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**DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR**

**BUCKHEAD SUBDIVISION**

THIS DECLARATION OF COVENANTS, EASEMENTS CONDITIONS, AND RESTRICTIONS FOR BUCKHEAD SUBDIVISION (the "Declaration") is made this 13th day of March, 2000 by (Buckhead of Orlando, Inc.), which declares hereby that the Property described in Exhibit "A" attached to and by reference incorporated in this Declaration is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, and liens set forth below. The address of the Developer is 71 E. Church St., Orlando, Fl. 32801.

**WITNESSETH:**

WHEREAS, the Developer is the owner of certain real property in Orange County, Florida, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property"); and

WHEREAS, the Developer has established a land use plan for the Property and the Developer plans to develop the Property and cause or allow the construction on the developed lots of single-family detached residential dwelling units; and

WHEREAS, in order to preserve and protect the value and desirability of the Property, the Developer deems it prudent to place this Declaration of record and to subject the Property to the matters set forth below.

NOW, THEREFORE, the Developer hereby declares that all of the Property shall be held, sold, transferred and conveyed subject to the following easements, restrictions, covenants, and conditions. These easements, restrictions, covenants and conditions are for the purpose of protecting the value and desirability of the Property as a residential community of high standards, quality, and beauty, and shall run with the Property and be binding on all of the parties having any rights, title or interest in the property or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each owner of the Property or any portion thereof.

**ARTICLE I**  
**DEFINITIONS**

The terms used in this Declaration shall be defined as set forth herein unless the context otherwise requires:

1.1 "Association" shall mean and refer to the BUCKHEAD HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not-for-profit, its successor and assigns.

1.2 "Board of Directors" or "Board" shall mean the directors serving as such from time to time under the Articles of Incorporation and the Bylaws of the Association, copies of both of which are attached hereto as Exhibits "B" and "C", respectively, and by this reference specifically incorporated herein.

1.3 "Developer" shall mean and refer to Buckhead of Orlando, Inc., a Florida corporation, its successors and assigns (subject to the terms, conditions, and restrictions as may be imposed on an assignment of Developer's rights). The Developer may assign all or only a portion of its rights hereunder; and Developer may assign all or a portion of its rights with respect only to specified portions of the Property. In the event of a partial assignment, the assignee shall not be deemed the Developer, but may exercise those rights of the Developer specifically assigned to it, if any. Any such assignment may be made on a non-exclusive basis.

1.4 "Development" shall mean and refer to the Property as it is developed pursuant to the Declaration or any property annexed thereto pursuant to this Declaration.

1.5 "Institutional Lender" shall mean a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, agency of the United States Government, mortgage banker or company, Federal National Mortgage Association, the Developer, or any affiliate of the Developer or other lender generally recognized as an institution type lender, which holds a mortgage on one or more of the Lots.

1.6 "Lot" shall mean and refer to any portion of the Property, described by lot or fractional lot, or by metes and bounds, with the exception of the Common Areas, and intended to be conveyed by the Developer to builders or individual purchasers for the site of a single-family residence.

1.7 "Member" shall mean and refer to all those Owners who are members of the Association in accordance with this Declaration, the Bylaws, or the Articles of Incorporation.

1.8 "Owner" shall mean and refer to the record owner, whether one or more person or entities, of the fee simple title to any Lot.

1.9 "Property" shall mean and refer to that certain real property heretofore described on Exhibit "A", and such additions thereto as may hereafter be properly brought within the jurisdiction of the Association.

ARTICLE II  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

2.1 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 which is subject to assessment. Any person or entity who holds an interest in a Lot merely as a security for the performance of an obligation is not a Member.

2.2 Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners except the Developer (as long as the Class B membership shall exist, and thereafter, the Developer shall be a Class A Member to the extent it would otherwise qualify). Except as provided below, Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, they may exercise a total of only one vote for that Lot, and the vote for such Lot shall be exercised as set forth in the Bylaws of the Association.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to one (1) vote for each Lot owned by the Developer, plus two (2) votes for each vote that the Class A Members are entitled to cast at any time and from time to time. The Class B membership shall cease and terminate and be converted to Class "A" membership on the happening of any of the following events, whichever occurs earlier:

- (a) When the Developer no longer owns record title to any portion of the Property; or
- (b) Six (6) years from the date of filing of this Declaration; or
- (c) At the election of the Developer (whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association).

2.3 General Matters. When reference is made herein, or in the Articles, Bylaws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the permitted votes of the Members and not of the Members themselves.

ARTICLE III  
PROPERTY RIGHTS IN THE COMMON AREAS; OTHER EASEMENTS

3.1 Members Easements. Each Member, and each tenant, agent and invitee of such Member, shall have a non-exclusive permanent and perpetual right and easement of enjoyment in, over, and upon the Common Areas for the intended use and enjoyment thereof in common with all other such Members, their tenants, agents and invitees, in such manner as may be regulated by the Association. No person entitled to so use and enjoy the Common Areas may do so in any manner inconsistent with their intended use or purpose.

Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

- (a) The right and duty of the Association to levy Assessments against each Lot for the

purpose of maintaining the Common Areas in compliance with the provisions of this Declaration and with the restrictions on the plats of portions of the Property from time to time recorded.

(b) The right of the Association to adopt at any time and from time to time and enforce rules and regulations governing, among other things, the use of the Common Areas and all facilities at any time situated thereon, including the right to fine Members as hereinafter provided. Any rule and/or regulation so adopted shall apply until rescinded or modified as if originally set forth at length in this Declaration.

(c) The right to the use and enjoyment of the Common Areas and facilities thereon shall extend to the users' immediate family who reside with a permitted user, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

(d) The right of the Developer to permit such persons as the Developer shall designate to use the Common Areas and all recreational facilities thereon (if any).

(e) The right of the Association, by a two-thirds (2/3) affirmative vote of the entire membership, to dedicate, sell, or transfer all or portions of the Common Areas to a public agency under such terms as the Association deems appropriate and to create or contract with special taxing districts for lighting, roads, recreational or other services, security or communications and other similar purposes deemed appropriate by the Developer (to which such creation or contract all Owners hereby consent).

(e) The right of the Association to suspend for a reasonable time the rights of a Member and the Member's tenants, guests, and invitees to use Common Areas as a result of the violation by the Member (or by the Member's tenant, guest, or invitee) of any covenant, condition, or restriction contained in this Declaration.

3.2 Easement Appurtenant. The rights and easements provided in Section 3.1 shall be appurtenant to and shall pass with the title to each Lot.

3.3 Maintenance. The Association shall maintain in good repair and shall manage, operate and insure, and shall replace as often as necessary, the Common Areas and the drainage structures, drainage easements, street lighting fixtures and appurtenances, landscaping, improvements and other structures (except utilities) situated or built on the Common Areas, if any, (the "Improvements") all such work to be done as ordered by the Board of Directors of the Association. Maintenance of the aforesaid street lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. Without limiting the generality of the foregoing, the Association shall assume all of the Developer's and its affiliates' responsibility to any governmental agencies of any kind with respect to the Improvements and the Common Areas and shall indemnify and hold the Developer and its affiliates harmless with respect thereto.

All work pursuant to this Section and all expenses incurred hereunder shall be paid for by the Association through assessments (either general or special) imposed in accordance with this Declaration. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Areas or abandonment of the right to use the Common Areas.

The Association shall maintain the outside portion of the walls (the side thereof not facing the Property) constructed by the Developer along the perimeter of the Property; whereas each Owner shall maintain the inside surface of that portion of any such wall that lies on or adjoins the Owner's Lot, as well as any other wall or fence that is on the Owner's lot. The Owner shall not make any structural changes in the wall, including, but not limited to, change of paint color on the outside of the wall, without the express written

approval of the Association.

3.4 Utility Easements. Use of the Common Areas for utilities and drainage as well as use of the other utility easements as shown on relevant plats, shall be in accordance with the applicable provisions of this Declaration. The Developer and its affiliates and its and their designees shall have a perpetual easement over, upon and under the Common Areas for the installation and maintenance of community and/or cable TV and security and other underground television, radio and security cables for service to the Lots and other portions of the Development.

3.5 Public Easements. Fire, police, health and sanitation, park maintenance and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

3.6 Ownership. The Common Areas shall be for the nonexclusive joint and several use, in common, of the Developer and the Owners of all Lots that may from time to time constitute part of the Property and the Developer's and such Owners' tenants, guests and invitees. The Common Areas (or appropriate portions thereof), excluding Orange County owned and maintained Tract "A" and "B" shall, upon the later of completion of any improvements thereon or the date when the first Lot with a residence built thereon within the Property has been conveyed to a purchaser (or at any time and from time to time sooner at the sole election of the Developer), be conveyed to the Association, which shall accept such conveyance. Beginning from the date on which this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Areas (Whether or not then conveyed or to be conveyed to the Association or the County as the case may be), such maintenance to be performed in a continuous and satisfactory manner. As long as there is a Class B membership, as that term is defined above, the Federal Housing Administration and the Veterans Administration must approve any dedication of the Common Areas. The Common Areas cannot be mortgaged or conveyed without the consent of two-thirds (2/3) vote of the Class A Members of the Association. It is intended that all real estate taxes assessed against that portion of the Common Areas owned or to be owned by the Association shall be proportionately assessed against and payable as part of the taxes of the Lots. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment of those taxes, including taxes on any improvements and any personal property located thereon. The Developer and its affiliates shall have the right from time to time to enter upon the Common Areas and other portions of the Property for the purpose of construction, reconstruction, repair, replacement and/or alteration of the any Improvements or facilities on the Common Areas or elsewhere on the Property, that the Developer and its affiliates elect to effect, and to use the Common Areas and other portions of the Property for sales, displays and signs of any portion of the Development. Without limiting the generality of the foregoing the Developer and its affiliates shall have the specific right to maintain upon any portion of the Property sales, administrative, construction and other offices without charge, and appropriate easements of access and use are expressly reserved unto the Developer and its affiliates, and its and their successors, assigns, employees and contractors, for this purpose. Any obligation to complete portions of the Common Areas shall, at all times, be subject and subordinate to these rights and easements and to the above-referenced activities. Accordingly, the Developer shall not be liable for delays in such completion to the extent resulting from the above-referenced activities.

3.7 Other Easements.

(a) The Owner of each Lot shall have an easement of access over and upon adjoining Lots and the Common Areas for the purpose of allowing such Owner to maintain and repair air-conditioning compressors, air-conditioning equipment, meters, and other equipment serving such Owner's Lot which may

be located on or extending onto such adjoining Lots or Common Areas. Easements are reserved over each Lot and the Common Areas in favor of each other Lot and the Common Areas in order to permit drainage and run-off from one Lot (and its improvements) to another or to the Common Areas or from the Common Areas to any Lot or Lots. The drainage easements and fence easements shall be maintained by the individual homeowner whose lot the easement affects. The subdivision retention pond is tied into a privately owned outfall pipe as outlined in Attachment "D" and is recorded in Plat Book 5977 Page 2306 - 2315.

In the event any portion of any Lot (or of the improvements thereon) encroaches upon the Common Areas as a result of the construction, reconstruction, repairs, shifting, settlement or moving of any portion of the Property, a valid easement for the encroachment is hereby created and granted. Notwithstanding the foregoing, no easement for an encroachment shall exist for any encroachment occurring due to the willful conduct of an Owner. The Association is granted an easement over the Lot of each Owner for the purpose of enforcing the provisions of this Declaration, and may go upon any Lot as necessary to remove or repair any cause or condition that constitutes a violation of any provision of this Declaration. If the Association, after notice to the Owner and failure to cure by the Owner, does in fact exercise its right to cure such a cause or condition, then all costs incident to the Association's actions shall become the personal obligation of the Owner and be imposed as a lien against the Lot in the same fashion as if those sums represented monies due for unpaid assessments.

(b) The Association shall have the right to grant permits, licenses, and easements over the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Development.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of the Assessments. Except as provided elsewhere herein, each Owner of a Lot by acceptance of a deed or conveyance therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments of \$199.00 per year, or charges for the maintenance, management, operation, and insurance of the Common Areas, administration of the Association, and for funding other permitted or required activities of the Association, including capital improvement assessments, assessments for maintenance, and all other charges and assessments hereinafter referred to, all such assessments to be fixed, established and collected from time to time as herein provided and in accord with all other provisions herein. In addition, special assessments may be levied against particular Lots or Owners (to the exclusion of others). The Association may also levy other charges against specific Lots or Owners as contemplated in this Declaration. The annual, special, and other assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the owner of the Lot against which the assessment is levied at the time when the assessment fell due and the obligation of all subsequent Owners until paid. Except as provided herein with respect to special assessments which may be imposed on one or more Lots and Owners to the exclusion of others, all assessments imposed by the Association shall be imposed against all Lots equally. There shall be an initiation fee of \$100.00 per lot to be paid upon the initial closing of each individual lot. This shall be in addition to the annual fee of \$199.00.

4.2 Purpose of Assessments. The annual Assessments levied by the Association shall be used

exclusively for maintenance of the Common Areas (including walls), for certain Lot maintenance, for capital improvements, insurance, cash reserves (if any), and for promoting the health, safety, welfare and recreational opportunities of the Members of the Association and their families residing with them, their guests and tenants, all as provided for herein. Payment of taxes on the Common Areas shall be a purpose of the Association and shall be paid by the Association.

4.3 Specific Damage. Owners (on their behalf and on behalf of their children and guests) causing damage to any portion of the Common Areas as a result of misuse, negligence, failure to maintain, or otherwise shall be directly liable to the Association for the cost of repairing damages or otherwise remedying the effects of their actions, and a special Assessment may be levied therefor against such Owner or Owners. Such special Assessments shall be subject to all of the provisions hereof relating to other Assessments, including, but not limited to, the lien and foreclosure procedures.

4.4 Exterior Maintenance. Each Owner, except as contemplated specifically herein, shall maintain the structures and grounds on his Lot at all times in a clean, kept, and attractive condition as provided elsewhere herein. Upon an Owner's failure to do so, the Association may at its option, after giving the Owner five (5) days written notice sent to his last known address, or to the affected Lot, have that portion of the grass, weeds, shrubs and vegetation which the Owner is to maintain cut when and as often as the Association deems necessary in its judgment, and dead trees, shrubs and plants removed from such Lot, and other areas resodded or landscaped, or the Association may otherwise do that which the Association deems necessary to place that Lot and the improvements thereon in full compliance with this Declaration; and all expenses of the Association for work performed or actions taken under this provision shall be a lien and special Assessment charged against the Lot on which the work was done and shall be the personal obligation of all Owners of such Lot. No bids need to be obtained by the Association for any such work and the Association shall designate the contractor or other service provider in its sole discretion.

4.5 Date of Commencement of Annual Assessments; Due Dates. The annual Assessments provided for in this Article shall commence as to all Lots on the first day of the month next following the recording of this Declaration, and shall be applicable through December 31 of such year. Each subsequent annual Assessment shall be imposed for the year beginning January 1 and ending December 31.

The annual Assessments shall be payable in advance in annual installments due and payable prior to January 1 of each year, as determined by the Board of Directors.

The Assessment amount (and applicable installments) may be changed at any time by the Board from that originally stipulated or from any other Assessment that is in the future adopted. The original Assessment for any year shall be levied for the calendar year, but the amount of any revised Assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year.

The due date of any special Assessment shall be fixed in the Board resolution establishing such Assessment.

4.6 Duties of the Board of Directors. The Board of Directors shall fix the commencement date and the amount of the Assessment against each Lot subject to the Association's jurisdiction for each assessment period to the extent practicable at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots 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 be sent to every Owner subject thereto thirty (30) days prior to the due date for payment of the first installment thereof, except as to emergency Assessments. In the event no such notice of a change in the Assessments for a new assessment period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until change in the manner provided for herein.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association reporting on the status of Assessments on a Lot is binding upon the Association as of the date of its issuance. The Association may delegate to a management company, financial institution or mortgage company responsibility for collection of Assessments.

The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms, or corporations (including affiliates of the Developer) for management services. The Association shall have all other powers provided in its Articles of Incorporation and Bylaws.

4.7 Effect of Non-Payment; the Personal Obligation; the Lien; Remedies of the Association. If the Assessments (or installments) are not paid on the date(s) when due (being the date(s) specified herein), then such Assessments (or installments) shall become delinquent and shall, together with late charges, interest, and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind that Lot in the hands of the then Owner, his heirs, personal representatives, successors, and assigns. The personal obligation of the then Owner to pay such Assessment shall pass to his successors in title and recourse may be had against either or both.

If any installment of an Assessment is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge not greater than the amount of such unpaid installment may be imposed (provided that only one late charge may be imposed on any one unpaid installment and if such installment is not paid thereafter, it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges, provided further, however, that each other installment thereafter coming due shall be subject to one late charge each as aforesaid), or the next 12 months worth of installments may be accelerated and become immediately due and payable in full, and all such sums shall bear interest from the dates when due until paid at the highest lawful rate. The Association may bring an action at law against the Owner(s) personally obligated to pay the Assessment or may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Lot on which the Assessments and late charges are unpaid and may foreclose the lien (in the manner to foreclose a mortgage) against the Lot on which the Assessments and late charges are unpaid. The Association may pursue one or more of such remedies at the same time or successively, and reasonable attorneys' fees and costs of preparing and filing the claim of lien and the complaint, if any, in such action shall be added to the amount of such Assessments, late charges and interest. In the event a judgment is obtained, such judgment shall include all such sums as above provided and reasonable attorneys' fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to reasonable attorneys' fees in connection with any appeal of any such action. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or abandonment of his/her Lot.

In the case of an acceleration of the next twelve (12) months worth of installments, each installment so accelerated shall be deemed, initially, equal to the amount of the then most current delinquent installment, provided that if any such installment so accelerated would have been greater in amount by reason of a subsequent increase in the applicable Assessment or budget, the Owner of the Lot whose



installments were so accelerated shall continue to be liable for the balance due by reason of such increase and special Assessments against such Lot shall be levied by the Association for such purpose.

No Owner acquiring title to a Lot an Assessment against which is delinquent shall be entitled to enjoy or use the Common Areas until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been paid; provided, however, that the provisions of this sentence shall not be applicable to the mortgages and purchasers contemplated by the Section below in this Article entitled "Subordination of the Lien." The Board shall also have the right to suspend any or all voting rights of any Owner who has failed to pay annual Assessments due from him within ninety (90) days after such Assessments become due.

It shall be the legal duty and responsibility of the Association (as hereinafter contemplated) to enforce payment of the Assessments hereunder. Failure of the Association to send or deliver bills shall not, however, relieve Owners from their obligations hereunder.

All Assessments, late charges, interest, penalties, fines, reasonable attorneys' fees and other sums provided for herein shall accrue to the benefit of the Association.

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

4.8 Subordination of the Lien. The lien of the Assessments provided for in this Article shall be a lien superior to all other liens except real estate tax liens and the lien of any mortgage to any Institutional Lender now or hereafter encumbering a Lot. Notwithstanding the foregoing, an Institutional Lender mortgagee, when in possession, or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid Assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an Assessment divided equally among, payable by, and a lien against all Lots subject to assessment. No purchaser at a foreclosure sale, and no persons claiming by, through or under an Institutional Lender acquiring title to a Lot through foreclosure or a deed in lieu thereof, shall be personally obligated to pay Assessments that accrue prior to the Institutional Lender's or the foreclosure purchaser's acquiring title.

4.9 Access at Reasonable Hours. The Association, through its duly authorized agents or employees or independent contractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day for the purpose solely of performing exterior maintenance on the Lot, and shall also have a reasonable right of entry upon any Lot to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the Development.

4.10 The Developer's Assessment. The Developer, as a Lot Owner shall be relieved from the obligation of paying Assessments levied against the Lots owned by the Developer, but instead shall be obligated to pay any operating expenses incurred by the Association that exceed the Assessments receivable from other Members and other income of the Association.

4.11 Trust Funds. The portion of all annual Assessments collected by the Association for reserves for future expenses, and the entire amount of all special Assessments, shall be held by the Association for the Owners of all Lots, as their interest may appear, and may be invested in interest-bearing

accounts or in certificates of deposit or other like instruments or accounts available at banks or savings and loan institutions, the deposits of which are insured by an agency of the United States.

4.12 Homeowner's Documents, Books and Papers. The Association shall have current copies of the Declaration, the Bylaws of the Association, the Articles of Incorporation, the Rules and Regulations for the Property, and the books, records, and financial statements of the Association available for inspection, upon request, during normal business hours, to Members and Institutional Lenders, and to holders, insurers or guarantors of any first mortgage on any Lot. The Association may adopt reasonable rules governing the frequency, time, location, notice, and manner of such inspections, and may impose fees to cover the Association's costs of providing copies of such records.

4.13 Reserves for Replacement. The Association may establish and maintain, out of regular Assessments for common expenses, an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common areas.

4.14 Exempt Property. All properties dedicated to, and accepted by a local public authority shall be exempt from the Assessments created herein.

#### ARTICLE V CERTAIN RULES AND REGULATIONS

5.1 Applicability. The provisions of this Article V shall be applicable to all of the Property (and the Owners thereof) but shall not be applicable to the Developer or property owned by the Developer.

5.2 Land Use and Building Type. No Lot shall be used except for residential purposes. No building constructed on a Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family house not to exceed two (2) stories in height. The minimum square footage of any residence shall be one thousand (1,000) square feet under roof. Temporary uses by Developer and its affiliates for model homes, sales displays, parking lots, sales offices, and other offices, or any one or combination of such uses, shall be permitted. No changes may be made in buildings erected by the Developer or its affiliates (unless such changes are made by the Developer) without the consent of the Architectural Control Board as provided below.

5.3 Easements. Easements for installations and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats covering the Property, as shown on the final surveys, and as provided herein. Within these easements, no structure, planting or other material may be placed or permitted to remain that will interfere with, damage, or prevent the maintenance of utilities or obstruct or retard the flow of water through drainage channels in the easements, or otherwise prevent or impede the intended use of the easement, except with the consent of the Board of Directors and the appropriate governmental agency. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot, except as provided herein to the contrary and except for installation for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company, the Association and the Developer and its affiliates, and their respective successors and assigns, shall have a perpetual easement for the installation and maintenance, of underground facilities and equipment such as water line, sanitary sewers, storm drains, and electric, telephone and security lines, cables, and conduits, under and through the utility easements as shown on the plats of the Property. The Developer and its affiliates, and its and their designees, successors and assigns, shall have a perpetual easement for the installation and maintenance of cable and community antenna, radio, television, and security lines within platted utility easement areas. All utilities and lines within

the Development, whether in street rights-of-way or utility easements, shall be installed and maintained underground.

5.4 Nuisances. No noxious, offensive or unlawful activity shall be carried on upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any Owners.

5.5 Temporary Structures. No structure of a temporary character, or trailer, tent, mobile home or recreational vehicle, shall be permitted on the Property at any time or used at any time as a residence, either temporarily or permanently, except by the Developer and its affiliates or other builders during construction. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any residence or ancillary building, unless buried beneath the ground.

5.6 Signs. No sign of any kind shall be displayed on any Lot, except only one sign of not more than one(1) square foot used to indicate the name of the resident or one sign of not more than five (5) square feet advertising the Lot for sale or for rent (in locations and in accordance with design standards approved by the Architectural Control Board), or any sign used by a builder to advertise the company during the construction and sales period. No sign of any kind shall be permitted to be placed on the outside walls of a residence or on any fences on the Property, nor on the Common Areas, nor on dedicated areas, if any, nor on entry ways within the Property, except such as are placed by the Developer or its affiliates.

5.7 Oil and Mining Operation. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in the Property, nor on dedicated areas, nor shall oil wells, tunnels, mineral excavations or shafts be permitted upon or in the Property. No derrick or other structure designed for use boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or any portion of the Property.

5.8 Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except household pets (in such numbers as the Board may permit) that are not kept, bred, or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any neighbor. No dogs or other pets shall be permitted to defecate on any Common Areas, except any areas designated by the Association, and Owners shall be responsible to clean up any improper defecations. In no event shall dogs be permitted upon the Common Areas unless leashed. For purposes hereof, "household pets" shall mean dogs, cats, caged domestic birds, and fish. Any Owner who keeps a pet thereby agrees to indemnify the Association and hold it harmless against any and all fines, penalties, claims, demands, expenses, costs, obligations, and liabilities of any kind or character arising from or relating to the pet. Pets shall also be subject to applicable rules and regulations. Notwithstanding anything provided in this subparagraph to the contrary, no pit bull dogs shall be raised, bred, or kept on any Lot. The term "pit bull" as used herein shall be based upon standards established by either the American Kennel Club or the United Kennel Club.

5.9 Visibility at Intersection. No obstruction to visibility at street intersections or Common Area intersections shall be permitted, and visibility clearances shall be maintained as required by local law.

5.10 Architectural Control. No building, wall, fence, swimming pool or other structure or improvement of any nature (including landscaping or exterior paint or exterior finish) shall be created, placed, applied, altered, or maintained on any Lot until the construction plans, specifications, and a plan showing the location of the structure, landscaping, and intended exterior materials as may be required by the Architectural Control Board have been approved in writing by the Architectural Control Board named below, and all necessary governmental permits are obtained. Each building, wall, fence, or other structure

or improvement of any nature, together with the landscaping, shall be erected, placed or altered upon a Lot only in accordance with the plans and specifications and plot plan so approved by the Architectural Control Board and with applicable governmental permits and requirements. Refusal by the Architectural Control Board of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds. Any change in the exterior appearance of any building (including any change in the exterior color of the building), wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval under this provision.

The Architectural Control Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. The Architectural Control Board shall be appointed by the Board of Directors of the Association. A majority of the Architectural Control Board may take any action the Architectural Control Board is empowered to take, may designate a representative to act for the Architectural Control Board, and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Architectural Control Board, the remaining members shall have full authority to designate a successor. The members of the Architectural Control Board shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Control Board shall act on submissions to it within thirty (30) days after receipt of the same (and all further documentation required). The Architectural Control Board's failure expressly to approve or disapprove any submittal under this paragraph within thirty (30) days of receipt of the last information delivered in connection with that submittal shall be deemed an approval of that submittal.

Without limiting the generality of Section 5.1 hereof, the foregoing provisions shall not be applicable to the Developer or its affiliates or to construction activities conducted by the Developer or such affiliates.

**5.11 Exterior Appearance and Landscaping.** The paint, coating, stain and other exterior finishing colors and materials on all residential buildings may be maintained as that originally installed without prior approval of the Architectural Control Board. However, prior approval by the Architectural Control Board shall be necessary before any such exterior finishing color or material is changed. The Lot landscaping (except for that portion to be maintained by the Association, if any), including, without limitation, the trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Owner or by the Association, as provided elsewhere herein, as originally installed, unless the prior approval for any change, deletion or addition is obtained from the Architectural Control Board.

**5.12 Commercial Trucks, Trailers, Campers and Boats.** No trucks of any kind, commercial vehicles, campers, mobile homes, motor homes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers or horse trailers (collectively the "Prohibited Vehicles"), shall be permitted to be parked or to be stored at any place on the Property, nor in dedicated areas, unless the Developer designates specifically certain spaces for some or all of the above. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up and delivery and other commercial services, nor to vans for personal use (with no commercial markings) which are in acceptable condition in the sole opinion of the Board (which favorable opinion may be changed at any time), nor to any vehicles of the Developer or its affiliates. No vehicles or automobiles shall be permitted to be parked or to be stored on easement areas, buffer areas, or any drainage easement or road right-of-way. Any Prohibited Vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations now or hereafter adopted may be towed by the Association at the sole expense of the owner of such Prohibited Vehicle if such Prohibited Vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed upon it. The Association shall not be liable to the owner of the Prohibited Vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. An affidavit of the person posting such notice stating that it

was properly posted shall be conclusive evidence of proper posting.

5.13 Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited, dumped or disposed of within the Property, except as permitted by the Association. The requirements from time to time of the applicable governmental authority for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Containers must be rigid plastic, no less than twenty (20) gallons, or more than thirty-two (32) gallons in capacity, and well sealed. Such containers may not be placed out for collection sooner than twenty-four (24) hours prior to scheduled collection and must be removed within twelve (12) hours of collection. In the event that governmental disposal or collection of waste is not provided to individual Lots, garbage, refuse, trash or rubbish shall be deposited by each Owner in a dumpster designated by the Association and shall be collected by a private entity hired by the Association.

5.14 Fence. No fences on any Lot shall extend toward the front of any Lot beyond the front corner of the home on the Lot that is nearest the front lot line. No fence or wall shall exceed a height of six (6) feet. The composition, location, and height not specified herein of any other fence or wall to be constructed on any Lot shall be subject to the approval of the Architectural Control Board.

5.15 No Drying. To the extent lawful, no clothing, laundry or wash shall be aired or dried out of doors on any portion of the Property.

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

5.17 Metal Out Buildings. No metal out-buildings or sheds shall be constructed or placed on any Lot.

5.18 Garages. All residences must have garages. No carports are permitted. All garage doors must be maintained in operating condition. No garage may be converted to living space without the prior approval of the Architectural Control Board.

5.19 Landscaping. The basic landscaping plan for each house must be submitted to and approved by the Architectural Control Board. Sodding will be required on all front yards. Either sodding, seeding, and/or sprigging is required in side and rear yards. On corner Lots, sodding will be required on all sides. Sodding in side yards will extend to the rear property line and the width will be the same as the side setback between the house and side Lot line. Each house must have shrubs on front and side yards.

5.20 Swimming Pools. Any swimming pool constructed on any Lot shall be subject to the following restrictions, reservations and conditions:

(a) On interior Lots, the outside edge of any pool may not be closer than five (5) feet to the side Lot line nor closer than ten (10) to the rear Lot line. Corner Lots will be reviewed by the Architectural Control Board on an individual basis.

(b) Pool screening may not be higher than sixteen (16) feet or the higher edge of the roof, whichever is lower.

(c) No overhead electrical wires shall cross the pool. All pool lights other than underwater lights must be four (4) feet from the edge of the pool.

(d) The pool itself must be enclosed with a fence not less than five (5) feet in height. Entrance gate to the backyard, or the pool itself, as the case may be, is to be constructed with a self-closing latch placed at least forty (40) inches above the ground. The fence of a neighbor, where sufficient to meet above standards, may be utilized to secure a pool.

5.21 Antennas and Dishes. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained upon any portion of a Lot. No short wave operations of any kind shall operate from any Lot.

5.22 Water Supply System. No individual water supply system shall be permitted on any Lot without the approval of the Architectural Control Board. The above does not restrict the right of any Owner to install, operate, and maintain a water well on the premises for use restricted to swimming pool and/or irrigation purposes.

5.23 Air Conditioning Units. No air conditioning units, either central or wall type, shall be placed on the front of any dwelling or otherwise placed or located so as to be visible from any public street. It is acknowledged that homes built on corner Lots may require an air conditioning unit facing a public street. Should this be necessary, or if that air conditioning unit is placed at the side or rear of such dwelling, but is still visible from any public street, it shall be permissible to so locate said unit if it is screened by mature bushes and shrubbery or some other permanent type of screening material, to be approved by the Architectural Control Board. Failure to maintain such screening may result in Association action.

5.24 Waterfront Lots. Owners of Lots fronting retention ponds will not be permitted to construct docks, floating or otherwise, boat davits, pier, or other structures in the lakes or retention ponds. No swimming or water skiing, and no boats in excess of eighteen feet (18') in length, will be permitted in lakes or retention ponds and no gasoline (combustion) engines will be permitted.

5.25 Increase in Insurance Rates. No Owner may take any action which will result in an increase in the rate of any insurance policy or policies covering any portion of the Common Areas.

5.26 Casualties. In the event that improvements on a Lot, in whole or in part, are destroyed by casualty or otherwise, or in the event any improvements upon the Common Areas are damaged or destroyed by casualty or otherwise, the Owner thereof or the Association, as the case may be, shall promptly clear all debris resulting therefrom and (subject to the duties and obligations of the Association) commence either to rebuild or repair the damaged improvements in accordance with the terms and provisions of this Declaration.

5.27 Reconstruction. Any repair, rebuilding, or reconstruction on account of casualty or other damage to any Common Areas or any part or parts thereof shall be substantially in accordance with the plans and specifications for such property and areas as originally constructed or with new plans and specifications approved by the Architectural Control Board. Any repair, rebuilding, or reconstruction on account of casualty or other damage to any improvements or any part or parts thereof shall be substantially in accordance with the plans and specifications for such property and areas as originally constructed or the new plans and specifications approved by the Architectural Control Board.

## ARTICLE VI

## ENFORCEMENT

6.1 Compliance by Owners. Every Owner shall comply with the easements, restrictions, and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors.

6.2 Enforcement. Failure of an Owner to comply with such easements, restrictions, covenants, or rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend voting rights of defaulting Owners in accordance with this Declaration and with applicable law. The offending Owner shall be responsible for all costs of enforcement, including reasonable attorneys' fees actually incurred and court costs.

6.3 Fines. In addition to all other remedies, in the sole discretion of the Board of Directors a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, or employees, to comply with any covenant, restriction, rule or regulation, provided the following procedures are adhered to:

(a) Notice. The Association shall notify the Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a special meeting of a committee of the Board at which time the Owner shall present reasons why penalties should not be imposed. At least fourteen (14) days' advance notice of such meeting shall be given.

(b) Hearing. The alleged violation shall be presented to the committee of the Board, after which that committee shall hear reasons why penalties should not be imposed. A written decision of the committee shall be submitted to the Owner by not later than twenty-one (21) days after the meeting. The Owner shall have a right to be represented by counsel and to cross-examine witnesses.

(c) Penalties. The committee of the Board may impose special assessments against the Lot owned by the Owner as follows:

The committee may levy fines not to exceed \$100.00 for each violation. The fine may be levied for each day a continuing violation continues (and no additional notice or hearing shall be required); provided, however, the aggregate total fine for a violation shall not exceed \$5,000.00.

(d) Payment of Penalties. Fines shall be paid not later than five (5) days after notice of the imposition or assessment of the penalties.

(e) Collection of Fines. Fines shall be treated as an Assessment subject to the provisions for the collection of Assessments as set forth herein.

(f) Application of Penalties. All monies received from fines shall be allocated as directed by the Board of Directors, subject always to the provisions of this Declaration.

(g) Non-Exclusive Remedy. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

(h) Applicable Law. To the extent applicable law regulates the imposition of fines by the Association, the notwithstanding the procedures, restrictions, and other details prescribed above, the Association's right to impose fines shall conform to, and this provision shall be deemed amended to conform to, applicable law; and the Association's right to impose fines shall be coextensive with the maximum right permitted by the law.

## ARTICLE VII INSURANCE

7.1 Coverage. The Association shall maintain insurance covering the following:

(a) Casualty. All improvements located on the Common Areas from time to time, together with any and all fixtures, building service equipment, personal property and supplies constituting the Common Areas or owned by the Association (collectively the "Insured Property"), which shall be insured in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against (i) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and (ii) such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism, malicious mischief and those covered by the standard "all risk" endorsement.

(b) Liability. Comprehensive general public liability and automobile liability insurance covering injury, loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters of things related to the Insured Property (including, but not limited to, liability arising from law suits related to employment contracts to which the Association is a party), with such additional coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000.00 for each accident of occurrence, \$1000,000.00 per person and \$50,000.00 property damage, and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa.

(c) Flood Insurance. Covering the Insured Property shall be maintained by the Association if the Development is in a special flood hazard area or if the Association so elects. The amount of flood insurance shall be the lesser of: (i) 100% of the current replacement cost of the Insured Property; or (ii) the maximum coverage available for the Insured Property under the National Flood Insurance Program.

(d) Fidelity Insurance or Bonds. Naming the Association as obligee and covering all directors, officers and employees of the Association shall be maintained by the Association in amount which is the greater of \$10,000.00 or the maximum amount of funds that will be in custody of the Association at any time while the bond is in force; notwithstanding the foregoing sentence, however, such fidelity insurance or bond shall not be for an amount less than the sum of three (3) months assessments on all Units and Lots, plus the Association's reserve funds for each person so insured or bonded.

(e) Other Insurance. The Association may also maintain worker's compensation or such other insurance as the Board may determine from time to time including officers' and directors' liability insurance.

Every casualty policy obtained by the Association shall have the following endorsements: (i) agreed amount and inflation guard, (ii) steam boiler coverage (providing at least \$50,000.00 coverage for each accident at each location), if applicable, and (iii) an appropriate endorsement covering the costs of changes



to undamaged portions of the improvements (even when only a portion thereof is damaged by an insured hazard) if any applicable construction code requires such changes.

7.2 Additional Provisions. All policies of insurance and fidelity bonds shall provide that such policies and bonds may not be cancelled or substantially modified without at least thirty (30) days prior written notice to all of the named insureds, including all mortgages of Units and Lots, including each service that services a Federal National Mortgage Association owned mortgage encumbering a Unit and Lot located in the Development.

7.3 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or any other action or omission of, particular Owners shall be assessed against and paid by such Owners. Premiums may be financed in such manner as the Board of Directors deems appropriate.

#### ARTICLE VIII NOTICES

8.1 Notices to Member or Owner. In addition to such other manners for providing notice as are permitted or prescribed in this Declaration, the Bylaws, or the Articles of Incorporation, any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been sent when personally delivered or mailed, post-paid, 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.

#### ARTICLE IX STANDARD DEVELOPMENT AND ANNEXATION

9.3 Other Annexation of Property. Land may be annexed to the Property with the consent of two-thirds (2/3) of the Members and with the approval of the Federal Housing Administration and the Veterans Administration as long as there is a Class B membership. Such annexation shall become effective upon the recording of an amendment to this Declaration evidencing the annexation in the Public Records of the County.

9.4 Platting. As long as there is a Class B membership, the Developer shall be entitled at any time and from time to time, to plat and/or replat all or any part of the Property and to file Buckhead Subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Property or Development without the consent or approval of an Owner.

9.5 Amendment. The provisions of this Article X cannot be amended without the written consent of the Developer, and any amendment of this Article X without the written consent of the Developer shall be deemed null and void.

#### ARTICLE X GENERAL PROVISIONS

10.1 Duration. The easements, conditions, covenants, and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Developer, the Association, the Architectural Control Board, and the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for

successive periods of ten (10) years each unless an instrument signed by the then Owners of seventy-five percent (75%) of all the Lots subject hereto has been recorded, agreeing to revoke this Declaration. Provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

**10.2 Enforcement.** Enforcement of these easements, conditions, covenants, and restrictions shall be accomplished by either the Developer, the Association, or any Owner by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain violation or to recover damages, and against the Lots to enforce any lien created by these covenants; and failure by the Developer, the Association, or by any Owner to enforce any covenant or restriction herein contained, including those set forth in Section 4.4 hereof, shall in no event be deemed a waiver of the right to do so thereafter. Court costs and reasonable attorneys' fees for a proceeding at law or in equity to enforce this Declaration, including any appeal thereof, shall be borne by the Owner(s) against whom the suit has been filed. In addition to all remedies expressly provided in this Declaration, the Developer and the Association shall have the right to enforce this Declaration by all remedies (including without implied limitation the imposition of fines and penalties) that may be permitted in 617.301 et seq. Florida Statutes, as amended; and this Declaration shall be deemed to include all procedures and conditions prescribed by those statutes for the exercise of the statutory remedies.

**10.3 Severability.** Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions of applications in other circumstances, all of which shall remain in full force and effect.

**10.4 Amendment.** In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, conditions, charges and liens of this Declaration may be amended, changed, or supplemented at any time and from time to time upon the execution and recording of an instrument executed by the Developer alone, for so long as it or its affiliates holds title to any Lot affected by this Declaration; or alternatively by approval at a meeting of Owners holding not less than two-thirds (  ) votes of the membership in the Association; provided, however, that so long as the Developer or its affiliates is the Owner of any Lot affected by this Declaration, the Developer's consent must be obtained if such amendment, in the sole opinion of the Developer, affects Developer's interest. In the event Buckhead of Orlando, Inc. is not the Developer, no amendment may be made which, in the opinion of Buckhead of Orlando, Inc., adversely affects its interest, without its consent. Further, no provision of this Declaration may be amended if such provision is required to be included herein by any law. The foregoing three (3) sentences may not be amended. Without limiting the generality of the foregoing paragraph, the Developer specifically reserves the right to amend this Declaration in order to comply with the requirements of the Federal Housing Authority, Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Orange County. Notwithstanding any of the foregoing, as long as there is Class B membership, as that term is defined in Section 2.2. hereof, the Federal Housing Administration or Veterans Administration must approve any amendment to this Declaration other than those to correct scrivener's errors or clarify any ambiguities herein.

The Developer shall have the right at any time within six (6) years from the date hereof to amend this Declaration to correct scrivener's errors and to clarify any ambiguities determined to exist herein. No amendment shall impair or prejudice rights or priorities of any Institutional Lender without their written

consent.

10.5 Effective Date. This Declaration shall become effective when recorded in the Orange County Public Records.

10.6 Withdrawal. The Developer reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Property then owned by the Developer or its affiliates or the Association from the provisions of this Declaration to the extent included originally in error or as a result of reasonable changes in the plans for the Property desired to be effected by the Developer.

10.7 Conflicts. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and Bylaws of the Association and the Articles shall take precedence over the Bylaws.

10.8 Standards for Consent, Approval, Completion, Other Action and Interpretation. Unless otherwise provided herein, whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Developer or its affiliates, the Association or the Architectural Control Board, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Developer or Association, as appropriate. This Declaration shall be interpreted by the Board of Directors and an opinion of counsel to the Association rendered in good faith, provided that the particular interpretation is not unreasonable, shall establish the validity of such interpretation.

10.9 Easements. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantee for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners designate hereby the Developer and the Association (or either of them as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

10.10 CPI. Whenever specific dollar amounts are mentioned in this Declaration (or in the Articles or Bylaws of rules and regulations), unless limited or prohibited by law, such amounts will be increased from time to time by application of a nationally recognized consumer price index chosen by the Board, using the date this Declaration is recorded as the base year. In the event no such consumer price index is available, the Board shall choose a reasonable alternative to compute such increases.

10.11 Covenants Running With the Land. Anything to the contrary herein notwithstanding, it is the intention of all parties affected hereby (and their respective heirs, personal representatives, successors and assigns) that these covenants and restrictions shall run with the land and with title to the Property. If any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if at all possible, to come as close as possible to the intent of such provision or application and then be enforced in a manner which will allow these covenants and restrictions to so run with the land; but if such provision and/or application cannot be so


modified, such provision and/or application shall be unenforceable and considered null and void in order that the paramount goal of the parties affected hereby (that these covenants and restrictions run with the land as aforesaid) be achieved.

10.12 Management Contract. At such time as it sees fit, the Association is hereby authorized to enter into an agreement with a management company (which may be an affiliate of the Developer) to provide for the management and maintenance of the Property, in which case each Owner shall be assessed for his Lot's share of the management fees, in accordance with the assessment provisions contained in this Declaration.


COPY

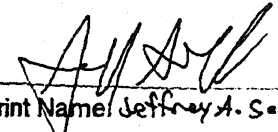
EXECUTED as of the date first above written.

Signed, sealed and delivered  
in the presence of:

  
Print Name: Christopher L. Kamusk:

Buckhead of Orlando Inc.

By:   
Print Name: R. W. Holston  
As its: President  
R. W. Holston, President  
71 E. Church St.  
Orlando, Fl. 32801

  
Print Name: Jeffrey A. Sedloff

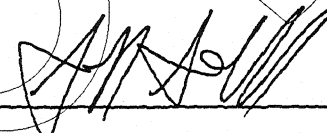
STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 22<sup>nd</sup> day of May, 2000, by, as President of Buckhead of Orlando, Inc., executing the foregoing instrument on behalf of the corporation, freely and voluntarily and for the purposes stated herein. He is (a)  personally known to me or (b) produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State aforesaid this 22<sup>nd</sup> day of May, 2000



Jeffrey Sedloff  
Commission # OC 835045  
Expires June 25, 2003  
Bonded Through  
Atlantic Bonding Co., Inc

  
Notary Public, State of Florida  
My Commission Expires:

"A"

# A PORTION OF SECTION 8, TOWNSHIP 22 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA

OR Bk 6037 Pg 3656  
Orange Co FL 2000-0277471

PLAT  
LEGAL

## LAND DESCRIPTION:

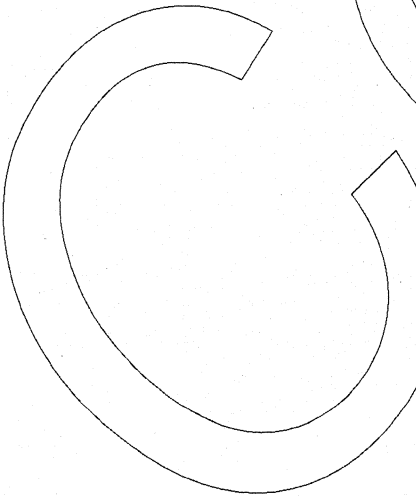
THE EAST ONE-HALF (E1/2) OF THE WEST ONE-HALF (W1/2) OF THE SOUTHEAST ONE-QUARTER (SE1/4) OF THE NORTHWEST ONE-QUARTER (NW1/4) OF SECTION 8, TOWNSHIP 22 SOUTH, RANGE 31 EAST, LESS BUCK ROAD ACCORDING TO PLAT BOOK 26, PAGE 15, ORANGE COUNTY, FLORIDA.

THE ABOVE LAND MAY ALSO BE DESCRIBED AS FOLLOWS:

A PORTION OF THE EAST ONE-HALF (E1/2) OF THE WEST ONE-HALF (W1/2) OF THE SOUTHEAST ONE-QUARTER (SE1/4) OF THE NORTHWEST ONE-QUARTER (NW1/4) OF SECTION 8, TOWNSHIP 12 SOUTH, RANGE 31 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF THE EAST ONE-HALF (E1/2) OF THE WEST ONE-HALF (W1/2) OF THE SOUTHEAST ONE-QUARTER (SE1/4) OF THE NORTHWEST ONE-QUARTER (NW1/4) OF SAID SECTION 8; THENCE N 89°50'21" E ALONG THE NORTH LINE OF THE EAST ONE-HALF (E1/2) OF THE WEST ONE-HALF (W1/2) OF THE SOUTHEAST ONE-QUARTER (SE1/4) OF THE NORTHWEST ONE-QUARTER (NW1/4) OF SAID SECTION 8, A DISTANCE OF 333.86 FEET; THENCE S 00°06'54" W ALONG THE EAST LINE OF THE EAST ONE-HALF (E1/2) OF THE WEST ONE-HALF (W1/2) OF THE SOUTHEAST ONE-QUARTER (SE1/4) OF THE NORTHWEST ONE-QUARTER (NW1/4) OF SAID SECTION 8, A DISTANCE OF 1308.88 FEET; THENCE S 89°39'23" W, 248.01 FEET; THENCE S 82°15'22" W, 54.70 FEET; THENCE N 72°42'57" W, 29.87 FEET (THE LAST THREE (3) COURSES DESCRIBED BEING COINCIDENT WITH THE NORTHERLY RIGHT-OF-WAY OF BUCK ROAD, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 26, PAGE 15 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA); THENCE N 00°01'20" W ALONG THE WEST LINE OF THE EAST ONE-HALF (E1/2) OF THE WEST ONE-HALF (W1/2) OF THE SOUTHEAST ONE-QUARTER (SE1/4) OF THE NORTHWEST ONE-QUARTER (NW1/4) OF SAID SECTION 8, A DISTANCE OF 1307.92 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN ORANGE COUNTY, FLORIDA, CONTAINING 9.995 ACRES MORE OR LESS.



ARTICLES OF INCORPORATION  
OF  
BUCKHEAD OF ORLANDO HOMEOWNERS' ASSOCIATION, INC.

In order to form a corporation not-for-profit under and in accordance with Chapter 617 of the Florida Statutes, we, the undersigned, hereby associate ourselves into a corporation not-for-profit for the purposes and with the powers hereinafter set forth and to that end, we do, by these Articles of Incorporation (the "Articles"), certify as follows:

ARTICLE I  
NAME

The name of this Association shall be BUCKHEAD OF ORLANDO HOMEOWNERS' ASSOCIATION, INC., whose present address is 71 East Church Street, Orlando, Florida 32801 (the "Association").

ARTICLE II  
PURPOSE OF ASSOCIATION

This Association is being organized in connection with the single-family development known as BUCKHEAD (the "Development") as evidenced by certain declarations of easements, covenants, conditions, and restrictions therefor as amended from time to time, (the "Declaration") which is or will be recorded in the Public Records of Orange County, Florida. All terms and definitions as set forth in the Declaration are hereby incorporated herein and made a part hereof. The purposes for which the Association is organized is to maintain, operate, manage, and preserve the Development; to provide for the architectural control of the residential lots in the Development; and to promote the health, safety, and welfare of the residents of the Development. Unless otherwise specified, the Association shall have and exercise all powers, rights and privileges set forth herein, in the Declaration, and in Chapter 617, Florida Statutes, as amended.

ARTICLE III  
POWERS

In addition to such other powers as may be set forth in the Declaration, these Articles, the bylaws promulgated by the Association ("Bylaws"), or the Florida Statutes, the Association shall have the following powers which shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of the Declaration, these Articles, the Bylaws, or the Florida Statutes.

B. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

1. Assessments. To fix and levy assessments on the Owners (as defined in the Declaration) of Lots (as defined in the Declaration) and to collect and enforce payments of such assessments.

2. Right of Entry and Enforcement. To enter upon any portion of the Development, including without implied limitation individual Lots owned by Owners for the purpose of enforcing by peaceful means any provisions of the Declaration, or for the purpose of maintaining or repairing any such area if, for any reason whatsoever, maintenance is required thereto.

3. Easement and Rights-of-Way. To grant and convey to the Developer (as defined in the Declaration) or any third party easements and rights-of-way in, on, over, or under any of the Common Areas (as defined in the Declaration) for the purpose of constructing, erecting, operating, or maintaining the following therein, thereon, or thereunder:

a. Overhead or underground lines, cables, wires, conduits or other devices for the transmission of electricity for lighting, heating, power, telephone, or other purposes; and

b. Public sewers, storm water drains, pipes, water systems, sprinkler systems, water, heating, and gas lines or pipes, cable television lines, and security system lines; and, similar public or quasi-public improvements or facilities.

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4. Employment of Agents. To employ the services of any person or corporation as property manager (the "Manager"), or other employees, to, as may be directed by the Board (as defined herein), manage, conduct, and perform the business, obligations, and duties of the Association, and to enter into contracts for such purpose. Such agent shall have the right to ingress and egress over such portions of the Common Areas or the Development as is necessary for the performance of such business, duties, and obligations.

5. Employment of Professional Advisers. To employ professional counsel and consultants such as, but not limited to, landscape architects, recreation experts, planners, lawyers, and accountants.

6. Create Classes of Service and Make Appropriate Charges. To create, in its sole discretion, various classes of service and to make appropriate charges therefor for the users thereof, including, but not limited to, reasonable admission and other fees, for the use of any recreational facilities situated in the Common Areas and to avail itself of any rights granted by law without being required to render such services to those of its Members (as defined herein) who do not assent to the said charges and to such other rules and regulations as the Board deems proper. In addition, the Board shall have the right to discontinue any service on non-payment or to eliminate such services for which there is no demand or adequate funds to maintain the same out of charges.

7. Miscellaneous. To sue and be sued; pay taxes; make and enter into contracts; and insure, enter into leases or concessions, and to pass good and marketable title to the Common Areas, dedicate or transfer all or any part of the Common Areas to a public agency, authority, or utility for such purposes and subject to such conditions as may be reasonable; make and execute any and all proper affidavits for various purposes; compromise any action without leave of court; and insure its own liability for claims against it and against its officers, directors, employees and contractors.

8. Inspection; Personal Liability. No Member of the Board or any officer of the Association, nor any officer or director of the Developer or the Manager, shall be personally liable to any Owner or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, provided that such person, firm or entity has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.



9. Books and Records. To keep separate books and records in accordance with these Articles, Bylaws, and applicable law.

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**ARTICLE IV**  
**MEMBERS**

The qualification of the Members, the manner of their admission to membership in the Association, the manner of the termination of such membership, and voting by the Members shall be as follows:

A. Until such time as the recording of the Declaration, the Members of this Association shall be comprised solely of the subscribers (the "Subscriber Members") to these Articles; and in the event of the resignation or termination of any Subscriber Member, the remaining Subscriber Members may nominate and designate a successor Subscriber Member. Each of the Subscriber Members shall be entitled to cast one (1) vote on all matters requiring a vote of the Members.

B. Upon the recording of the Declaration, the Subscriber Members' rights and interests shall be automatically terminated and the Owners, which in the first instance means the Developer as the owner of Lot(s), shall be entitled to exercise all of the rights and privileges of the Members, as set forth in the Declaration and in these Articles.

C. Membership in the Association shall be established by the acquisition of ownership by a person(s) or entity(ies) of a Lot in the Development as evidenced by the recording of an instrument of conveyance in the Public Records of Orange County, Florida, whereupon the membership in the Association of the prior Owner thereof, if any, shall terminate. New Members shall deliver a true copy of the recorded deed or other instrument of acquisition of title to the Association. No person or entity holding an interest or title to a Lot as security for performance of an obligation shall acquire the membership rights appurtenant to such Lot by virtue of such interest or title.

D. No Member may assign, hypothecate, or transfer in any manner his/her membership in the Association or his/her share in the funds and assets of the Association except as an appurtenance to his/her Lot. In no event may any membership be severed from the Lot to which it is appurtenant.

E. Except as otherwise provided in the Declaration, each Member shall be entitled to one (1) vote for each Lot owned with respect to matters on which a vote by the Owners is required to be taken pursuant to the Declaration, these Articles, or the Bylaws.

**ARTICLE V**  
**VOTING RIGHTS**

The Members of the Association shall have voting rights provided to them in the Declaration.

**ARTICLE VI**  
**TERM**

The term for which this Association is to exist shall be perpetual.

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**ARTICLE VII  
SUBSCRIBERS**

The name and address of the Subscriber to these Articles is as follows:

<u>Name</u>	<u>Address</u>
James R. Pratt	369 North New York Ave., 3rd floor Winter Park, Florida 32789

**ARTICLE VIII  
OFFICERS**

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A. The affairs of the Association shall be managed by a President, one (1) or more Vice President(s), a Secretary; and a Treasurer and, if elected by the Board, an Assistant Secretary and an Assistant Treasurer, which officers shall be subject to the directions of the Board.

B. The Board shall elect the President, the Vice President, the Secretary, the Treasurer and as many other Vice Presidents, Assistant Secretaries, and Assistant Treasurers as the Board shall from time to time deem appropriate. Such officers shall be elected annually by the Board at the first meeting of the Board; provided, however, such officers may be removed by such Board and other persons may be elected by the Board as such officers in the manner provided in the Bylaws. The President shall be a Director of the Association, but no other officer need be a Director. The same person may hold two (2) offices, the duties of which are not incompatible; provided, however, the offices of President and Vice President shall not be held by the same person, nor shall the same person hold the office of President who holds the office of Secretary or Assistant Secretary.

**ARTICLE IX  
FIRST OFFICERS**

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	Robert W. Holston, Jr.
Vice President	Rohland A. June, II
Secretary	Robert W. Holston, Jr.
Treasurer	Rohland A. June, II

**ARTICLE X  
INITIAL REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the initial registered office of this corporation is 369 N. New York Avenue, 3rd Floor, Winter Park, Florida 32789 and the name of the initial resident agent of this corporation at that address is James R. Pratt.

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**ARTICLE XI**  
**BOARD OF DIRECTORS**

A. The form of administration of the Association shall be by a Board of not less than three (3) Directors nor more than seven (7) Directors, the exact number to be determined from time to time by the Board and in accordance with the Declaration. The number of Directors initially constituting the Board (as hereinafter defined) shall be two (2).

B. The names and addresses of the persons who are to serve as the initial Board of Directors are as follows:

<u>Name</u>	<u>Address</u>
Robert W. Holston, Jr.	71 East Church Street Orlando, Florida 32801
Rohland A. June, II	71 East Church Street Orlando, Florida 32801

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The Developer reserves the right to appoint members to the Board so long as the Developer controls the Association in accordance with the provisions of the Declaration. During such period of time, Members shall not have the right to elect members to the Board. Except for the Developer and its representatives, every Director must be a Member.

C. The initial Board shall serve unless the successor Developer's representatives are appointed or until turnover of control as provided for herein. Unless otherwise provided for herein, vacancies of the Board shall be filled in accordance with the provisions of the Bylaws.

D. At such time as the Members (other than the Developer) are permitted to elect officers and directors of the Association, the Board shall consist of three (3) Directors to be elected by Members of the Association. Voting shall be conducted in accordance with the provisions of the Bylaws.

**ARTICLE XII**  
**INDEMNIFICATION**

Every Director and every officer of the Association (and the Directors and/or officers as a group) shall be indemnified by the Association against all expenses and liabilities, including counsel fees (at all trial and appellate levels) reasonably incurred by, asserted against, or imposed upon him or them in connection with any proceeding, litigation, or settlement in which he may become involved by reason of his being or having been a Director or officer of the Association, or arising in connection with the performance of his or their duties as officers or Directors, as the case may be. The foregoing provisions for indemnification shall apply whether or not he is a Director or officer at the time such expenses are incurred. Notwithstanding the above, in instances where a Director or officer admits or is adjudicated guilty of willful misfeasance or malfeasance in the performance of his duties, or of any acts involving criminal liability, the indemnification provisions of these Articles shall not apply. Otherwise, the foregoing rights to indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer may be entitled whether by statute or common law.

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ARTICLE XIII  
TRANSACTION IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED

A. No contract or transaction between the Association and one or more of its Directors or officers, or between the Association and any other corporation, partnership, association or other organization in which one or more of its Directors or officers are directors or officers or have a financial interest, shall be invalid, void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee thereof which authorized the contract or transaction, or solely because his or their votes are counted for such purpose. No Director or officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction.

B. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction.

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ARTICLE XIV  
BYLAWS

The Bylaws of the Association shall be adopted by the first Board, and thereafter may be altered, amended, or rescinded in the manner provided for in the Bylaws. As is set forth in the Bylaws, the Bylaws may be amended by a majority vote of the Members present or the affirmative approval of a majority of the Board at a regular or special meeting of the Board.

ARTICLE XV  
DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the total number of the Members. Upon dissolving the Association, other than incident to a merger or consolidation with a similar association, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event the dedication is refused or not accepted, such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes. Any action under this Article is subject to the procedures and requirements of Florida Statutes 617.05 and to Sections 617.301 et seq, Florida Statutes.

ARTICLE XVI  
AMENDMENTS

A. Prior to the recording of the Declaration in the Public Records of Orange County, Florida, these Articles may be amended only by an instrument in writing signed by all of the Directors and filed in the office of the Secretary of State of the State of Florida. The instrument amending these Articles shall identify the particular Article or Articles being amended and give the exact language of such amendment, and a certified copy of such amendment shall always be attached to any certified copy of these Articles and shall be an exhibit to the Declaration upon the recording of any such Declaration.

B. After the recording of the Declaration in the Public Records of Orange County, Florida, amendment of these Articles requires the approval of at least two-thirds (2/3) vote of the Members.

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C. A copy of each amendment shall be certified by the Secretary of State and recorded in the Public Records of Orange County, Florida.

D. Notwithstanding the foregoing provisions of this Article, there shall be no amendment to these Articles which shall abridge, amend, or alter the rights of the Developer, including the right to designate and select the Directors as provided herein, or the provisions of this Article, without the prior written consent therefor by the Developer.

ARTICLE XVII  
FHA/VA APPROVAL

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Notwithstanding anything in these Articles to the contrary, annexation of additional properties, mergers and consolidations, mortgaging of Common Areas (as defined in the Declaration), dissolution, and amendments of the Articles of Incorporation require prior approval of the Federal Housing Administration and the Veterans Administration as long as there is a Class B membership (as defined in the Declaration) in the Association.

ARTICLE XVIII

In case of any conflict between these Articles and the Bylaws of the Association, these Articles shall control; and in case of any conflicts between these Articles and the Declaration, the Declaration shall control.

IN WITNESS WHEREOF, the Subscribers have hereunto affixed each of their signatures the day and year set forth below.

Dated: March 2 2000

James R. Pratt

STATE OF FLORIDA  
COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, before me, a Notary Public duly authorized in the State and County named above to take acknowledgments, personally appeared JAMES R. PRATT, personally to me known to be the person described above as the Subscriber and who, under oath executed the foregoing Articles of Incorporation, and he acknowledged before me that he executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State aforesaid, this 2nd day of March, 2000.

NOTARY PUBLIC


Signature: Gidget A. Zook  
Print Name: GIDGET A. ZOOK  
State of Florida at Large  
MY COMMISSION EXPIRES:

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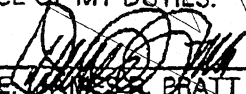


**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE  
FOR THE SERVICE OF PROCESS WITHIN FLORIDA  
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED**

FIRST: THAT THE BUCKHEAD OF ORLANDO HOMEOWNERS' ASSOCIATION, INC., DESIRING TO ORGANIZE OR QUALIFY UNDER THE LAWS OF THE STATE OF FLORIDA, WITH ITS PRINCIPAL PLACE OF BUSINESS AT CITY OF ORLANDO, STATE OF FLORIDA, HAS NAMED JAMES R. PRATT LOCATED AT 369 NORTH NEW YORK AVENUE, 3RD FLOOR, WINTER PARK, FLORIDA 32879 TO ACCEPT SERVICE OF PROCESS WITHIN FLORIDA.

  
NAME: ~~JAMES R. PRATT~~  
TITLE: SUBSCRIBER  
DATE: March 2, 2000

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION, AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY AGREE TO ACT IN THIS CAPACITY, AND I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES.

  
NAME: ~~JAMES R. PRATT~~  
TITLE: RESIDENT AGENT  
DATE: March 2, 2000

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BY-LAWS

OF

BUCKHEAD HOMEOWNERS' ASSOCIATION, INC.

Section 1. Identification of Association.

These are the Bylaws of BUCKHEAD HOMEOWNERS' ASSOCIATION, INC. (hereinafter referred to as the "Association"), as duly adopted by its Board of Directors. The Association is a corporation not-for-profit, organized pursuant to and under Chapter 617 of the Florida Statutes. The Association has been incorporated in connection with the creation of that certain Development (the "Development") known as "" as evidenced by that certain Declaration of Easements, Covenants, Conditions, and Restrictions for (the "Declaration") recorded or to be recorded in the Public Records of Orange County, Florida, as amended. All terms and definitions as set forth in the Declaration are incorporated herein and made a part hereof.

1.1 The office of the Association shall be for the present at 71 E. Church St.,) Orlando, FL 32801, and thereafter may be located at any place in Orange County, Florida, designated by the Board of Directors of the Association.

1.2 The fiscal year of the Association shall be the calendar year, unless a different fiscal year is adopted by the Board.

1.3 The seal of the Association shall bear the name of the Association, the word "Florida," and the words "Corporation Not-For-Profit" or similar words.

Section 2. Membership in the Association, Members Meetings, Voting and Proxies.

2.1 The qualifications of Members, the manner of their admission to membership in the Association, and the manner of the termination of such membership shall be as set forth in the Articles and the Declaration.

2.2 The Members shall meet annually at the office of the Association or such other place in Florida, as determined by the Board and as designated in the Notice of such meetings, at the time determined by the Board, within ninety (90) days before each year-end (calendar or fiscal year-end as determined by the Board) commencing with the year that follows the year in which the Declaration is recorded. Such meetings shall be known as the "Annual Members Meeting". The purpose of the Annual Members Meeting shall be to elect Directors, to hear reports of the officers, and to transact any other business authorized to be transacted by the Directors or the Members.

2.3 Special meetings of the Members shall be held at any place within Orange County, whenever called by the President, Vice President, or a majority of the Board. A special meeting must be called by the President or Vice President upon receipt of a written request from one-fourth (1/4) of the Members.

2.4 A written notice of the meeting (whether the Annual Members Meeting or a special meeting of the Members) shall be mailed to each Member entitled to vote at his last known address as it appears on the books of the Association. Such written notice of an Annual Members Meeting shall be mailed to each Member

not less than fourteen (14) days nor more than forty (40) days prior to the date of the Annual Members Meeting. Written notice of a special meeting of the Members shall be mailed not less than ten (10) days nor more than forty (40) days prior to the date of a special meeting. The notice shall state the time and place of such meeting and the object for which the meeting is called. If a meeting of the Members, either a special meeting or an Annual Members Meeting, is one for which, by express provision of applicable law, the Articles, or these Bylaws, there is permitted or required a greater or lesser amount of time for the mailing or posting of notice than is required or permitted by the provisions of this Section, then the aforesaid express provision shall govern. Any provision herein to the contrary notwithstanding, notice of any meeting may be waived by any Member before, during, or after a meeting, which waiver shall be in writing.

2.5 The Members, at the discretion of the Board, may act by written agreement in lieu of a meeting, provided written notice of the matter or matters to be agreed upon is given to the Members, at the addresses and within the time periods set forth in Section 2.4 above, or duly waived in accordance with such Section. The decision of the majority vote of the Members as to the matter or matters to be agreed upon (as evidenced by written response to be solicited in the notice) shall be binding on the Members, provided a quorum of the Members submits a response. The notice shall set forth a time period during which time a response must be made by a Member.

2.6 A quorum of the Members shall consist of persons entitled to cast twenty percent (20%) of the votes of the Members. A Member may join in the action of a meeting by signing and concurring in the minutes thereof and such a signing shall constitute the presence of such Member for the purpose of determining a quorum. When a quorum is present at any meeting and a question which raises the jurisdiction of such meeting is presented, the holders of a majority of the voting rights present in person or represented by written "proxy" (as hereinafter defined) shall be required to decide the question. However, if the question is one upon which, by express provisions of the Declaration, the Articles, or these Bylaws, requires a vote of other than the majority vote of a quorum, then the such express provision shall govern and control the required vote on the decision of such question.

2.7 If any meeting of the Members cannot be organized because a quorum is not in attendance, the Members who are present, either in person or by proxy, may adjourn the meeting to a date certain or otherwise from time to time until a quorum is present. In the case of a meeting being postponed, the notice provisions for the adjournment shall be as determined by the Board and applicable law. In any such subsequent meetings, a quorum shall consist of ten percent (10%) of the votes of the Members.

2.8 Minutes of all meetings shall be kept in a businesslike manner and be available for inspection by the members and the Directors at all reasonable times.

2.9 Voting rights of Members shall be as stated in Section 2.10 below. Such votes may be cast in person or by proxy. "Proxy" is defined to mean an instrument containing the appointment of a person designated by a Member to vote for him and in his place and stead. Proxies shall be in writing and shall be valid only for the particular meeting designated therein, and any adjournments of that meeting. A proxy must be filed with the Secretary of the Association before the appointed time of the meeting in order to be effective. Any proxy may be revoked prior to the time a vote is cast according to such proxy.

2.10 The following provisions shall govern the right of each Member to vote and the manner of exercising such right:

(a) Each Owner or the collective Owners of a Lot of record shall be entitled to one (1) vote in the Association with respect to matters on which a vote by the Owners is expressly required or permitted to be taken under the Declaration, the Articles or these Bylaws.



(b) The vote of the Owners of a Lot owned by more than one natural person, or by a corporation or other legal entity, shall be cast by the person named in a certificate executed by all of the Owners of the Lot, or if appropriate, by properly designated officers, partners, or principals of the legal entity, and filed with the Secretary of the Association. If such a certificate is not on file with the Secretary of the Association, the vote of such Lot shall not be considered for a quorum or for any other purpose.

(c) Notwithstanding the provisions of paragraph (b) of this Section 2.10, whenever any Lot is owned by a husband and wife, they may, but shall not be required to, designate a voting member. In the event a certificate designating a voting member is not filed by a husband and wife, the following provisions shall govern their right to vote:

(1) Where both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Lot owned by them. In the event they are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at the meeting.

(2) Where only one (1) spouse is present at a meeting, the person present may cast the vote for the Lot without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior notice to the contrary to the Association or the designation of a different proxy by the other spouse, the vote of said Lot shall not be considered.

(d) In the event that any Owner shall fail to pay an annual Assessment (or installment thereof) within ninety (90) days after such becomes due, the vote of the Lot owned by such Owner shall be suspended until such Assessment plus interest thereon and costs of collection thereof are paid to the Association.

(e) The foregoing provisions shall not apply to the Developer.

2.11 At any time prior to a vote upon any matter at a meeting of the Members, any Member may demand the use of a secret written ballot for voting on such matter. The Chairman of the meeting shall call for nominations for inspectors of election to collect and tally written ballots upon the completion of balloting upon the subject matter.

### Section 3. Board of Directors; Director's Meetings.

3.1 The form of administration of the Association shall be by a Board of not less than three (3) Directors nor more than seven (7) Directors, the exact amount to be determined from time to time in accordance with the Declaration, or the Articles. The Board shall initially consist of three (3) members, who need not be members of the Association.

3.2 The provisions of the Articles setting forth the selection, election, designation and removal of Directors by the Developer are hereby incorporated herein by reference.

3.3 Subject to Section 3.5 below and to the Developer's rights as set forth in the Declaration, the Articles and as set forth in Section 3.5(c) below, vacancies in the Board shall be filled by persons elected by the remaining Directors. Any such person shall be a Director as if, and have all of the rights, privileges, duties and obligations as a Director, elected at an Annual Members Meeting, and shall serve for the term prescribed in Section 3.4 of these Bylaws.

3.4 The term of each Director's services shall extend until the next Annual Members Meeting and until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided herein.

3.5(a) A Director elected by the Members, as provided in the Articles, may be removed from office upon the affirmative vote or the agreement in writing of a majority vote of the Members at a special meeting of the Members for any reason deemed by the Members to be in the best interests of the Association. A meeting of Members to so remove a Director elected by them shall be held, subject to the notice provisions of Section 2.4 hereof, upon written request of ten percent (10%) of the Members. However, before any Director is removed from office, he shall be notified in writing that a motion to remove him will be made prior to the meeting at which said motion is to be made, and such Director shall be given an opportunity to be heard at such meeting should he be present prior to the vote on his removal.

(b) Members shall elect, at a special meeting or at the Annual Members Meeting, persons to fill vacancies to the Board caused by the removal of a Director elected by Members in accordance with Section 3.5(a) above.

(c) A Director designated by Developer, may be removed only by Developer in its sole and absolute discretion and without any need for a meeting or vote. The Developer shall have the unqualified right to name a successor for any Director designated and thereafter removed by it, and Developer shall notify the Board of the name of the successor Director and the commencement date for the term of such successor Director.

(d) In the event a Director not designated by the Developer shall fail to pay Assessments within ten (10) days after he has been notified in writing by the Association that such Assessments are due, his Board membership shall automatically be terminated and if such Board member is an officer of the Board he shall automatically be discharged from his office. The provisions hereof shall not act to deprive the Developer of its right to designate officers or Directors.

3.6 The organizational meeting of a newly elected Board shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. No further notice of the organizational meeting shall be necessary.

3.7 Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Special Meetings of the Board may be called at the discretion of the President or the Vice President of the Association. Special meetings must be called by the Secretary at the written request of one-third (1/3) of the Directors.

3.8 Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally or by mail, telephone, or telegraph at least three (3) days prior to the day named for such meeting. Any Director may waive notice of a meeting before, during, or after a meeting, and such waiver shall be deemed equivalent to the receipt of notice by such Director.

3.9 A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as specifically otherwise provided in the Declaration, Articles, or elsewhere herein. If at any meeting of the Board, there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting being held because of such an adjournment, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, notice to the Directors of such adjournment shall be as determined by the Board.

3.10 The presiding officer at Board meetings shall be the President.

3.11 Director's fees, if any, shall be determined by a majority vote of the Members.

3.12 Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times.

3.13 The Board shall have the power to appoint various executive committees of the Board. Each committee shall act as a liaison to the Board and provide the Board with such information and reports as the Board may request. Executive committees shall consist of no more than three (3) persons. Executive committees shall have and exercise such powers as the Board may delegate to such executive committee. In addition to such executive committees of the Board, the Board may organize owners' committees in the Development consisting of no more than three (3) owners. Such committee shall be designated as a "non-official committee", and the Owners shall have no authority to act on behalf of the Board. However, the purpose of such Owners shall be to act as a liaison and to provide the Board with such information as the Board may deem appropriate and necessary to exercise its power.

3.14 Meetings of the Board shall be open to all Members. Unless a Member serves as a Director or unless he has been specifically invited by the Directors to participate in a meeting, subject to the requirements of Florida law, Members shall not be entitled to participate in any meeting of the Board, but shall only be entitled to act as an observer. In the event that a Member not serving as a Director or not otherwise invited by the Directors to participate in a meeting attempts to become more than a mere observer at such meeting, or conducts himself in a manner detrimental to the carrying on of such meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish such an expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he is a Member, unless said person was specifically invited by the Directors to participate in such meeting. Board members may attend a meeting via telephone conference call if a speaker phone is available so that all those present at the meeting can communicate.

3.15 Subject to the requirements of applicable law, the Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

#### Section 4. Powers and Duties of the Board of Directors.

All of the powers and duties of the Association including those existing under the Declaration, the Articles, and these Bylaws shall be exercised by the Board, unless otherwise specifically delegated to the Members. Such powers and duties of the Board shall be exercised in accordance with the provisions of the Declaration and these Bylaws, and shall specifically include all powers designated in the Declaration, the Articles, and these Bylaws, including, without limitation, the following:

4.1 Making and collecting special Assessments and annual Assessments against Members (collectively "Assessments") in accordance with the Declaration. These Assessments shall be collected by the Association through payments made directly to it by the Members.

4.2 Using the proceeds of Assessment in the exercise of the powers and duties of the Association and the Board.

4.3 Maintaining, repairing and operating the Development.

4.4 Reconstructing improvements after casualties and losses, and making further authorized improvements of the Development.

4.5 Making and amending rules and regulations with respect to the use of the Development.

4.6 Enforcing by legal means the provisions of the Declaration, the Articles, these Bylaws, and applicable provisions of law.

4.7 Contracting for the management and maintenance of the Development, and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules, and maintenance, and repair and replacement of the Common Areas and the Lots with funds that shall be made available by the Association for such purposes and other services.

4.8 Paying taxes and Assessments which are or may become liens against the Common Areas, if any, and assessing the same against the Members.

4.9 Purchasing and carrying insurance for the protection of the Owners, the Board, and the Association against casualty and liability.

4.10 Paying costs of all power, water, sewer, and other utility services rendered to the Development, and not billed to the Owners.

4.11 Hiring and retaining such employees as are necessary to administer and carry out the services required for the proper administration of the purposes of this Association, including the hiring of a resident manager and paying all salaries therefor.

Section 5. Officers of the Association.

5.1 The officers of the Association shall be a President, who shall be a Director, one (1) or more Vice Presidents, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed with or without cause from office by a vote of the Directors at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The Board shall, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

5.2 The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the President of an owner's association, including, but not limited to, the power to appoint such committees at such times from among the Members as he may, in his discretion, determine appropriate to assist in conducting the affairs of the Association. The President shall preside at all meetings of the Board.

5.3 In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board. In the event there shall be more than one (1) Vice President elected by the Board, then they shall be designated "First", "Second", etc., and shall exercise the powers and perform the duties of the President, in order.

5.4 The Secretary shall cause to be kept the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and shall be available for inspection by Members and Directors at all reasonable times. He shall have custody of the seal of the Association and shall affix the same to instruments requiring such seal when duly authorized and directed by the Board to do so. He shall keep the records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President. The

Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent, and shall assist the Secretary.

5.5 The Treasurer shall have custody of all of the property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the assessment rolls and accounts of the Members, keep the books of the Association in accordance with generally accepted accounting practices, and shall perform all of the duties incident to the office of a Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer whenever the Treasurer is absent, and shall assist the Treasurer.

5.6 The compensation, if any, of all officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from employing a Director as an employee of the Association or preclude the contracting with a Director for the management of the Development.

5.7 The offices of Secretary and Treasurer may be held by the same person.

5.8 A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the office he replaces.

#### Section 6. Accounting Records; Fiscal Management

6.1 The Association shall maintain accounting records in accordance with generally accepted accounting practices which shall be open to inspection by the Members or their authorized representatives at reasonable times. Such authorization as a representative of a Member must be in writing and signed by the Member giving such authorization and dated within sixty (60) days of the date of any such inspection.

6.2 (a) The Board shall adopt a budget of the common expenses for the Development for each forthcoming fiscal year, the date to be determined by the Board. Prior to the budget meeting, a proposed Budget shall be prepared by or on behalf of the Board for the Development, which shall include, but not necessarily be limited to, the following items of expense:

- i) Services
- ii) Utilities
- iii) Administration
- iv) Supplies and Materials
- v) Insurance
- vi) Repairs, Replacement and Maintenance
- vii) Professional Fees
- viii) Reserve Funds
- ix) Operating Capital
- x) Other Expenses

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In addition to the foregoing items of expense, the Budget(s) may include taxes, if the Board so determines.

Copies of the proposed Budgets and notice of the exact time and place of the budget meeting shall be mailed to each member at the Member's last known address, as reflected on the books and records of the Association, not less than thirty (30) days prior to said Budget Meeting. The Budget Meeting shall be open to the Members. The meeting may be held anywhere in Orange County, Florida as determined by the Board.

(b) The Board may also include in such proposed Budgets, either annually, or from time to time as the Board shall determine to be necessary, a sum of money as an Assessment for the making of betterment to the Development and for anticipated expenses of the Association which are not anticipated to be

incurred on a regular or annual basis. This sum of money so fixed may then be levied upon the members by the Board as Special Assessment. In addition, the Board shall, subject to the Declaration, include on an annual basis the establishment of reserve accounts for capital expenditures and deferred maintenance of the Development.

(c) In administering the finances of the Association, the following procedures shall govern:

(i) the fiscal year shall be the calendar year, unless a different fiscal year is adopted by the Board; (ii) any income received by the Association in any calendar year may be used by the Association to pay expenses incurred by the Association in the same calendar year; (iii) there shall be apportioned between calendar years on a prorata basis any expenses which are prepaid in any one calendar year for Common Expenses which cover more than such calendar year; (iv) Assessments shall be made annually in amounts no less than are required to provide funds in advance for payment of all of the anticipated current expenses and for all unpaid expenses previously incurred; and (v) Common Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such Common Expenses is received. Notwithstanding the foregoing, Assessments shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses and anticipated cash needs in any calendar year.

(d) The depository of funds of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

(e) A review of the accounts of the Association shall be made annually by an auditor, accountant, or Certified Public Accountant designated by the Board, and a copy of a report of such audit shall be furnished to each Director no later than the first day of April of the year following the year for which the report is made. The report shall be deemed to be furnished to the Director upon its delivery or mailing to the Director at his last known address as shown on the books and records of the Association.

(f) No Board shall be required to anticipate revenue from Assessments or expend funds to pay for common expenses not included in the Budget or which shall exceed budgeted items, and no Board shall be required to engage in deficit spending. Should there exist any deficiency which results from there being greater common expenses than income from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a special Assessment to be levied by the Board as otherwise provided in the Declaration.

6.3 The Association shall collect annual Assessments and special Assessments from the Owners in the manner set forth in the Declaration, the Articles, and these Bylaws.

6.4 As more fully described in the Declaration, each Member is obligated to pay to the Association annual and special Assessments which are secured by a continuing lien upon the property against which the assessment is made, and which are the personal obligation of the Member.

6.5 The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

#### Section 7. Rules and Regulations.

The Board may adopt Rules and Regulations, or amend or rescind existing Rules and Regulations, for the operation and the use of the Development at any meeting of the Board; provided, however, that such Rules and Regulations are not inconsistent with the Declaration, the Articles, or these Bylaws.

#### Section 8. Amendment of the Bylaws.

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8.1 These Bylaws may be amended by a majority vote of the Members present at an Annual Members Meeting or a special meeting of the Members and the affirmative approval of a majority of the Board at a regular or special meeting of the Board. A copy of the proposed amendment shall be sent to each Member along with the notice of the special meeting of the Members or Annual Members Meeting. An amendment may be approved at the same meeting of the Board and/or the Members at which such amendment is proposed.

8.2 An amendment may be proposed by either the Board or by the Members, and after being proposed and approved by one of such bodies, it must be approved by the other as above set forth in order to become enacted as an amendment.

8.3 No modification or amendment to these Bylaws shall be adopted which would affect or impair the priority of any Institutional Lender as that term is defined in the Declaration, the validity of the mortgage held by any such Institutional Lender as that term is defined in the Declaration, or any of the rights of the Developer.

8.4 As long as there is a Class B membership, as that term is defined in the Declaration, no modification or amendment to these Bylaws shall be adopted without the prior consent of the Federal Housing Administration and the Veterans Administration.

Section 9. Florida Law.

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To the extent Sections 617.301, et seq. Florida Statutes, as amended, prescribe procedures or requirements (including without implied limitation for providing notice of meetings, for maintaining records, or for exercising voting rights) in addition to or in conflict with the procedures and requirements contained in these Bylaws, then these Bylaws shall be deemed to include and conform to those statutes. Further, these Bylaws shall be deemed to include and authorize all powers, rights, and remedies permitted the Board, the Association, or the officers that are permitted in Section 617.301, et seq. Florida Statutes, as amended, even such powers, rights, and remedies as are not expressly addressed in these Bylaws.

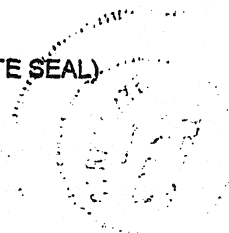
BUCKHEAD HOMEOWNERS' ASSOCIATION,  
INC., a Florida corporation

Print Name:

By: [Signature]  
12 W Houston Dr

Attest: [Signature]

(CORPORATE SEAL)



"D"

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## AGREEMENT

THIS AGREEMENT is made effective as of as of the \_\_\_ day of April, 2000 between ERP OPERATING LIMITED PARTNERSHIP, an Illinois limited partnership ("ERP"), whose address for purposes of this Agreement is Two North Riverside Plaza, Suite 400, Chicago, Illinois 60606, and BUCKHEAD OF ORLANDO INC., a Florida corporation ("Buckhead"), whose address for purposes of this Agreement is c/o Holston Properties and Development, Inc., 71 East Church Street, Orlando, Florida 32801-3409.

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### STATEMENT OF FACTS

- A. ERP holds fee simple title to that certain parcel of real estate commonly known and referred to as Mission Bay Apartments (the "ERP Parcel") and legally described on Exhibit A attached hereto.
- B. Buckhead holds fee simple title to that certain parcel of real estate located off of Buck Road approximately one thousand feet (1,000') east of the ERP Parcel (the "Buckhead Parcel") and is legally described on Exhibit B attached hereto.
- C. Buckhead is in the process of securing all necessary permits to develop the Buckhead Parcel into a single family residential community to consist of approximately 45 single family homes which community will be subject to a homeowners association to be established by Buckhead and to be named the Buckhead Homeowner's Association, Inc., (the "HOA").
- D. The Public Works Department of Orange County, Florida (the "County") rejects all responsibility to the stormwater drainage outfall pipeline (the "Drainage Pipe") that lies within the public right of way commonly known and referred to as Buck Road (herein so called) and claims that the Drainage Pipe was permitted and installed pursuant to a certain Right of Way Utilization/Underground Utility Permit #90-R-450 issued to Hubbard Construction, which company was hired by the original developer of the ERP Parcel and that the Drainage Pipe serves only the ERP Parcel. The County further claims that because the Drainage Pipe was never conveyed to the County, ERP retains ownership of the Drainage Pipe as well as all obligations of maintenance and repair thereto and that it is permitted to lie within the Buck Road right-of-way under the authority of Orange County Code Section 21-171-et. seq.
- E. As a result of the County's position that the Drainage Pipe is a private, stormwater outfall pipeline, the County, as a condition to its grant of the permits needed by Buckhead to develop the Buckhead Parcel, has required Buckhead to obtain the consent of ERP to connect the Buckhead Parcel stormwater drainage system into the Drainage Pipe.
- F. ERP hereby consents to Buckhead connecting the Buckhead Parcel stormwater drainage system into the Drainage Pipe and Buckhead has agreed to assume all obligations of maintenance, repair and replacement to the Drainage Pipe from the Buckhead Connection (as defined below) East to the current terminus of the Drainage Pipe.

**THEREFORE, IN CONSIDERATION** of the above Statement of Facts, the terms and mutual agreements and covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ERP and Buckhead agree as follows:

1. **INCORPORATION OF STATEMENT OF FACTS.** The Statement of Facts are incorporated by reference hereby and made a part hereof.
2. **DEFINITIONS.** Unless otherwise defined in this Agreement, the following terms shall have the following meanings within the context of this Agreement:



A. "Buckhead Connection" shall mean the connection of the proposed stormwater drainage system with the Buckhead Parcel which Hook-Up shall be constructed by Buckhead in accordance with plans and specifications approved by Orange County, Florida, with the Drainage Pipe located within the dedicated right-of-way of Buck Road.

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B. "HOA" shall mean Buckhead Homeowner's Association, Inc., a Florida Corporation Not for Profit, to be formed by the Developer and which will be formed to administer a declaration of covenants and restrictions, or some other similar declaration that will affect the Buckhead Parcel

C. "Law" shall refer to, as applicable, all laws, statutes, ordinances, orders, regulations, permits, licenses, approvals, development orders, and other requirements of governmental or quasi-governmental authorities, including without implied limitation courts and tribunals whether existing or subsequently enacted from time to time.

D. "Legal fees and costs" and similar terms shall refer to accountants' fees attorneys' fees, paralegals' fees, legal assistants' fees, and the costs and disbursements of accountants, attorneys, paralegals and legal assistants, whether or not administrative, arbitration, or judicial proceedings are commenced; and if administrative, arbitration, or judicial proceedings are commenced, such term shall include all such fees, costs, and disbursements through the trial or other initial proceedings and through all appellate levels, as well as all other fees, costs, and disbursements related to such proceedings, including the enforcement of any judgments.

E. "Section" shall refer to all numbered provisions of this Agreement included under any underlined heading or title. Any Section shall include all clauses and provisions contained between the underlined heading for that Section and the underlined heading of the following Section.

All of the defined terms contained in this Agreement, whether or not listed above in this Section, may be used in the singular or the plural and, except as the context may require otherwise, shall mean when used in the plural all objects, persons, and the like included in the definition, and when used in the singular any of the objects, persons, and the like included in the definition.

3. CONSENT AND CONVEYANCE.

A. ERP hereby consents to the Buckhead Connection to the Drainage Pipe subject to the terms and conditions of this Agreement.

B. Buckhead acknowledges and agrees that ERP shall retain ownership of the Drainage Pipe and that the obligations conveyed and accepted are limited solely to the maintenance, repair and replacement obligations to that portion of the Drainage Pipe beginning at the Buckhead Connection, East to the current terminus of the Drainage Pipe which distance is approximately Two Thousand Eight Hundred Fifteen feet (2,815') (the "Buckhead Drainage Pipe").

4. BUCKHEAD CONNECTION. The installation of the Buckhead Connection to the Drainage Pipe shall be subject to the following terms and conditions and as otherwise provided in this Agreement:

A. Buckhead shall, at its own cost and expense, use a qualified licensed Florida general contractor to install the Buckhead Connection, which shall be installed and maintained in accordance with (i) the plans and specifications prepared by a

licensed engineer and approved by the County (ii) sound and generally accepted engineering and construction practices and procedures, and (iii) any standards and specifications which may be prescribed by Orange County, Florida, including all County building and development codes and ordinances and/or by any governmental or quasi-governmental body or authority having jurisdiction.

- B. ERP expressly reserves the right to approve any and all future connections to the Drainage Pipe and strictly prohibits Buckhead from entering into any agreement with any other party without the prior written consent of ERP. ERP shall have the absolute right to deny any additional connections to the Drainage Pipe.
- C. Buckhead hereby expressly agrees to exercise the highest degree of care in order to avoid any damage to or interference with the existing Drainage Pipe that lies within Buck Road and that in the event of any damage to or interference with the Drainage Pipe, such damage or interference shall be promptly rectified at Buckhead's sole cost and expense, to ERP's satisfaction.

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5. MAINTENANCE OBLIGATIONS. In consideration of ERP's consent to the Buckhead Connection, Buckhead agrees to assume all obligations of maintenance, repair and replacement of the Buckhead Drainage Pipe subject to the following terms and conditions:

- A. Buckhead shall at all times throughout the term of this Agreement, promptly perform all maintenance, repairs and replacements to the Buckhead Drainage Pipe in a first-class manner and in compliance with all applicable Laws, in order that the Drainage Pipe will properly function in accordance with its intended purpose in a first-class manner, in accordance with all Laws.
- B. Buckhead shall not suffer or permit any lien or mechanics, materialmen, laborers or any similar lien to be placed against the Drainage Pipe or ERP's property, or any portions thereof with respect to work or services claimed to have been performed for, or materials claimed to have been furnished to or on behalf of Buckhead by contractors retained by or on behalf of Buckhead; and, in the event any such lien attaching, or claim thereof being asserted, Buckhead shall, within thirty (30) days after learning thereof, cause it to be released and, if necessary, removed of record.
- C. In the event Buckhead fails to maintain, repair or replace the Buckhead Drainage Pipe, ERP reserves the right, after 10 days' written notice to Buckhead (or in the event of an emergency, after such notice is practical under the circumstances) and without prejudice to any other remedy ERP may have, may make good such deficiencies and may charge to Buckhead all reasonable costs thereof, including ERP's expenses made necessary thereby.
- D. Buckhead shall not introduce from the Buckhead Parcel into the Drainage Pipe, any petroleum products or other products which are in violation of or will occasion a violation of any Laws and, Buckhead shall maintain filters or other types of controls so that any water introduced into the Drainage Pipe from the Buckhead Parcel shall meet and comply with allowable limits established by all Laws.

6. INDEMNIFICATION AND INSURANCE.

- A. Buckhead shall indemnify, defend and hold harmless, ERP and its related and affiliated entities and each of their respective past, present and future members, principals, beneficiaries, partners, officers, trustees, directors, employees, insurers,

mortgagee(s) (if any) and agents, and the respective principals and members of any such agents (collectively the "Equity Related Parties"), against and from, without limitation, all liabilities, obligations, damages, penalties, claims, costs, charges, expenses attorneys' fees, and other professional fees (if and to the extent permitted by law), which may be imposed upon, incurred by, or asserted against ERP or any of the Equity Related Parties and arising out of or in connection with, directly or indirectly, any act or omission of Buckhead, any contractor or subcontractor retained by Buckhead or any of their respective agents, servants, contractors or employees.

- B. Buckhead shall carry at all times, with respect to Buckhead's obligations under this Agreement, commercial general public liability insurance, including contractual liability, in an amount not less than Two Million and NO/100 Dollars (\$2,000,000.00) combined single limit per occurrence, comprehensive commercial automobile liability insurance, and workers compensation insurance sufficient to satisfy applicable statutory requirements. Such policy of insurance shall include the following language as the additional insured: "*ERP Operating Limited Partnership, Equity Residential Properties Trust and their related and affiliated entities as additional insureds*". Prior to the commencement of any work of any kind to be performed pursuant to the terms of this Agreement, including, but not limited to all work related to the Buckhead Connection and to the Drainage Pipe, and from time to time upon request of ERP, Buckhead shall furnish to ERP copies of policies or certificates evidencing such coverage, which policies or certificates shall state that such coverage may not be reduced, canceled or allowed to expire without at least thirty (30) days prior written notice to ERP.

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7. DEFAULT.

- A. If Buckhead defaults in the performance of any obligation imposed on Buckhead under this Agreement, then ERP, in addition to all other remedies available to it at law or in equity, after ten (10) days' prior written notice to Buckhead (or in the event of an emergency, after such notice is practical under the circumstances), shall have the right to perform such obligation on behalf of Buckhead. In such event, Buckhead shall promptly reimburse ERP for all costs incurred by ERP to cure such default, together with interest thereon from the date of payment by ERP, at the rate of 12% per annum.

- B. Any such claim for reimbursement, together with interest accrued thereon, shall be secured by an equitable charge and lien against the Buckhead Parcel, which lien shall be effective upon the recording of a notice thereof in the Office of the Clerk of Orange County, Florida. The lien shall be subordinate to any mortgage of record at the time of recording of such lien. Each such lien shall be foreclosed in the same manner as a mortgage may be foreclosed. Any cost or expense in filing such lien or in the prosecution or defense thereof, including reasonable attorney's fees at the trial and appellate levels, shall be paid by the non-prevailing party.

8. CONVEYANCE OF DRAINAGE PIPE TO COUNTY. Buckhead agrees to jointly pursue with ERP any and all reasonable steps to convey the Drainage Pipe to the County and cause the County to establish the Drainage Pipe as a public utility line and assume all obligations, including, but not limited to all obligations of maintenance, repair and replacement. Buckhead further agrees to share in all reasonable costs incurred by ERP associated with such conveyance to the County in order to release both ERP and Buckhead from any further interest either party has in and to the Drainage Pipe.

9. **CONSIDERATION AND OTHER COSTS.**

- A. In consideration of ERP's consent to the Buckhead Connection, Buckhead agrees to pay to ERP, upon execution of this Agreement, the sum of One Thousand Five Hundred and NO/100 Dollars (\$1,500.00).
- B. Buckhead shall also pay all reasonable attorneys' fees, including in-house counsel fees incurred by ERP in connection with the preparation and review of this Agreement and any related documentation. Buckhead further agrees to pay all reasonable attorney's fees already incurred by ERP in connection with the review of the issues surrounding the County's assertion that ERP must consent to the Buckhead Connection.

10. **HOA ASSUMPTION OF OBLIGATIONS.** At such time as the HOA is incorporated, Buckhead shall assign all rights and duties herein to HOA and HOA shall assume all the obligations of Buckhead under this Agreement.

11. **CUMULATIVE REMEDIES, SPECIFIC PERFORMANCE.** Remedies provided to the parties by this Agreement, at law, and in equity are cumulative. No remedy shall be exclusive of any other remedies. A party's exercise of any particular remedy shall not be exclusive of any other remedies. Without limiting the foregoing, the parties expressly acknowledge the remedy of specific performance is an appropriate remedy under this Agreement, and may be exercised in the event of a party's default.

12. **COUNTERPARTS.** This Agreement may be executed in any number of identical counterparts, any or all of which may contain signatures of fewer than all of the parties but all of which shall be taken together as a single instrument.

13. **WAIVER.** No waiver of any provision hereof shall be effective unless executed in writing by the party claimed to have made the waiver. No waiver of a provision hereof shall constitute a continuing waiver. A party's forbearance to enforce any available rights or to exercise any available remedy, or to insist upon strict compliance herewith, shall not be deemed a waiver or forfeiture of such rights, remedies or strict compliance. A party's acceptance of any late or inadequate performance, shall not constitute a waiver of forfeiture of that party's right to treat such performance as an event of default or to require timely and adequate performance in the future. Any party may at any time insist on strict compliance with the terms, obligations, covenants, conditions, and requirements of this Agreement, notwithstanding any custom, practice, or course of dealing between or among the parties to the contrary.

14. **SEVERABILITY.** If any provision (or portion of a provision) of this Agreement, the deletion of which would not adversely affect a party's enjoyment of any material benefit intended by this Agreement nor substantially increase the burden of either party under this Agreement, is found to be invalid or unenforceable, that provision (or portion thereof) will be severed from this Agreement and the remainder of this Agreement will continue to be binding and enforceable.

15. **ATTORNEYS' FEES.** If either party initiates or is made a party to legal proceedings (whether judicial, administrative, declaratory, in arbitration, or otherwise) in connection with this Agreement, then the nonprevailing party in those proceedings will pay the costs and reasonable attorneys' fees, including the costs and attorneys' fees of appellate proceedings, incurred by the prevailing party. This obligation to pay attorneys' fees and costs will apply also to settlements of disputes and to collection efforts.

16. **PERSONS BOUND.** If either party consists of more than one person or entity, all such persons and entities will be jointly and severally liable under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors-in-interest. This Agreement is for the benefit only of the parties or their successors-in-interest. No other person shall be

entitled to rely hereon, receive any benefit herefrom or, enforce any provision of this Agreement against any party.

17. **ENTIRE AGREEMENT.** This Agreement embodies the entire understanding of the parties, and all negotiations, representations, warranties, and agreements made between the parties are merged herein. The making, execution and delivery of this Agreement by both parties has been induced by no representations, statements, warranties or agreements that are not expressed herein. There are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This Agreement may not be amended or modified except by written agreement of all parties.

18. **APPLICABLE LAWS.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

19. **CONSTRUCTION.** Whenever the context permits, or requires the use of the singular in this Agreement shall include the plural, and the plural shall include the singular. Any reference herein to one gender shall likewise apply to the other gender and to the neuter; and any reference herein to the neuter shall refer likewise to one or both genders. Any reference herein to a person shall include trusts, partnerships, corporations, and any other entity, as appropriate.

20. **FORCE MAJEURE.** If the performance required of either party under this Agreement is delayed by act of God, civil commotion, governmental or sovereign conduct (including but not limited to delays in the issuance of permits or approvals), restrictive laws or regulations, the conduct of any person not a party hereto, or any other cause without fault to and beyond the control of the obligated party (financial inability excepted), then that party shall be excused from such performance for the period of time that is reasonably necessary to remedy the effects of the occurrence causing the delay. Nothing in this provision shall be construed as relieving a party from any obligation hereunder timely to make a payment of any charge or other monetary obligation.

21. **RELATION OF PARTIES.** The parties are not partners, joint venturers, principal and agent, co-shareholders or similarly related; and no provision of this Agreement shall be construed to create any such relationship between the parties. Neither party shall have authority to bind or otherwise act on behalf of the other party. This Agreement shall not be construed to make either party the fiduciary of the other.

22. **FAIR AND USUAL MEANING.** The language used in this Agreement will be construed according to the fair and usual meaning of the language, and will not be strictly construed for or against either party.

23. **TERM AND RECORDATION.** The Buckhead Parcel shall be held, conveyed, leased, mortgaged, and otherwise dealt with subject to the terms and obligations of this Agreement and shall run with the Buckhead Parcel and be binding upon all persons having and/or acquiring any right, title or interest in the Buckhead Parcel or any portion thereof, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the Buckhead Parcel, or any portion thereof. This Agreement shall be recorded in the Official Public Records of Orange County, Florida.

24. **NOTICES.** All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and delivered personally or by certified mail, return receipt requested, postage prepaid, by telecopy or other facsimile transmission, or by overnight courier, addressed as follows:

To ERP: Two North Riverside Plaza  
Suite 400  
Chicago, IL 60606  
Attn: General Counsel  
Fax: 312/454-0039

OR Bk 6037 Pg 3679  
Orange Co FL 2000-0277471

W/copies to: c/o Mission Bay Apartments  
3378 Mission Lake Drive  
Orlando, FL 32817  
Attn: Property Manager  
Fax: 407/679-3220

To Buckhead: c/o Holston Properties and Development, Inc.  
71 East Church Street  
Orlando, FL 32801-3409  
Attn: Bob Holston  
Fax: 407/299-0011

All notices given in accordance with the terms hereof shall be deemed given and received when sent or when delivered personally. Either party hereto may change the address for receiving notices, requests, demands or other communication by notice sent in accordance with the terms of this Section 22.

IN WITNESS WHEREOF, the parties hereto have affixed their hand and seal effective as of the date first written above.

Signed, sealed and delivered in the presence of:

ERP OPERATING LIMITED PARTNERSHIP,  
an Illinois limited partnership

By: Equity Residential Properties Trust, a  
Maryland real estate investment trust, its  
general partner

By: Barry Altshuler  
Barry Altshuler  
As Its: Vice President

Kirk J. Altman  
Kirk J. Altman  
Print Name Below Signature

Donna Aselle  
Donna Aselle  
Print Name Below Signature

BUCKHEAD OF ORLANDO, INC.,  
a Florida Corporation


By: Robert Holston  
Robert Holston  
As Its: President

Christopher L. Kaminski  
Christopher L. Kaminski  
Print Name Below Signature

Rowland A. June II  
Rowland A. June II  
Print Name Below Signature

STATE OF FLORIDA  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of April, 2000, by Barry Altshuler, as Vice President of Equity Residential Properties Trust, a Maryland real estate investment trust, general partner of ERP OPERATING LIMITED PARTNERSHIP, an Illinois limited partnership, who is personally known to me.


 Josee Santo  
My Commission CC762277  
Expires July 26, 2002

Josee Santo  
Notary Public  
JOSEE SANTO  
Print Name Below Signature  
7/26/02  
My Commission Expires  
CC762277  
Serial Number

OR Bk 6037 Pg 3681  
Orange Co FL 2000-0277471

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of April, 2000, by Robert Holston, as President of Buckhead of Orlando, Inc., a Florida Corporation, who is  personally known to me  or who has produced \_\_\_\_\_ as identification and who did not take an oath.

 Jeffrey Sedloff  
Commission # CC 835045  
Expires June 25, 2003  
Bonded Thru  
Atlantic Bonding Co., Inc.

Jeffrey Sedloff  
Notary Public  
Jeffrey A. Sedloff  
Print Name Below Signature  
6/25/03  
My Commission Expires  
CC 835045  
Serial Number

**EXHIBIT A**

OR Bk 5977 Pg 2314  
Orange Co FL 2000-014444

**ERP PARCEL LEGAL DESCRIPTION**

OR Bk 6037 Pg 3682  
Orange Co FL 2000-0277471

**MISSION BAY (ORANGE COUNTY):**

Commencing at the Northwest corner of Section 8, Township 22 South, Range 31 East, Orange County, Florida, run thence South 89° 58' 33" East, along the North line of the Northwest 1/4 of the Northwest 1/4 a distance of 1064.56 feet; thence South 00° 01' 39" West, a distance of 75.07 feet, for a Point of Beginning. Thence continue South 00° 01' 39" West, 85.00 feet; thence South 19° 02' 09" East, 150.11 feet; thence South 28° 54' 34" East, 167.93 feet; thence North 72° 00' 55" East, 162.56 feet to the East line of West 1/2 of the Northwest 1/4 of Section 8, Township 22 South, Range 31 East; thence South 00° 09' 02" East along the East line for a distance of 1409.14 feet; thence North 87° 51' 04" West, 246.13 feet; thence South 50° 25' 48" West, 41.57 feet; thence North 39° 11' 02" West, 164.14 feet; thence South 58° 29' 10" West, 119.76 feet; thence South 86° 08' 37" West, 121.41 feet; thence North 65° 09' 41" West, 218.93 feet; thence South 65° 37' 25" West, 77.27 feet; thence South 76° 54' 32" West, 36.61 feet; thence South 39° 31' 08" West, 23.41 feet; thence South 54° 59' 01" West, 77.78 feet; thence North 65° 40' 34" West 86.91 feet; thence North 85° 04' 02" West 151.66 feet to the East right of way line of Dean Road; thence North 04° 17' 09" East along said right-of-way line a distance of 569.99 feet; thence South 89° 58' 33" East, 505.71 feet; thence North 00° 25' 27" West, 265.71 feet; thence North 89° 34' 33" East, 111.33 feet; thence North 47° 57' 51" East, 124.39 feet; thence North 47° 51' 43" East, 165.71 feet; thence North 02° 02' 48" East, 201.03 feet; thence North 29° 39' 12" East, 95.78 feet; thence North 15° 09' 42" West, 231.06 feet; thence North 00° 01' 39" East, 130.40 feet; thence South 89° 58' 09" East, 9.94 feet; thence South 00° 17' 15" East, 11.00 feet; thence South 89° 58' 21" East for a distance of 53.00 feet to the Point of Beginning.

**LESS THE FOLLOWING:**

That portion as conveyed to COUNTY OF ORANGE by virtue of that certain Deed recorded September 30, 1992 in Official Records Book 4467, page 1890, as described as follows:

Commence at the Northwest corner of the Northwest 1/4 of Section 8, Township 22 South, Range 31 East, Orange County, Florida: Thence run S. 00° 58' 48" E. along the West line of the Northwest 1/4 of the Northwest 1/4 for a distance of 1343.37 feet to the Northwest corner of the Southwest 1/4 of the Northwest 1/4 of said Section 8; thence run N. 89° 33' 43" E. along the North line of the Southwest 1/4 of the Northwest 1/4, a distance of 147.14 feet to the existing East right-of-way of Dean Road for the point of beginning; thence run N. 04° 00' 13" E. along said East right-of-way a distance of 180.56 feet; thence departing said right-of-way run N. 89° 44' 31" E. parallel with the north line of the Northwest 1/4 of said Section 8, a distance of 30.08 feet; thence S. 04° 00' 13" W., a distance of 471.12 feet; thence S. 00° 03' 33" W., a distance of 101.77 feet; thence N. 86° 20' 58" W., a distance of 37.00 feet to the existing East right-of-way of Dean Road; thence run N. 04° 00' 13" E., along said East right-of-way a distance of 389.43 feet to the point of beginning.

**TOGETHER WITH EASEMENT PARCEL 1:**

A perpetual non-exclusive easement being Landscape Easement Number One and Landscape Easement Number Two as described in Item 2 as set forth in Declaration of Easement, Restrictions, Conditions and Covenants, dated March 9, 1990 and recorded March 19, 1990 in Official Records Book 4166, page 2478, Public Records of Orange County, Florida.

**TOGETHER WITH EASEMENT PARCEL 2:**

A perpetual non-exclusive easement being Landscape Easement Number Three and Landscape Easement Number Four as described in Item 3 as set forth in Declaration of Easement, Restrictions, Conditions and Covenants, dated March 9, 1990 and recorded March 19, 1990 in Official Records Book 4166, page 2478, Public Records of Orange County, Florida.

**TOGETHER WITH EASEMENT PARCEL 3:**

A perpetual non-exclusive easement being Sanitary Sewer Easement Number One as described in Item 4 as set forth in Declaration of Easement, Restrictions, Conditions and Covenants, dated March 9, 1990 and recorded March 19, 1990 in Official Records Book 4166, page 2478, Public Records of Orange County, Florida.

**TOGETHER WITH EASEMENT PARCEL 4:**

A perpetual non-exclusive easement being Drainage Easement No. 3 and Retention Area Easement No. 2 as set forth in Declaration of Easements, Restrictions, Conditions and Covenants, dated March 9, 1990 and recorded March 19, 1990 in Official Records Book 4166, page 2478, Public Records of Orange County, Florida.



OR Bk 5977 Pg 2315  
Orange Co FL 2000-0144444

EXHIBIT B

Recorded - Martha O. Haynie

**BUCKHEAD PARCEL LEGAL DESCRIPTION**

The East one-half (E1/2) of the West one-half (W1/2) of the Southeast one-quarter (SE1/4) of the Northwest one-quarter (NW1/4) of Section 8, Township 22 South, Range 31 East (Less Road Right of Way) in Orange County, Florida.

OR Bk 6037 Pg 3683  
Orange Co FL 2000-0277471

Recorded - Martha O. Haynie

COPY