

Section 10.25 **Jurisdictional Areas and Permits.**

10.25.1 The plat of the Property may depict certain wetlands jurisdictional areas, environmental buffer zones or conservation easements established by or granted to the SJRWMD, the ACOE, or the FDEP. Neither the Association nor any Owner shall build upon, fill, or otherwise alter any portion of the Property lying within such jurisdictional areas, environmental buffer zones or conservation easements without obtaining a permit from the applicable agency. Any Owner violating this provision shall indemnify, defend and hold harmless the Developer, the Association and their respective employees, agents, independent contractors, successors and assigns from and against all claims, investigations, enforcement proceedings, fines, penalties, costs or damages arising out of such violation, including all reasonable attorneys fees and expenses incurred by such parties in connection therewith.

(a) There shall be set aside a Conservation Easement over that portion of the property shown on the plat of Westport Bay. The following activities are prohibited within this Easement: filling or excavation; planting, sodding or removing vegetation, irrigation, or construction of fences which impede the flow of surface water.

(b) No alteration of the Easement shall be authorized without prior written authorization from the District. Any damage to any Easement, whether caused by natural or human-induced phenomena, shall be repaired and the Easement returned to its former condition as soon as possible by the Association.

10.25.2 In addition to the foregoing, in the event that any other conservation easements are granted or created with respect to any portion of the Property, the Owners of any land subject to such conservation easements shall strictly abide by all restrictions contained therein.

10.25.3 The Property is or may be subject to the rights of the State of Florida and the United States over any portion of the Property which may be considered wetlands, marshes, sovereignty or jurisdictional lands. The Developer has obtained certain permits to allow the development of the Property and the SJRWMD has issued permits for the development of the Property under the following permit numbers: St. Johns River Water Management District No. 4-031-68654-1 (the "Permit"). The construction periods for works authorized by the Permits are finite, however, certain limitations and prohibitions set forth in the Permits do not expire. Every Owner, upon acquisition of title to a Lot, shall be deemed to accept the transfer of the portion of each Permit which relates to the Owner's Lot including the assumption of all rights and obligations associated therewith.

ARTICLE XI
RIGHTS AND EASEMENTS RESERVED BY DEVELOPER

Section 11.1 **Easements for Ingress, Egress, Utilities and Drainage.** The Developer reserves for itself, its successors, assigns and designees, a right-of-way and perpetual, nonexclusive easement for ingress and egress and to erect, maintain and use utilities, electric, telephone and street lighting poles, wires, cables, conduits, storm sewers, sanitary sewers, water mains, gas, sewer, water lines, drainage ways and structures, cable television and radio equipment or other public conveniences or utilities, on, in and over, (i) any portion of the Common Area; (ii) any area designated as an easement, private street or

right-of-way area on any plat of all or any portion of the Property; and (iii) a strip of land within each Lot ten feet in width along the front, rear and sides of each Lot.

Section 11.2 **Drainage Flow**. Drainage flow shall not be obstructed or diverted from drainage easements except as provided in Section 5.5 hereof.

Section 11.3 **Future Easements**. Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and rights of way on any Lots within the Property owned by Developer. In addition, Developer hereby expressly reserves the right to grant easements and rights-of-way over, under and through the Common Area so long as Developer shall own any portion of the Property. The easements granted by Developer shall not materially or adversely affect any improvements or unreasonably interfere with the enjoyment of the Common Area.

Section 11.4 **Cable Television or Radio**. Developer reserves for itself, and its successors and assigns, an exclusive easement for the installation, maintenance and supply of radio and television cables within the rights of way and easement areas depicted upon any plat of any portion of the Property or within any easement reserved by this Declaration.

Section 11.5 **Easements for Maintenance Purposes**. The Developer reserves for itself, the Association, and their respective agents, employees, successors or assigns, easements, in, on, over and upon each Lot and the Common Area as may be reasonably necessary for the purpose of preserving, maintaining or improving roadways, landscaped areas, wetland areas, lakes, ponds, hammocks, wildlife preserves or other areas, the maintenance of which may be required to be performed by the Developer or the Association.

Section 11.6 **Developer Rights Re: Temporary Structures, Etc.** Developer reserves the right for itself, its successors, assigns, nominees and grantees, to erect and maintain such temporary dwellings, model houses and/or other structures upon Lots owned by the Developer, which it may deem advisable for development purposes and to do all acts reasonably necessary in connection with the construction and sale of improvements located on the Lots within the Subdivision. Nothing contained in this Declaration shall be construed to restrict the foregoing rights of Developer.

ARTICLE XII **MORTGAGEE PROTECTION**

Section 12.1 **Rights of Mortgagees**. The following provisions are hereby made for the benefit of parties holding first mortgages that encumber any Lot or other portion of the Property ("Mortgagees"). To the extent that said provisions conflict with any other provisions of this Declaration, the following provisions shall control:

(a) The Association shall be required to make available to all Owners and Mortgagees, and to insurers and guarantors of any first mortgage, for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of this Declaration (with all amendments) and the Association's Articles of Incorporation, Bylaws, architectural criteria, rules and regulations and the books and records of the Association. Furthermore, such persons shall be entitled, upon written request, to

(i) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (ii) receive notices of and attend the Association meetings, (iii) receive notice from the Association of an alleged default by an Owner in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default, and (iv) receive notice of any substantial damage or loss to the Common Areas.

(b) Any holder, insurer or guarantor of a mortgage encumbering a Lot shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Common Areas, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Lot, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (iv) any amendment to this Declaration, the Association's Articles of Incorporation, Bylaws, architectural criteria or rules and regulations; and (v) notice of any extraordinary action taken by the Association.

ARTICLE XIII GENERAL PROVISIONS

Section 13.1 Remedies for Violations.

13.1.1 If any Owner or other person shall violate or attempt to violate any of the covenants or restrictions herein set forth, it shall be lawful for the Association, the Developer, or any Owner (i) to prosecute proceedings at law for the recovery of damages against those so violating or attempting to violate any such covenant; or (ii) to maintain any proceeding against those so violating or attempting to violate any such covenant for the purpose of preventing or enjoining all or any such violations, including mandatory injunctions requiring compliance with the provisions of this Declaration. The SJRWMD 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. In the event litigation shall be brought by any party to enforce any provisions of this Declaration, the prevailing party in such proceedings shall be entitled to recover from the non-prevailing party or parties, reasonable attorneys fees for pre-trial preparation, trial, and appellate proceedings unless governed otherwise by applicable Statute. The remedies in this section shall be construed as cumulative of all other remedies now or hereafter provided or made available elsewhere in this Declaration, or by law.

13.1.2 In addition to all other remedies, and to the maximum extent allowed by law, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, lessees, invitees or employees, to comply with any covenant or restriction herein contained, or rule of the Association, provided the following procedures are adhered to:

(a) For a first violation, the Association shall warn the Owner of the alleged infraction in writing.

(b) For a subsequent violation, the Association shall provide the Owner with a notice of its intent to impose a fine for such violation. Included in the notice shall be the date and time of a meeting of a committee appointed by the Board of Directors (the "Rules Enforcement Committee") at which time the Owner shall present argument as to why a fine should not be imposed. At least fourteen (14) days prior notice of such meeting shall be given.

(c) At the meeting, the alleged infractions shall be presented to the Rules Enforcement Committee, after which the Committee shall receive evidence and hear argument as to why a fine should not be imposed. A written decision of the Rules Enforcement Committee shall be submitted to the Owner not later than thirty (30) days after the Board of Directors meeting. At the meeting, the Owner shall have the right to be represented by counsel and to cross-examine witnesses.

(d) The Rules Enforcement Committee, by majority vote, may impose a fine not to exceed the maximum amount allowed by law from time to time.

(e) Fines shall be paid not later than five (5) days after notice of the imposition or assessment thereof.

(f) The payment of fines shall be secured by one or more liens encumbering the Lot or Lots owned by the offending Owner. Such fines and liens may be collected and enforced in the same manner as regular and special assessments are collected and enforced pursuant to Article 0 hereof.

(g) All monies received from fines shall be allocated as directed by the Board of Directors.

(h) The imposition of fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association or any Owner may be otherwise legally entitled; provided, however, any fine paid by an offending Owner shall be deducted from or offset against any damages which may be otherwise recoverable from such Owner.

(i) The Rules Enforcement Committee shall be comprised of not less than three (3) members who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee.

Section 13.2 **Severability.** Invalidation of any of the provisions of this Declaration by judgment or court order shall not affect or modify any of the other provisions, which shall remain in full force and effect.

Section 13.3 **Additional Restrictions.** No Owner, without the prior written consent of the Developer, may impose any additional covenants or restrictions on any part of the Property, but the Developer may include in any contract or deed hereafter made and covering all or any part of the Property, any additional covenants or restrictions applicable to the Property so covered which are not inconsistent with and which do not lower standards established by this Declaration.

Section 13.4 **Titles**. The addition of titles to the various sections of this Declaration are for convenience and identification only and the use of such titles shall not be construed to limit, enlarge, change, or otherwise modify any of the provisions hereof, each and all of which shall be construed as if not entitled.

Section 13.5 **Termination or Amendment**. The covenants, restrictions, easements and other matters set forth herein shall run with the title to the Property and be binding upon each Owner, the Developer, the Association, and their respective successors and assigns for a period of fifty (50) years, and shall be automatically renewed for successive ten (10) year periods unless terminated as herein provided. The Owners holding not less than sixty-seven percent (67%) of the total votes of the Association (which must include Owners other than the Developer holding a majority of the total votes allocated to such Owners) may alter, amend or terminate these covenants provided however, that so long as the Developer owns any land within the Property or owns any property contiguous to the Property, no such termination or amendment shall be effective without the written consent and joinder of the Developer. Further, until such time as the Developer shall not own any lands subject to this Declaration, the Developer shall have the unilateral right to amend this Declaration without the consent or joinder of any other party, to correct any scrivener's errors or ambiguities contained herein, or to comply with any requirements imposed by the federal department of Housing and Urban Development ("HUD"), the Veteran's Administration ("VA") or any similar government or government sponsored agency. Any amendment to this Declaration which alters any provision relating to the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portion of the Common Areas, must have the prior written approval of the SJRWMD. This Declaration may not be terminated unless adequate provision for transferring perpetual maintenance responsibility for the Surface Water or Stormwater Management System obligation to the then Owners of the Lots is made, and said transfer obligation is permitted under the then existing requirements of the SJRWMD or its successors and the County or any other governmental body that may have authority over such transfer. Any such amendment to this Declaration shall be executed by the Association and Developer, if applicable, and shall be recorded in the current public records of Duval County, Florida. For so long as there is a Class B membership, any material amendments to this Declaration, or extraordinary actions of the Association shall require the approval of HUD and VA, provided that HUD or VA has guaranteed any loans secured by any Lot or Lots within the Property.

Section 13.6 **Assignment of Permit Responsibilities and Indemnification**. In connection with the platting and development of the Property, the Developer assumed certain obligations in connection with the maintenance of the Surface Water or Stormwater Management System. The Developer hereby assigns to the Association, and the Association shall be solely responsible for, all of the Developer's obligations and responsibilities for maintenance of the Surface Water or Stormwater Management System pursuant to all applicable permits and the plat of the Subdivision. Subsequent to the termination of the Class B Membership, the Association shall indemnify, defend and hold the Developer harmless from all suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury or property damage, or any other damage arising from or out of an occurrence in, upon, at or resulting from the operation or maintenance of the Surface Water or Stormwater Management System, occasioned wholly or in part by any act or omission of the Association or its agents, contractors, employees, servants or licensees.

Section 13.7 **Conflict or Ambiguity in Documents.** To the extent of any conflict, ambiguity, or inconsistency between this Declaration, the Articles, or the Bylaws, the terms of this Declaration shall control both the Articles and Bylaws.

Section 13.8 **Usage.** Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 13.9 **Effective Date.** This Declaration shall become effective upon its recordation in the public records of Duval County, Florida.

Section 13.10 **Disclaimers as to Water Bodies.** NEITHER THE DEVELOPER, THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY ADJACENT TO OR WITHIN THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS, POISONOUS SNAKES, AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT OR OTHER PORTION OF THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR LAKE BOTTOMS LOCATED THEREIN.

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IN WITNESS WHEREOF, the Developer has caused this instrument to be executed under seal this 25th day of June, 2000.

Signed, sealed and delivered in the presence of

WESTPORT BAY - MLC, INC.
a Florida corporation:

Patsy A. Hite
Patsy A. Hite

By: Mitchell R. Montgomery
President

Elsa B. Murphy
Elsa B. Murphy

STATE OF FLORIDA)
)SS
COUNTY OF DUVAL)

The foregoing instrument was acknowledged before me this 25th day of June, ~~2000~~²⁰⁰¹, by Mitchell R. Montgomery, the President of Westport Bay-MLC, Inc., a Florida corporation, on behalf of the corporation. They did not take an oath and they both are personally known to me.

Elsa B. Murphy
Elsa B. Murphy
NOTARY PUBLIC, State of Florida at Large
Commission # CC 709167
My Commission Expires



OFFICIAL SEAL
ELSA B. MURPHY
Notary Public - State of Florida
Commission No. CC 709167
My Commission Expires Feb. 9, 2002

EXHIBIT "A"

A parcel of land, being all of Tract 9, together with a portion of Tract 10, Block 3, Section 26, Township 3 South, Range 25 East, and that portion of a 15 foot Road Reservation, as shown on the plat of JACKSONVILLE HEIGHTS, as shown on the plat thereof, recorded in Plat Book 5, page 93 of the Current Public Records of Duval County, Florida, said parcel of land being more particularly described as follows:

For a POINT OF BEGINNING, BEGIN at the Southwest corner of Lot 1, GREYFIELD, as shown on the plat thereof, recorded in Plat Book 48, pages 71, 71A through 71C, inclusively, of said Current Public Records of Duval County, Florida, (said point also being the intersection of the Easterly line of Tract 10, Block 3, Section 26, JACKSONVILLE HEIGHTS, with the Northerly Right of Way line of COLLINS ROAD, an 80 foot Public Road Right of Way), and run South $88^{\circ}32'43''$ West, along the Northerly Right of Way line of COLLINS ROAD, a distance of 648.39 feet, to an intersection with the Easterly line of INDIAN TRAILS ESTATES, (an Unrecorded Subdivision, prepared by Northeast Florida Surveyors), and also being the Westerly line of Said Section 26, Township 3 South, Range 25 East; run thence North $00^{\circ}13'25''$ East, along last said line, a distance of 1,307.75 feet, to the Northwest corner of Tract 9, Block 3, Section 26, JACKSONVILLE HEIGHTS, (and also being the Southwest corner of GREYFIELD UNIT TWO, as shown on the plat thereof, recorded in Plat Book 50, pages 88,88A through 88E, inclusively, of said Current Public Records of Duval County, Florida; run thence North $88^{\circ}11'35''$ East, along the Northerly line of said Tract 9, Block 3, Section 26, JACKSONVILLE HEIGHTS, a distance of 658.30 feet, to the Northwest corner of the plat of GREYFIELD, as shown on the plat thereof, recorded in Plat Book 48, pages 71, 71A through 71C, inclusively, of said Current Public Records, said point also being on the Easterly line of Tract 10, Block 3; run thence South $00^{\circ}39'02''$ West, along the Westerly boundary of said GREYFIELD, (also being the Easterly line of said Tracts 10 and 9, Block 3, Section 26, JACKSONVILLE HEIGHTS), a distance of 1,311.98 feet, to the aforesaid Northerly Right of Way line of COLLINS ROAD, and the POINT OF BEGINNING.

The lands thus described, contains 855,270 square feet, or 19.63 Acres, more or less, in Area.