Board to the Lot Owners in the following manner:

(a) Lot Owner Representation. Lot Owners other than Developer shall be entitled to elect not less than a majority of the members of the Board upon occurrence of the earliest of the following:

(i) Three (3) months after ninety percent (90%) of the Lots that will be operated ultimately by the Association have been conveyed to members; or

(ii) Seven years after recordation of the Declaration.

For purposes of this Section, the term "Lot Owners other than Developer" shall not include builders, contractors or others who purchase a lot for the purpose of constructing improvement thereon for resale.

Notwithstanding anything contained herein to the contrary, Developer shall be entitled to elect at least one (1) member of the Board so long as Developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots in the community. When Developer owns less than five percent (5%) of the Lots in the community it shall nonetheless be entitled to vote as any other Unit Owner.

(b) Meeting to Elect Unit Owners. Within ninety (90) days after Lot Owners other than Developer are entitled to elect a majority of the members to the Board, the Association shall call a meeting of Lot Owners to elect the members to the Board. Notice shall be given not less than sixty (60) days before the election. The election shall proceed as provided in the By-laws. The notice may be given by any Lot Owner if the Association fails to do so.

(c) Actions Requiring Developer Consent. So long as the Developer holds any lots for sale in the ordinary course of business none of the following

actions may be taken without approval, in writing by the Developer: (i) assessment of the Developer as a Lot Owner for capital improvements, and (ii) any action by the Association that would be detrimental to the sales of lots by the Developer. However, increase in Assessments for Common Expenses without discrimination against Developer shall not be deemed to be detrimental to the sale of Lots.

(d) Lot Owner Control. Prior to or not more than ninety (90) days after the time that Lot Owners other than the Developer elect a majority of the members of the Board, Developer shall relinquish control of the Association and the Lot Owners shall accept control. Simultaneously, or, with respect to the financial records, not more than ninety (90) days thereafter, the Developer shall deliver to the Association, at the Developer's expense, all property of the Lot Owners and the Association held or controlled by the Developer, including those items required by Section 720.307(3), Florida Statutes, as amended.

## ARTICLE XI GENERAL PROVISIONS

### Section 1. Amendments.

a. Prior to transferring control of the *SUGAR MILL GARDENS RESIDENTIAL HOMEOWNERS' ASSOCIATION* to the nondeveloper members, the developer reserves for itself, its successors and assigns, and shall have the unilateral right; (i) to amend these restrictive covenants for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein; (ii) to include in any contract or deed or other instrument hereafter made, any additional covenants and restrictions applicable to the said subdivision which do not lower standards of the covenants, conditions and restrictions herein contained or subsequently promulgated by the Sugar Mill Association DRB; (iii) to release any building lot from any part of the covenants, conditions, and restrictions which have been violated (including without limiting the foregoing, violations of building restriction lines) if the developer or Association determines such violation to be a minor violation.

b. Anything in this Declaration to the contrary notwithstanding, this Declaration may be amended from time to time by recording among the Public Records of Volusia County, Florida, an instrument executed by the President and attested to by the Secretary of the Association indicating that at a meeting called for that purpose, the fee owners of a simple majority of all Lots in the Properties have approved such amendment, provided that no such amendment shall affect or interfere with vested rights previously acquired by Lot owners, and further provided that any amendment to any provisions in the Declaration affecting the rights of the City of New Smyrna Beach may not be amended without the written consent of the City of New Smyrna Beach.

c. Anything in this Declaration to the contrary notwithstanding, any amendment to the Covenants and Restrictions which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

Section 2. Duration. Except as provided in Section 1 hereof, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration was initially recorded. Thereafter, said covenants shall be automatically extended for successive periods of ten (10) years unless amended, modified, or revised as provided herein.

Section 3. Notices. (a) Any notice required to be sent to any member or Lot Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing. (b). Disclosure Summary - Pursuant to Section 720.401, Florida Statutes, any developer or owner of a Lot must present a disclosure summary to any prospective purchaser before executing a contract for sale and purchase. The disclosure summary is for the purpose of notifying prospective purchasers that the property they intend to buy is subject to association membership requirement and restrictive covenants governing the use and occupancy of such property. The disclosure summary must be in a form substantially similar to the form set forth in Section 720.401 Florida Statutes.

Section 4. Enforcement.

(a) Remedies at law or in equity. Enforcement of these covenants and restrictions may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain the violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the 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. In addition, the Association shall have the right, whenever there shall have been built on any Lot, any structure which is in violation of these Covenants and Restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the Owners; and such entry and abatement or removal shall not be deemed a trespass. In any suit or legal proceeding brought to enforce any of these covenants and restrictions, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees in connection therewith.

(b) The St. John's River Water Management District and the City of New Smyrna Beach shall have the 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 or stormwater management system.

(c) Levy of Fines and Suspension of Use Rights. In addition to other remedies available, the Association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests or invitees, or both, to use common areas and facilities and may levy fines against a member for the failure of the member or a member's tenants, guests, or invitees to comply with any provision of the Declaration, Bylaws or reasonable rules of the Association. No fine may exceed \$100.00 per violation against any member or any tenant, guest or invitee. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine in the aggregate shall exceed \$1,000.00. A fine shall not become a lien against a Lot. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorneys fees and costs from the non-prevailing party as determined by a Court. No fine shall be levied except after giving reasonable notice and opportunity for a hearing to the member and, if applicable, the members tenants, guests, or invitees. The hearing must be held before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee by a majority vote, does not agree with the fine, the fine may not be levied. The Association shall adopt a written procedure, as part of its Bylaws or rules, which, at a minimum, provides: (a) the party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than 14 days and said notice shall include (1) a statement of the date, time and place of the hearing; (2) a statement of the provisions of the Declaration, Bylaws or rules which have been allegedly violated; and (3) a short and plain statement of the matters asserted by the association; and (b) the party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association.

(d) The remedies provided in this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall not otherwise affect any other provisions, which shall remain in full force and effect.

Section 6. Mergers. Upon merger or consolidation of the Association with another association upon vote of two-thirds (2/3) of the Association's membership and as provided in its Articles of Incorporation, the Association's Properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the Properties,

rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Properties except as herein provided.

11<sup>th</sup> IN WITNESS WHEREOF, the developer has caused these presents to be executed this day of September, 2006, in the presence of:

Signed, sealed and delivered  
in the presence of:

**PROGRESSIVE BUILDERS, L.L.C., a Limited  
Limited Company**

[Signature]  
Witness SIDNEY C. PETERSON, II

BY: [Signature]  
Name: MITCHELL  
Title: DALE L. WILLIAMS

[Signature]  
Witness JAMES C. PETERSON

STATE OF FLORIDA

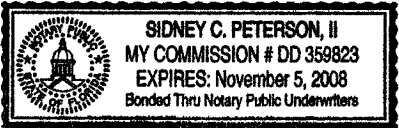
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of September, 2006, by DALE L. WILLIAMS, who is personally known to me or who has produced PERSONALLY KNOWN as identification and who executed the foregoing instrument.

WITNESS MY HAND and official seal in the State and County last aforesaid this 11<sup>th</sup> day of September, 2006.

[Signature]  
SIDNEY C. PETERSON, II

(Notary - print name)  
Notary Public - State of Florida  
Commission No.  
My Commission Expires:



This instrument prepared by:  
**SID C. PETERSON, JR., PA**  
418 Canal Street  
P. O. Box 428  
New Smyrna Beach, FL 32170

**EXHIBIT "A"**  
**TO**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS & RESTRICTIONS**  
**OF**  
**SUGAR MILL GARDENS RESIDENTIAL**  
**(Properties)**

Lots 1 through 98, inclusive, and Tracts D, E, F, G, H, I, J, K and O, *SUGAR MILL GARDENS*, as per plat recorded in Plat Book 54, page 37, Public Records of Volusia County, Florida.

***EXHIBIT "B"***  
***TO***  
***DECLARATION OF COVENANTS,***  
***CONDITIONS & RESTRICTIONS***  
***OF***  
***SUGAR MILL GARDENS RESIDENTIAL***  
***(Common Properties)***

The areas shown as Tracts "D", "E", "F", "G", "H", "I", "J", "K" and "O" on the plat of *SUGAR MILL GARDENS*, recorded at Plat Book 54, pages 33, Public Records of Volusia County, Florida.

***EXHIBIT "C"***  
***TO***  
***DECLARATION OF COVENANTS,***  
***CONDITIONS & RESTRICTIONS***  
***OF***  
***SUGAR MILL GARDENS RESIDENTIAL***  
***(Conservation Easement)***

***See attached Conservation Easement in favor of ST.  
JOHN'S RIVER WATER MANAGEMENT DISTRICT***

Return to and prepared by:  
SID C. PETERSON, JR., ESQUIRE  
P. O. Box 428  
New Smyrna Beach, FL 32170

## CONSERVATION EASEMENT

**THIS CONSERVATION EASEMENT** is made this 11<sup>th</sup> day of September, 2006, by **PROGRESSIVE BUILDERS, L.L.C., a Florida limited liability company**, having an address at 2248 St. Rd. 44, New Smyrna Beach, Florida 32168 ("*Grantor*"), in favor of the **ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**, a public body existing under Chapter 373, Florida Statutes, having a mailing address at P. O. Box 1429, Palatka, Florida 32178-1429 ("*Grantee*").

### WITNESSETH:

**WHEREAS**, *Grantor* solely owns in fee simple certain real property in Volusia County, Florida, more particularly described in Exhibit "A" attached hereto and incorporated by this reference as the "*Property*";

**WHEREAS**, *Grantor* grants this conservation easement as a condition of permit #40-127-90311-1 issued by *Grantee*, solely to off-set adverse impacts to natural resources, fish and wildlife, and wetland functions; and

**WHEREAS**, *Grantor* desires to preserve the *Property* in its natural condition in perpetuity;

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of Section 704.06, Florida Statutes, *Grantor* hereby voluntarily grants and conveys to *Grantee* a conservation easement in perpetuity over the *Property* of the nature and character and to the extent hereinafter set forth (the "*Conservation Easement*"). *Grantor* fully warrants title to said *Property*, and will warrant and defend the same against the lawful claims of all persons whomsoever.

1.) Purpose. The purpose of the conservation Easement is to assure that the Conservation Easement Area will be retained forever in its existing natural condition and to prevent any use of the Conservation Easement Area that will impair or interfere with the environmental value of this area.

2.) Prohibited Uses. Any activity in or use of the Conservation Easement Area inconsistent with the purpose of the Conservation Easement is prohibited. The Conservation Easement expressly prohibits the following activities and uses:

- a. Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

- b. Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.
  - c. Removing, destroying or trimming trees, shrubs, or other vegetation.
  - d. Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
  - e. Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.
  - f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
  - g. Acts or uses detrimental to such retention of land or water areas.
  - h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.
3. **Reserved Rights.** *Grantor* reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the *Property*, including the right to engage in or permit or invite others to engage in all uses of the *Property*, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement.
4. **Rights of Grantee.** To accomplish the purposes stated herein, *Grantor* conveys the following rights to *Grantee*:
- a. To enter upon and inspect the *Property* in a reasonable manner and at reasonable time to determine if *Grantor* or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.
  - b. To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the *Property* that may be damaged by any activity inconsistent with this Conservation Easement.

5. **Grantee's Discretion.** *Grantee* may enforce the terms of this Conservation Easement at its discretion, but if *Grantor* breaches any term of this Conservation Easement and *Grantee* does not exercise its rights under this Conservation Easement, *Grantee's* forbearance shall not be construed to be a waiver by *Grantee* of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the *Grantee's* rights under this Conservation Easement. No delay or omission by *Grantee* in the exercise of any right or remedy upon any breach by *Grantor* shall impair such right or remedy or be construed as a waiver. *Grantee* shall not be obligated to *Grantor*, or to any other person or entity, to enforce the provisions of this Conservation Easement.

6. **Grantee's Liability.** *Grantor* will assume all liability for any injury or damage to the person or property of third parties which may occur on the *Property* arising from *Grantor's* ownership of the *Property*. Neither *Grantors*, nor any person nor entity claiming by or through *Grantors*, shall hold *Grantee* liable for any damage or injury to person or personal property which may occur on the *Property*.

7. **Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement shall be construed to entitle *Grantee* to bring any action against *Grantor* for any injury to or change in the *Property* resulting from natural causes beyond *Grantor's* control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by *Grantor* under emergency conditions to prevent, abate or mitigate significant injury to the *Property* or to persons resulting from such causes.


8. **Recordation.** *Grantor* shall record this Conservation Easement in timely fashion in the Official Records of Volusia County, Florida, and shall re-record it at any time *Grantee* may require to preserve its rights. *Grantor* shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. *Grantor* will hold *Grantee* harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

9. **Successors.** The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the *Property*.

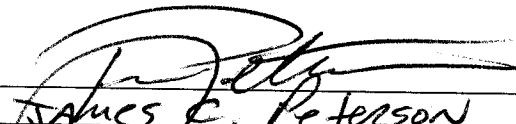
*IN WITNESS WHEREOF*, Grantor has executed this Conservation Easement on the day and year first above written.

*Signed, Sealed and Delivered  
In our Presence*

**PROGRESSIVE BUILDERS, L.L.C., a Florida  
limited liability company**

  
\_\_\_\_\_  
**SIDNEY C. PETERSON, II**  
(Witness - print name)

BY:   
\_\_\_\_\_  
**DALE L. WILLIAMS, managing member**

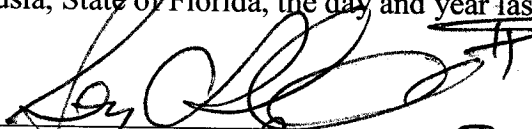
  
\_\_\_\_\_  
**James C. Peterson**  
(Witness - print name)

**STATE OF FLORIDA**

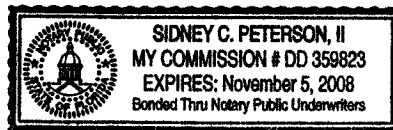
**COUNTY OF VOLUSIA**

*I HEREBY CERTIFY*, that on this 11<sup>th</sup> day of September, 2006, before me personally appeared **DALE L. WILLIAMS**, as managing member of **PROGRESSIVE BUILDERS, L.L.C.**, a limited liability company under the laws of the State of Florida, who is personally known to me or who has produced Personally known as identification and who executed the foregoing conveyance and who acknowledged the execution thereof to be his free act and deed as such officer, for the uses and purposes therein mentioned; and the said instrument is the act and deed of said company.

*WITNESS* my signature and official seal at New Smyrna Beach, in the County of Volusia, State of Florida, the day and year last aforesaid.

  
\_\_\_\_\_  
**SIDNEY C. PETERSON, II**  
(Notary - print name)

Notary Public - State of Florida  
Commission No.:  
My Commission Expires:



***EXHIBIT "A"***  
***DESCRIPTION OF PROPERTY FOR***  
***CONSERVATION EASEMENT***

Tract "D", *SUGAR MILL GARDENS*, as per plat recorded in Plat  
Book 54, page 33, Public Records of Volusia  
County, Florida.

Return to and  
Prepared by:  
SID C. PETERSON, JR., ESQUIRE  
P. O. Box 428  
New Smyrna Beach, FL 32170

**CONSENT AND JOINDER OF MORTGAGEE**

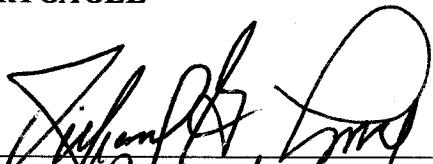
The undersigned, Prosperity Bank (mortgagee) the Mortgagee under that certain Mortgage dated March 23, 2005, 2004 and recorded in Official Records Book 5521, page 42, Public Records of Volusia County, Florida, hereby consents and joins in the foregoing Deed of Conservation Easement, and subordinates its mortgage lien encumbering all or any part of the Property (as described in the foregoing Deed of Conservation Easement) to the Deed of Conservation Easement.

**IN WITNESS WHEREOF**, this Consent and Joinder is executed by the undersigned this 13<sup>th</sup> day of SEPT., 2006.

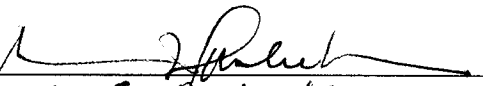
**Signed, Sealed and Delivered  
in our Presence:**

**MORTGAGEE**

Jessie R. Smith  
Jessie R. Smith  
(Witness - print name)

BY:   
Name: Richard G. Cuce  
Title: SP. VICE PRES.

Karen J. Hengstler  
Karen J. Hengstler  
(Witness - print name)

ATTEST:   
Name: Michael J. Apafanaka  
Title: EXECUTIVE VICE PRESIDENT

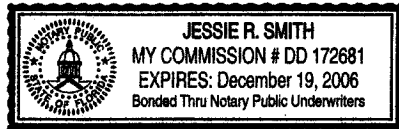
STATE OF Florida

COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of September, 2006, by Richard C. Luce, who did not take an oath.

Jessie R. Smith  
Jessie R. Smith  
(Notary - print name)

Notary Public - State of Florida  
Commission No.: DD 172681  
My Commission Expires 12/19/06



Personally known  OR produced identification  Identification produced

\_\_\_\_\_

Return to and  
Prepared by:  
SID C. PETERSON, JR., ESQUIRE  
P. O. Box 428  
New Smyrna Beach, FL 32170

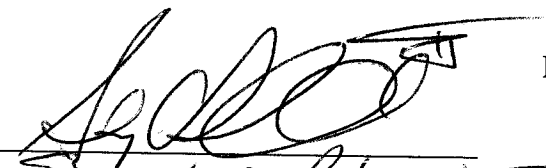
**CONSENT AND JOINDER OF MORTGAGEE**

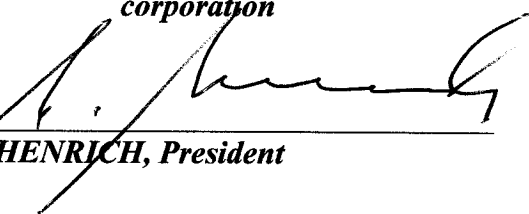
The undersigned, **ECLECTIA, INC., a Florida corporation**, (mortgagee) the Mortgagee under that certain Mortgage dated March 23, 2005 and recorded in Official Records Book 5521, page 67, Public Records of Volusia County, Florida, hereby consents and joins in the foregoing Deed of Conservation Easement, and subordinates its mortgage lien encumbering all or any part of the Property (as described in the foregoing Deed of Conservation Easement) to the Deed of Conservation Easement.

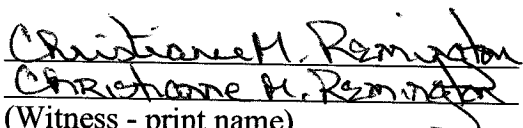
**IN WITNESS WHEREOF**, this Consent and Joinder is executed by the undersigned this 27<sup>th</sup> day of December, 2006

**Signed, Sealed and Delivered  
in our Presence:**

**MORTGAGEE: ECLECTIA, INC., a Florida  
corporation**

  
\_\_\_\_\_  
Sidney C. Peterson, II  
(Witness - print name)

BY:   
\_\_\_\_\_  
**HORST HENRICH, President**


  
\_\_\_\_\_  
Christiane M. Remington  
(Witness - print name)

**STATE OF FLORIDA**

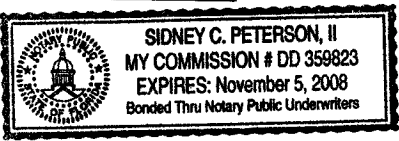
**COUNTY OF VOLUSIA**

I HEREBY CERTIFY, that on this 27<sup>th</sup> day of December, 2006, before me personally appeared **HORST HENRICH**, President of **ECLECTIA, INC.**, a corporation under the laws of the State of Florida, who is personally known to me or who has produced PERSONALLY KNOWN as identification and who executed the foregoing Consent and Joinder and who acknowledged the execution thereof to be his free act and deed as such officer, for the uses and purposes therein mentioned; and the said instrument is the act and deed of said corporation.

**WITNESS** my signature and official seal at New Smyrna Beach, in the County of Volusia, State of Florida, the day and year last aforesaid.

  
SIDNEY C. PETERSON, II

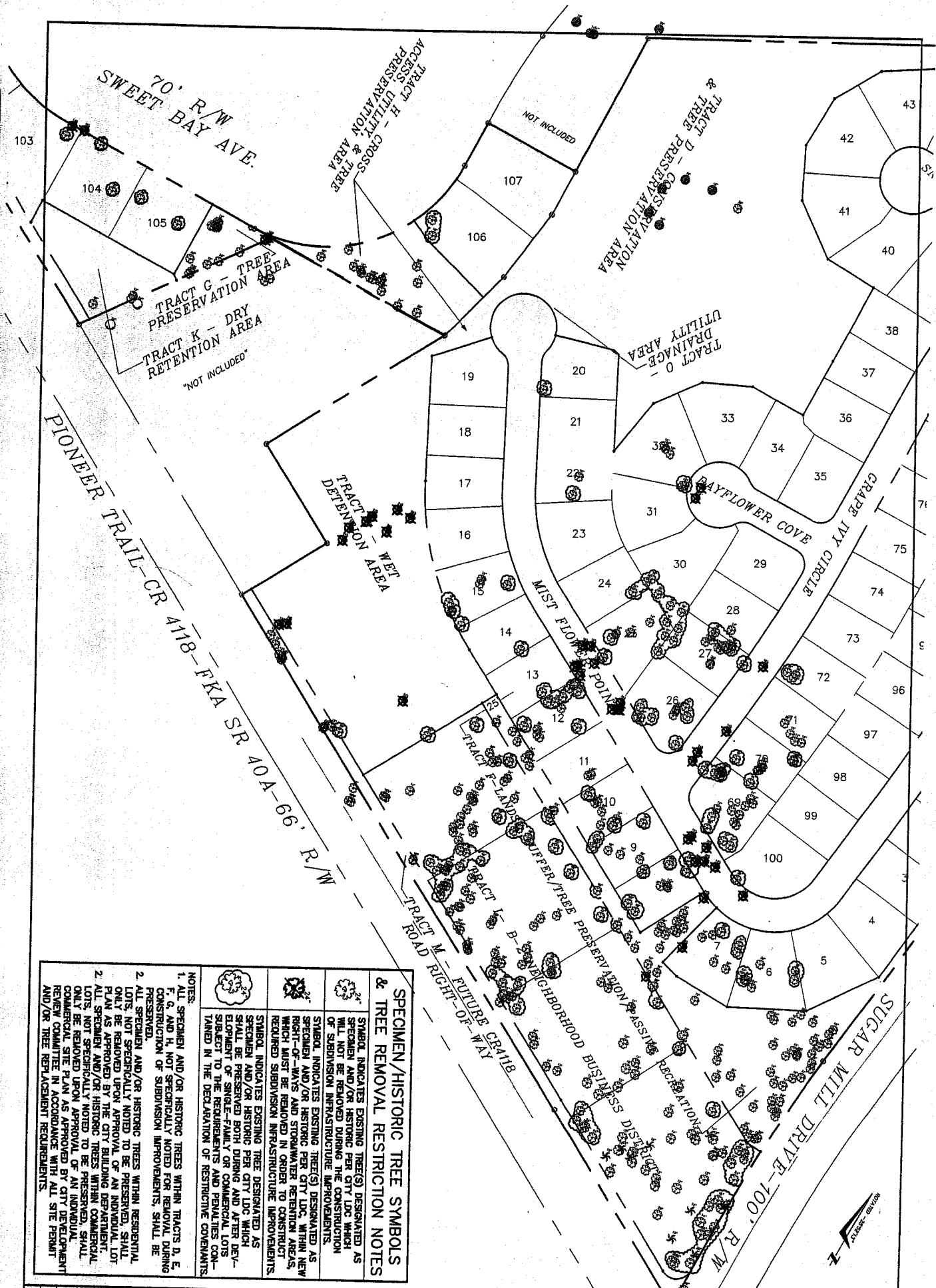
(Notary - print name)  
Notary Public - State of  
Commission No.:  
My Commission Expires



***EXHIBIT "D"***  
***TO***  
***DECLARATION OF COVENANTS,***  
***CONDITIONS & RESTRICTIONS***  
***OF***  
***SUGAR MILL GARDENS RESIDENTIAL***  
***(Specimen/Historic Trees)***

***See attached Tree Preservation Plan Exhibit prepared  
by Design Service Group, Inc.***

Instrument# 2007-002551 # 39  
 Book: 5984  
 Page: 1189  
 Diane M. Matousek  
 Volusia County, Clerk of Court



**SPECIMEN/HISTORIC TREE SYMBOLS & TREE REMOVAL RESTRICTION NOTES**

	SYMBOL INDICATES EXISTING TREE(S) DESIGNATED AS SPECIMEN AND/OR HISTORIC PER CITY LDC WHICH WILL NOT BE REMOVED DURING THE CONSTRUCTION OF SUBDIVISION INFRASTRUCTURE IMPROVEMENTS.
	SYMBOL INDICATES EXISTING TREE(S) DESIGNATED AS SPECIMEN AND/OR HISTORIC PER CITY LDC, WITHIN NEW RIGHT-OF-WAYS AND STORMWATER RETENTION AREAS WHICH MUST BE REMOVED IN ORDER TO CONSTRUCT REQUIRED SUBDIVISION INFRASTRUCTURE IMPROVEMENTS.
	SYMBOL INDICATES EXISTING TREE(S) DESIGNATED AS SPECIMEN AND/OR HISTORIC PER CITY LDC WHICH SHALL BE PRESERVED BOTH DURING AND AFTER DEVELOPMENT OF SINGLE-FAMILY OR COMMERCIAL LOTS SUBJECT TO THE REQUIREMENTS AND PENALTIES CONTAINED IN THE DECLARATION OF RESTRICTIVE COVENANTS.

**NOTES:**

1. ALL SPECIMEN AND/OR HISTORIC TREES WITHIN TRACTS D, E, F, G AND H, NOT SPECIFICALLY NOTED FOR REMOVAL DURING CONSTRUCTION OF SUBDIVISION IMPROVEMENTS, SHALL BE PRESERVED.
2. ALL SPECIMEN AND/OR HISTORIC TREES WITHIN RESIDENTIAL LOTS, NOT SPECIFICALLY NOTED FOR REMOVAL DURING CONSTRUCTION OF SUBDIVISION IMPROVEMENTS, SHALL ONLY BE REMOVED UPON APPROVAL OF AN INDIVIDUAL LOT PLAN AS APPROVED BY THE BOARD OF BUILDING DEPARTMENT.
3. ALL SPECIMEN AND/OR HISTORIC TREES WITHIN COMMERCIAL LOTS, NOT SPECIFICALLY NOTED TO BE PRESERVED, SHALL ONLY BE REMOVED UPON APPROVAL OF AN INDIVIDUAL COMMERCIAL SITE PLAN AS APPROVED BY CITY DEVELOPMENT REVIEW COMMITTEE IN ACCORDANCE WITH ALL SITE PERMIT AND/OR TREE REPLACEMENT REQUIREMENTS.

DATE: DECEMBER, 2002  
 SCALE: 1" = 60'  
 SHEET: 1 OF 1

**Design Service Group, Inc.**  
 Site Planning • Consulting Engineering • Environmental Permitting  
 Florida Board of Professional Engineers Certificate of Authorization Number: 4220  
 362A SOUTH GRANT STREET  
 LONGWOOD, FLORIDA 32750  
 Phone: (407) 331-3773 Fax: (407) 260-0718 E-Mail: designservicegroup@earthlink.net

TREE PRESERVATION PLAN EXHIBIT  
**SUGAR MILL GARDENS**  
 NEW SMYRNA BEACH, FLORIDA

PREPARED FOR:  
**PIONEER-MILL, INC.**  
 3406 S. ATLANTIC AVE.  
 NEW SMYRNA BCH, FL 32189  
 (386) 428-4349

PREPARED FOR: