

Record and Return to:  
HECTOR FORMOSO-MURIAS, ESQ.  
FORMOSO-MURIAS, P.A.  
1101 Brickell Avenue, Penthouse  
Miami, Florida 33131

96-386652 TH001  
08-08-96 10:39AM

DECLARATION OF RESTRICTIONS,  
PROTECTIVE COVENANTS AND EASEMENTS FOR  
COCO BAY

THIS DECLARATION is made this 5th day of August, 1996, by NEXT COCO BAY, LTD., a Florida limited partnership, hereinafter called "Declarant", which declares that the real property described in Article II herein, which is owned by Declarant, is and shall be held, transferred, sold, conveyed and utilized subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I.  
Definitions

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

- (a) "Articles" shall mean and refer to the Articles of Incorporation of the Association, a true copy of which is attached hereto as Exhibit "A", as amended from time to time.
- (b) "Association" shall mean and refer to COCO BAY HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit.
- (c) "Board of Directors" shall mean and refer to the Board of Directors of the Association and, where applicable, any officer of the Association acting at the direction of the Board of Directors.
- (d) "By-Laws" shall mean and refer to the By-Laws of the Association, a true copy of which is attached hereto as Exhibit "B", as amended from time to time.
- (e) "CAB" shall mean and refer to the Community Appearance Board.
- (f) "Coco Bay", "Community" and "Development" shall mean and refer to all such existing properties and additions thereto as are now and hereafter made subject to this Declaration and which are intended to be made part of a common scheme of development in the manner specified

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hereunder, the initial portion of which is more particularly described in Exhibit "C" attached hereto and by this reference made a part hereof.

- (g) "Common Areas" shall mean and refer to all real property (and interests therein and improvements thereon) and personal property owned and leased by or dedicated to the Association for the common use and enjoyment of the Owners, together with the landscaping and any improvements thereon as Declarant may construct from time to time, including, without limitation, all structures, facilities, open space, walkways, sprinkler systems, and lighting installations, but excluding any public utility installations thereon, and also excluding all Units. The Common Areas shall consist of all portions of the Development which are not Units, nor dedicated to a governmental entity or the public, including the open spaces between the Units, access roads to the Units and the parking areas lying within the Development. Said Common Areas shall contain, but not be limited to, the surface water management system as permitted by the South Florida Water Management District including, but not limited to: lakes; retention and detention ponds; landscape buffers; wetlands mitigation or preservation areas and easements; conservation areas; culverts; drainage facilities; ditches; and related appurtenances thereto. All the Common Areas shall be operated and maintained by the Association as provided hereinafter.
- (h) "Conservation Easement" shall mean and refer to the Deed of Conservation Easement granted by Next Coco Bay, Ltd., on August 3, 1995 to Broward County and the South Florida Water Management District, a true copy of which is attached hereto as Exhibit "D", as amended from time to time, and by this reference made a part hereof.
- (i) "Declarant" shall mean and refer to Next Coco Bay, Ltd., a Florida limited partnership, its successors and such of its assigns as to which the rights of Declarant hereunder are specifically assigned by written instrument. Declarant may assign all or any portion of its rights hereunder on an exclusive or nonexclusive basis or in connection with all or only a portion of the Community. In the event of any assignment of Declarant rights other than an exclusive assignment of all of such rights as to all of the Community, the assignee thereunder shall not be the Declarant but may exercise such specific rights which are assigned to it. Notwithstanding any assignment as aforesaid whatsoever, no amendment may be made to this Declaration, the Articles or By-Laws without the prior written consent of Next Coco Bay, Ltd., a Florida limited partnership, as long as same owns any property in Coco

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- (j) "Exotic Vegetation" shall include, but is not limited to, melaleuca, Brazilian pepper, Australian pine, and Japanese climbing fern.
- (k) "Institutional Lender" shall mean and refer to any bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension fund, government agency, government-chartered company, Declarant, Declarant's affiliates, any other lender generally recognized in Broward County, Florida as an institutional lender, and any and all of the successors and assigns of the foregoing, provided that any such entity holds a first mortgage on a Unit.
- (l) "Limited Common Areas" shall mean and refer to such portions of the Common Areas as are designated as Limited Common Areas by Declarant from time to time and are intended for the exclusive use of the Owner(s) of a specific Unit(s). Without limiting the generality of the foregoing, assigned parking spaces (if any) shall be Limited Common Areas of the Units which they serve. Unless otherwise provided or the context indicates specifically to the contrary, reference herein to the Common Areas shall include Limited Common Areas.
- (m) "Maintenance Plan" shall mean and refer to the Maintenance and Monitoring Plan approved by the South Florida Water Management District, a true copy of which is attached hereto as Exhibit "F", as amended from time to time, and by this reference made a part hereof.
- (n) "Member" shall mean and refer to all those Owners of record title to any Unit, as provided in Article III, Section 1, hereof.
- (o) "Notice Signage" shall mean and refer to permanent markers and signs installed at the edge of a Unit/buffer line informing Members of the conservation status of the areas protected under the Conservation Easement.
- (p) "Nuisance Vegetation" shall include, but is not limited to, cattails, primrose willow and grape vine.
- (q) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit situated within the Community.
- (r) "Permit" shall mean and refer to District Surface Water Management Permit (Permit No. 06-00551-S-17) issued by

the South Florida Water Management District on July 13, 1995, a true copy of which is attached hereto as Exhibit "E".

- (s) "Unit" shall mean and refer to any parcel within the Community, on which a single-family residential dwelling is constructed by Declarant and conveyed by recorded deed to a purchaser thereof. Each Unit shall be subject to the easements described in Article IV hereof.

## **ARTICLE II.**

### **Property Subject to this Declaration**

**Section 1. Legal Description.** The real property which initially is and shall be held, transferred, sold, conveyed and utilized subject to this Declaration is located in Broward County, Florida, as more particularly described in Exhibit "C", and shall initially constitute the Development.

**Section 2. Annexation by Declarant.** Until such time as Class B membership (as such term is hereinafter defined) to the Association has ceased pursuant to the provisions of ARTICLE III hereof, additional residential properties and land may be annexed to the Development with the approval and consent of the Declarant. No consent from any other party except as listed directly above, including Class A members, or any mortgagees of any Units shall be required. Such annexed portions shall be brought within the scheme of this Declaration subject to any and all applicable local, state and federal laws by the recording of a Short Form Notice of Declaration in the Public Records of Broward County, Florida. The Short Form of Declaration shall refer to this Declaration and shall, unless specifically otherwise provided, incorporate by reference all the terms, protective covenants and conditions of this Declaration, thereby subjecting said annexed lands to such terms, covenants, conditions and restrictions as fully as though said annexed lands were described herein. Such Notice of Declaration may contain such additions or modifications of the covenants and restrictions contained in this Declaration as may be appropriate in the Declarant's judgment to reflect the different character, if any, of the added portions. Nothing in this Declaration, however, shall obligate Declarant to add to the initial portion of the Development or to develop future portions of the Development under a common scheme, nor to prohibit Declarant (or the applicable Declarant-affiliated Owner) from rezoning and changing the development plans with respect to such future portions or from adding additional or other property to the Development under a common scheme. All Owners, by acceptance of a deed to their Units, thereby automatically consent to any such rezoning, change, addition or deletion thereafter made by Declarant (or the applicable Declarant-affiliated Owner) and shall evidence such consent in writing if requested to do so by Declarant at any time.

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**Section 3. Annexation by Members.** At such time as Class B Membership has ceased pursuant to the provision of ARTICLE III hereof, additional lands and properties may be annexed with the consent of two-thirds (2/3rds) of the vote of the membership in the Association.

**ARTICLE III.  
Membership and Voting Rights in the Association**

**Section 1. Membership.** Every person or entity who is a record Owner of a fee or undivided fee interest in any Unit which is subject to this Declaration shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association.

**Section 2. Voting.** The Association shall have two (2) classes of voting membership:

**Class A.** Class A Members shall be all those Owners as defined in Section 1 with the exception of Declarant (as long as the Class B membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify). Class A Members shall be entitled to one (1) vote for each Unit in which they hold the interest required for membership by Section 1. When more than one (1) person holds such interest or interests in any Unit, all such persons shall be Members, and the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Unit.

**Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote entitled to be cast at any time and from time to time by the Class A Members (e.g., if Class A members have a total of twenty (20) votes among them, the Class B Member would have forty-one (41) votes). The Class B Membership shall cease and terminate when the earlier of the following events occurs: (i) three (3) months after 75% of the Units within the Development have been sold and conveyed by Declarant; (ii) December 31, 2000; or (iii) when Declarant elects to terminate the Class B Membership (whereupon the Class A Members shall be obligated to elect the Board of Directors and assume control of the Association subject to any exercise of Declarant's rights in Section 4 herein.

**Section 3. General Matters.** Unless otherwise specifically indicated to the contrary, when reference is made herein, or in the Articles, By-Laws, Rules and Regulations, any management contract or otherwise, to a majority or specific percentage or portion of members, such reference shall be deemed to be reference to a majority or specific percentage or portion of the votes of Members and not of the Members themselves.

**Section 4. Additional Declarant Voting Rights.** Declarant shall be entitled but not obligated to elect at least one member of the Board of Directors as long as the Declarant holds for sale in the ordinary course of business at least 5% of the Units in the Community.

**Section 5. Additional Classes of Members.** The Association may create such additional classes or types of memberships in the Association as may be permitted by the Articles of Incorporation and By-Laws of the Association from time to time.

**ARTICLE IV.  
Property Rights in the Common Areas;  
Other Easements**

**Section 1. Members' Easements.** Except as provided in Section 5 herein below, the portions of the Common Areas not used from time to time for driveway (other than Limited Common Areas) purposes shall be for the common use and enjoyment of the Members of the Association, and each Member shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such property as are suitable for pedestrian traffic and for the use of the same as common open space in such manner as may be regulated by the Association. 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 Unit for the purpose of maintaining the Common Areas, Units (to the extent applicable) and facilities in compliance with the provisions of this Declaration and with the restrictions on any plat(s) of the Community.

(b) The right of the Association to suspend the right of an Owner to use any of the facilities located in the Common Areas for any period during which any assessment against such Owner's Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations.

(c) The right of the Association to charge reasonable fees for the use of designated facilities (if any) situated on the Common Areas.

(d) The right of the Association to adopt, at any time and from time to time, and enforce reasonable rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon, including the right to fine Members as provided in Article X hereof. Any rule, and/or regulation, as the same may be modified, shall apply until rescinded by a majority of the Board of Directors of the Association.

(e) The right to the use and enjoyment of the Common Areas and facilities thereon shall extend to all Members' invited guests, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

(f) The right of Declarant to permit such persons as Declarant, by written instrument signed by a Vice President or more senior officer of Declarant, shall designate to use the Common Areas and all facilities located thereon.

(g) The right of Declarant to designate any portion(s) of the Common Areas as Limited Common Areas, thereby restricting the use thereof to fewer than all Owners, as well as the right of the Declarant to have access to the Common Areas to complete the construction of improvements thereon.

(h) The right of Declarant to give, dedicate, or sell all or any portion of the Development to any public agency, authority or utility or private concern for such purposes and subject to such conditions as may be determined by Declarant;

(i) The right of the Association to meet all the requirements and criteria of the Surface Water Management Permit as secondary operator and the right to maintain the Conservation Easement Area including the right to enforce the conditions of the permit and easement as against Owners through fines and/or penalties. In the event the South Florida Water Management District requires water quality monitoring, the Association shall be responsible for implementing the required water quality monitoring as well as mitigate adverse water quality impacts, if any.

(j) The other provisions of this Declaration and the Articles and By-laws.

**Section 2. Utility Easements.** Use of the Common Areas for utilities, as well as use of the other utility easements over, under or through the Development, shall be in accordance with the

applicable provisions of this Declaration. Declarant and its affiliates and its and their designees shall have the right also to install and maintain security and other communications lines, connections and equipment in the Development, and perpetual easements are hereby reserved for Declarant, its affiliates and such designees over the Community for this purpose. Likewise, each Owner and each appropriate utility company or agency shall have an easement for the purpose of installing and maintaining all utility lines, connections and equipment serving a Unit and now or hereafter located on the Common Areas or other Units in accordance with this Declaration. All use of utility and communication easements shall be in accordance with the applicable provisions of this Declaration.

**Section 3. Public Easements.** Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas for the purpose of performing their duly authorized duties.

**Section 4. Conservation Easement.** The South Florida Water Management District, pursuant to the Conservation Easement, has the right to enter upon the Property, as such term is defined therein, at reasonable time to enforce the rights therein granted and enjoin any activity on or use of the Property that is inconsistent with the Conservation Easement and to enforce the restoration of such areas or feature of the Property that may be damaged by any inconsistent activity or use. The following activities are prohibited in or on the Property: (a) construction or placing buildings, road, signs, billboards or other advertising, utilities, or other structures on or above the ground; (b) dumping or placing soil or other substances or material as landfill, or dumping or placing trash, waste, or unsightly or offensive materials; (c) removal or destruction of trees, shrubs, or other vegetation, except for the removal for Exotic Vegetation and Nuisance Vegetation in accordance with the Maintenance Plan; (d) excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface; (e) surface use except for purposes that permit the land or water area to remain in its natural condition; and (f) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

**Section 5. Ownership.** The Common Areas, subject to the present or future designation of Limited Common Areas, are hereby dedicated to the joint and several use, in common, of the Owners of all Units that may from time to time constitute part of the Development, in the manner specified in this Declaration. The Common Areas (or appropriate portions thereof) shall, upon the later of completion of the improvements thereon or three (3) months after seventy five percent (75%) of the units within the Development have been conveyed by Declarant (or at any time and from time to time sooner, at the sole election of Declarant), be



conveyed to the Association, which shall automatically be deemed to have accepted such conveyance and accepted the permanent and full responsibility for the perpetual maintenance of the Conservation Easement and agrees to take action against any Member to enforce the conditions of the Conservation Easement and the Permit. Beginning from the date this Declaration is recorded, the Association shall be responsible for the maintenance of such Common Areas (whether or not then conveyed or to be conveyed to the Association), such maintenance to be in a continuous and satisfactory manner without cost to the general taxpayers of Broward County, Florida. It is intended that all real estate taxes against the Common Areas owned or to be owned by the Association shall be proportionally assessed against and payable as part of the taxes of the Units within the Development, the value of such Common Areas being *ipso facto* included in the value of the Units. However, in the event that any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property on such land, which taxes accrue from and after the date this Declaration is recorded, and such taxes shall be prorated between Declarant and the Association as of the date of such recordation. Unit Owners shall have the right to peacefully assemble and the right to invite officers or candidates for public office to appear to speak in Common Areas. Declarant shall have the right from time to time to enter upon the Common Areas for the purpose of the construction of any facilities on the Common Areas or elsewhere in the Development that Declarant elects to build, and to use the Common Areas and other portions of the Development for sales, leasing, displays and signs or for any other purpose during the sales, leasing, management or construction of any portion of the Development. Without limiting the generality of the foregoing, Declarant shall have the specific right to maintain upon any portion of the Common Areas sales, administrative, construction or other offices without charge, and appropriate easements of access and use are expressly reserved unto Declarant, its 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, offices or facilities. Accordingly, Declarant shall not be liable for delays in such completion to the extent resulting from an abatement of same because of the need or desire to use such offices or facilities and/or the conducting of the above-referenced activities on portions of the Common Areas to be so completed. From and after the time that title to the Common Areas is vested in the Association, the Association may neither mortgage nor convey the Common Areas without the consent of at least two-thirds (2/3rds) of the Owners other than the Declarant.

**Section 6. Other Easements.** Easements are reserved over each Unit and the Common Areas in favor of each other Unit and the Common Areas in order to permit maintenance and repairs of improvements on any Unit or to the Common Areas by the Association.

The Association shall have a permanent and perpetual easement for ingress and egress over and across the Insured Property, as defined in Article VI, for the purpose of repairing, restoring or rebuilding any portion of the Insured Property in the event of damage thereto. Said easement shall extend to any person or entity designated to make such repairs by the Association or by the insurance company insuring said Insured Property against loss, damage or destruction.

**Section 7. Maintenance Easement.** Easements are reserved over the front yards of each Unit and side yards if any, which are adjacent to streets of each Unit, in favor of the Association in order to permit the Association to maintain the landscape to the satisfaction of the City of Coconut Creek, Florida as required under the City Ordinance No. 150-94. Upon recordation of this Declaration, the Association shall be responsible for maintaining said front yards and side yards.

**Section 8. Five Foot Easement.** All Units in Coco Bay are adjacent to another Unit wherein a dwelling on the adjacent Unit has been constructed on and abutting the common boundary line between the two Units. There is hereby created a five-foot easement upon each Unit, running parallel to such common boundary line upon which a dwelling has been constructed on the adjacent Unit abutting such common boundary line. This shall be a perpetual easement running with the land for the benefit of such adjacent Unit for the purposes and uses of drainage, roof overhang, utilities and access for maintenance of the dwelling constructed upon the boundary line.

**Section 9. Easements Appurtenant.** The easements in favor of Owners provided in this Article IV shall be appurtenant to and shall pass with the title to each Unit.

#### **ARTICLE V. Maintenance**

**Section 1. Maintenance of Common Areas.** The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Areas and the paving, drainage structures, lighting fixtures (if any) and appurtenances, landscaping, improvements and other structures, (except public utility installations) situated on the Common Areas, all such work to be done as ordered by the Board of Directors. Maintenance of said lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. All work pursuant to Section 1 and all expenses hereunder and all work pursuant to Section 6 Article IV relating to the Maintenance Easement and all expenses therein and all work pursuant to Section 5 herein relating to the Conservation Easement and Permit and all expenses therein shall be paid for by assessments imposed in accordance with Article VI. No Owner may waive or otherwise

escape liability for assessments by non-use (voluntary or otherwise) of the Common Areas or abandonment of his rights to use the Common Areas, nor shall an Owner escape liability for assessments by the non-use of his Unit.

**Section 2. Limitations on Use.** The portions of the Common Areas set aside for landscaping and pedestrian use shall be used for the purposes of landscaping, for installation and maintenance of underground utilities and lines, and for pedestrian ingress and egress to Units and to the Common Areas, and shall not be used by Owners of the respective Units for parking or for any other purposes without the prior written consent of the Board of Directors of the Association. No driveway access or vehicular access shall be permitted to any Units across any landscaped and pedestrian areas.

**Section 3. Access at Reasonable Hours.** For the purpose solely of performing the maintenance authorized by this Article and all of the removal, maintenance and other work and inspections permitted under this Declaration including but not limited to Section 6 of Article IV, the Association, through its duly authorized agents, employees or independent contractors, shall have the right, after reasonable written notice to the Owner, to enter upon any Unit at reasonable hours on any day and an easement therefor is hereby expressly declared. Such notice shall not be required in the event of an emergency where a delay in entry would result in damage to any Unit, Common Area or persons or other property.

**Section 4. Maintenance of Surface Waters.** The Association shall maintain all surface waters within Coco Bay. This shall include, but not be limited to, control of floating and emergent aquatic vegetation in surface waters and on adjacent lake slopes and banks.

**Section 5. Maintenance of Conservation Easement Area.** The Association shall comply with all the requirements of the Maintenance Plan, including, but not limited to maintaining the Conservation Easement area free of Exotic Vegetation and Nuisance Vegetation. The Association shall be responsible for maintenance of the Notice Signage.

#### **ARTICLE VI. Covenant for Assessments**

**Section 1. Creation of Lien and Personal Obligation for Assessments.** Except as provided in Section 12 of this Article VI, Declarant, for all Units within the Development, hereby covenants and agrees, and each Owner of any Unit by acceptance of such deed 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 and other assessments or charges for the maintenance, management, operation and insurance of the Common

Areas, as provided in Article V hereof, for insurance as provided in Section 6 of this Article VI, for the maintenance, management and insurance of the Conservation Area as provided in Section 4, Article IV, and Section 5 of Article V, for the maintenance of the Maintenance Easement areas as provided in Section 6 Article IV, and for the operation of the Association, including such reasonable reserves as the Association may deem necessary, capital improvement assessments as provided in Section 7 hereof, assessments for maintenance as provided in Section 5 hereof and all other charges and assessments hereto for and hereinafter referred to, all such assessments to be fixed, established and collected from time to time as herein provided. In addition, special assessments may be levied against particular Owners and Units for fines and expenses incurred against particular Units and/or Owners to the exclusion of others. The annual, special and other assessments, if any, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Unit and shall be a continuing lien upon the property against which each such assessment is made which lien shall be effective from and after the recordation of claim of lien by the Association. Each such assessment, 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 such property at the time when the assessment fell due and of all subsequent Owners until paid. Except as provided herein with respect to special assessments and surcharges which may be imposed on one or more Units and Owners to the exclusion of others, and except as provided in Section 12 of this Article, all assessments imposed by the Association shall be imposed against all Units subject to its jurisdiction equally. Reference herein to Assessments shall be understood to include reference to any and all of the aforesaid charges whether or not specifically mentioned.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the operation and maintenance of the Common Areas as provided in Article V hereof and in Section 5 of this Article VI, for insurance as provided in Section 6 hereof, for capital improvements as provided in Section 7 hereof, for the management insurance and maintenance of the Conservation Easement and Maintenance Easement areas, for the operation of the Association and to promote the health, safety, welfare and recreational opportunities of the Members of the Association and their families and guests.

**Section 3. Method of Sharing Assessments.** Annual assessments shall be determined by the Board of Directors and share by Owners of all units as follows:

(a) Coco Bay is proposed to be constructed in two (2) phases over the next few years. The initial budget of expenses and assessments to Owners, and proration thereof shall be determined as if all 341 units were constructed in Coco Bay and Declarant agrees to pay the deficit as provided in Section 12 herein. If during the

interim, Declarant determines that less than 341 units are to be constructed in Coco Bay, then this lesser annual shall be used for budgeting and proration purposes during the next annual budget period.

(b) Declarant does hereby assign to each unit .00745% of the annual assessment. Declarant may at any time and from time to time amend this Section to revise the proportional share of each Owner.

**Section 4. Specific Damage.** Each Owner shall be liable to the Association and be subject to a special assessment for any damage to any portion of the Common Areas or Units (including, but not limited to, damage arising from the discharge of refuse, trash, rubbish, sewage, oil, or other prohibited substances from a Unit into or on the Common Areas of the Development) caused by or resulting from active conduct, misuse, negligence, failure to maintain or other cause attributable to such Owner, any member of his family or any agent, lessee, sublessee or invitee of such Owner. Such special assessment shall be levied and payable in accordance with the provisions of this Declaration and all exhibits hereto relating to assessments including, but not limited to, those providing for liens and the foreclosure thereof.

**Section 5. Common Area Maintenance and Repairs.** As provided in Article V, the Association shall maintain the Common Areas, the costs of such maintenance being deemed general common expenses of the Association. Each Owner shall keep his Unit at all times in a neat, attractive and safe condition, and the Association may levy a fine which may not exceed Fifty Dollars (\$50.00) per violation, and/or special assessment against such owner for the cost of maintaining the appearance and safety of his Unit, plus an administrative fee of not more than twenty-five percent (25%) of such Cost. Notwithstanding the foregoing, however, the Association shall not be liable to any Owner or other person or entity for any damage caused by the failure of an Owner to keep his Unit in safe condition.

**Section 6. Insurance.**

(a) **Coverage.** The Association shall maintain insurance covering the Common Areas, and all fixtures, installations, additions and improvements constructed thereon, (collectively, the "Insured Property"), in an amount not less than 100% of the full insurable replacement value thereof, excluding foundations, piles, dredging and excavation costs. Such policies may contain reasonable deductible provisions as agreed to by the Board of Directors. Insurance coverage shall include fire and hazard insurance, comprehensive general public liability insurance, automobile liability insurance, workmen's compensation insurance, flood insurance, fidelity insurance and such other insurance as the Board of Directors of the Association shall determine from time



to time to be desirable. All insurance policies obtained by the Association shall be for the benefit of the Association and the Owners and their mortgagees (without naming them), as appropriate, as their respective interests may appear.

(b) **Premiums.** Premiums upon insurance policies purchased by the Association and charges and costs for uninsured damages shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by misuse, improper occupancy or abandonment of any of the Common Areas by, or any other action or omission of, a particular Owner(s) shall be assessed against and paid by such Owner(s). Premiums may be financed in such manner as the Board of Directors deems appropriate.

(c) **Reconstruction and Repair.** In the event of damage to or destruction of the Insured Property as a result of fire or other casualty [unless 75% (in terms of replacement costs) or more of the Insured Property is destroyed or substantially damaged and the Association elects not to proceed with repairs or restoration], the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property. If 75% (in terms of replacement costs) or more of the Insured Property is substantially damaged or destroyed and if the Association duly and promptly resolves not to proceed with the repair or restoration thereof, the Insured Property will not be repaired, in which event the net proceeds of insurance resulting from such damage or destruction shall be held by the Association, which shall then be dissolved with the proceeds being distributed to the Owners in the manner provided by law; provided, however, that no payment shall be made to an owner until there has first been paid out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

(d) **Plans and Specifications.** Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements to the Common Areas; or if not possible or commercially practicable, then in substantial accordance with the plans and specifications approved by the Board of Directors of the Association.

(e) **Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction

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and repair are insufficient, regular or interim assessments shall be made against the Units in sufficient amounts to provide funds for the payment of such costs. Such assessments on account of damage to the Insured Property shall be in the same proportion as all of the Owners' respective assessments, except as to special assessments for damage caused by a particular Owner(s).

(f) **Surplus.** It shall be presumed that the first monies disbursed in payment of the costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be held by the Association and applied in such a manner as the Board of Directors elects, including, but not limited to, an offset against future assessments.

(g) The Association will be required to obtain and maintain insurance of the fore described types in the amounts required hereby only as long as such insurance is available at reasonable rates. The decision of a majority of the members of the Board of Directors as to whether the cost of such insurance is reasonable will be determinative.

**Section 7. Improvements.** Funds in excess of \$20,000 in any one case which are necessary for the addition or replacement, or the financing of the addition or replacement, of capital improvements (as distinguished from repairs and maintenance) relating to the Common Areas and which have not previously been collected as reserves or are otherwise available to this Association shall be levied by the Association as special assessments only upon approval of the majority of the Board of Directors and upon approval by two-thirds (2/3) favorable vote of the Members of the Association voting at a meeting or by ballot as may be provided in the By-Laws of the Association.

**Section 8. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for in this Article VI shall commence on the first day of the month following the recordation of these covenants.

The annual assessments shall be payable in monthly installments, or in annual, semi- or quarter-annual installments, if so determined by the Board of Directors.

The assessment amount may be changed at any time by the Board of Directors from that originally stipulated or from any other assessment amount that is in the future adopted. The assessment shall be for the calendar year (to be reconsidered and amended, if necessary, every six (6) months), but the amount of the annual

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 or interim assessment under this Article shall be fixed by the Board in the resolution adopting such assessment.

**Section 9. Duties of the Board of Directors.** The Board of Directors shall fix the date of commencement and the amount of the regular assessment against each Unit subject to the Association's jurisdiction for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Units and Owners and regular 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 regular assessment shall thereupon be sent to every Owner subject thereto at least twenty (20) days prior to the date such payment is due.

The Board of Directors shall have the authority to fix and levy interim assessments for the purpose of paying expenses (other than those for capital improvements) incurred by the Association which are of a non-recurring nature, are not provided for in the applicable budget and cannot be paid from assessments collected pursuant to a budget for a subsequent time period(s). All such interim assessments shall be imposed and collected, and be enforceable by the lien for collection, as provided in this Article. The Board of Directors shall endeavor, however, to provide for all non-recurring expenses expected to be incurred during any applicable budget period in the budget for that period.

The Association shall prepare an Annual Budget which shall reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The Association shall provide written notice that a copy of the budget is available upon request at no charge to the Owner.

The Association shall prepare an Annual Financial Report within sixty (60) days after the close of the fiscal year. The Association shall provide written notice that a copy of the Financial Report is available upon request at no charge to the member.

Subject to the provisions of Article VII hereof, the Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Unit. Such certificate (as to any person reasonably relying thereon) shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.



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 Declarant) for management services, the fees and charges for such services to be a common expense of the Association. The Association shall have all other powers provided in its Articles of Incorporation.

**Section 10. Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association.** If the assessments are not paid on the date(s) when due (being the date(s) specified in Section 8 hereof), then such assessments shall be deemed delinquent and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon be secured by the continuing lien on the Unit herein created, which lien shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. This lien shall be superior to any homestead right of the Owner and the Owner expressly waives any right of homestead under Florida Law and the Florida Constitution so that either the Declarant or the Association can enforce its lien right through a foreclosure proceeding. 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 eighteen percent (18%) of 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 twelve (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 lesser of (a) eighteen percent (18%) per annum or (b) the highest lawful rate applicable to consumer loans of equal amount. The Association may bring an action at law against the Owner(s) personally obligated to pay all sums due hereunder or may record a claim of lien and foreclose the lien against the property on which the assessments, late charges and interest are unpaid, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint (if any) in such action, and in prosecuting the same, shall be added to the amount of such assessments, late charges and interest, and in the event a judgment is obtained, such judgment shall include all such sums as above provided (including all similar sums connected with any appellate proceedings).

In the case of an acceleration of the next twelve (12) months' of installments, each installment so accelerated shall be deemed, initially, to be 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 budget, the Owner of the Unit whose installments were so accelerated shall continue to be liable for the balance due and payable by reason of such an increase and a special assessment against such Unit shall be levied by the Association for such purpose.

In addition to the rights of collection of assessments stated in this Section 10, any and all persons acquiring title to or an interest in a Unit as to which the assessment is delinquent, including, but not limited to, persons acquiring title by operation of law and by judicial sales, shall not be entitled to the use of the Limited Common Areas or the use and enjoyment of the Common Areas until such time as all unpaid and delinquent assessments due and owing from the selling owner have been fully paid. Further, no sale or other disposition of a Unit shall be permitted until an estoppel letter is received from the Association acknowledging payment in full of all assessments and other sums due; provided, however, that the provisions of this paragraph shall not be applicable to the Institutional Lenders and purchasers as contemplated by Section 11 of this Article.

It shall be the duty and responsibility of the Association to collect assessments and to enforce payment thereof. Failure of the Association to send or deliver bills shall not, however, relieve Owners from their obligations hereunder.

All assessments, surcharges, late charges, interest, penalties, fines, attorney's fees and other sums provided for herein shall accrue to the benefit of the Association.

**Section 11. Subordination of the Lien.** The lien of the assessments provided for in this Article VI shall be subordinate to city and county real estate tax liens and to the lien of any mortgage (recorded prior to recordation by the Association of a claim of lien) to any Institutional Lender and which is now or hereafter placed upon any property subject to assessment; provided, however, that any Institutional Lender, when in possession, or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any Institutional Lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or Institutional Lender, 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 Unit by reason of the provisions of this Section 11 shall be deemed to be an assessment divided equally among, payable by and a lien against all Units subject to assessment by the Association, including the Unit as to which the foreclosure (or conveyance in lieu of

foreclosure) took place.

**Section 12. Effect on Declarant.** Notwithstanding any provision that may be contained to the contrary in this Declaration, for as long as Declarant is the Owner of any Unit, the Declarant shall not be liable for assessment against such Unit, provided that Declarant funds any deficit in operating expenses, exclusive of reserves, costs of capital improvements and non-budgeted repairs or replacements and management fees (if Declarant or its affiliate is entitled to same) of the Association. For the purposes hereof, a deficit in operating expenses shall be computed by subtraction from said expenses (exclusive of the items described in the foregoing sentence) all assessments, contributions and other sums received or receivable by the Association. Declarant may at any time and from time to time commence paying such assessments as to Units that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association, or at any time and from time to time elect again to fund deficits as aforesaid. When all Units within the Community are sold and conveyed to purchasers, Declarant shall have no further liability of any kind to the Association for the payment of assessments or deficits other than those which arose prior to such time.

**Section 13. Funds.** The portion of all regular assessments collected by the Association for reserves for future expenses, and the entire amount of all other assessments, shall be held by this Association for the benefit of the Owners of all Units, as their interests 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.

**Section 14. Initial Contributions.** Initial contributions, if any, to the Association made by Owners acquiring title from the Declarant shall be deemed ordinary Association income and need not be separated from or held or applied differently than assessments. Initial contributions shall not be credited against any assessments. Declarant may deduct, directly from such contributions, any sums due it hereunder or under any agreement for the sale of a Unit between the Declarant and a purchaser whereunder such contribution is required.

## **ARTICLE VII. Certain Rules and Regulations**

**Section 1. Applicability.** The provisions of this Article VII shall be applicable to all of the Development, but shall not be applicable to Declarant or any portion(s) of the Development owned by it insofar as Declarant's activities in developing, managing, operating, selling or leasing any portion thereof are concerned.

**Section 2. Use Restrictions.**

(a) The Development shall be used solely and exclusively as a residential community and for no other purposes whatsoever. All operators of vehicles shall observe all posted speed limits and other rules and all "Rules of the Road" when within the boundaries of the Community. Vehicles shall at all times comply, and be operated in compliance, with all applicable Association, city, county, state and federal laws, rules and regulations pertaining to the operation of motor vehicles.

(b) No person shall be permitted to remain in any vehicle parked within the Community overnight for any purpose. Except for the purpose of arrivals and departures, no person shall be permitted to remain in the Common Areas between the hours of 12:00 midnight and 6:00 a.m.

(c) During hurricanes and other high velocity wind threats, each owner shall be responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, the Association or any other applicable agency. If an owner plans to be absent during the hurricane season, such owner must prepare his Unit and secure or remove, as appropriate, any personal property prior to his departure in accordance with the standards established by the Board of Directors of the Association (or in the absence thereof, with all due care), designate a responsible firm or individual to care for his Unit should there be a hurricane or other storm, and furnish the Association with the name(s), address and telephone number of such firm or individual. Such firm or individual shall be subject to the approval of the Association. The Owner shall be liable for any and all damages caused to the Common Areas or other property of other Owners for such Owner's improper preparation or failure of removal, as the case may be, of personal property from around his Unit for hurricanes and other storms. Notwithstanding anything contained herein to the contrary, the Association may also levy fines in accordance with the rules and regulations if the Unit Owner fails to abide by the provisions of this paragraph. Notwithstanding the right of the Association to enforce the foregoing requirements, the Association shall not be liable to any Owner or other person or entity for any damage to persons or property caused by an Owner's failure to comply with such requirements.

(d) No nuisances (as defined by the Association) shall be allowed in the Development or any part thereof, and all valid laws, zoning ordinances and regulations of all

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governmental bodies having jurisdiction there over shall be observed.

(e) No owner shall erect or maintain any fence or other barrier, or other structure or improvement on any portion of the Development without the prior written approval of the Community Appearance Board.

(f) No open fires shall be permitted on any Common Areas, except in any areas which may be approved for such use by the Board of Directors, and no charcoal, starting fluids or similarly used substances shall be kept in any portion of the Common Areas.

**Section 3. Temporary Structures.** No structure of a temporary character, or trailer, tent, mobile home or recreational vehicle, shall be permitted on the Common Areas at any time or used at any time as a residence, either temporarily or permanently, except by Declarant during construction and other activities.

**Section 4. Signs.** No sign of any kind shall be displayed to the public view on any Unit or on the Common Areas without the prior written consent of the Association, except for Notice Signage, lettering, registration numbers, flags and other displays customarily found on residential structures.

**Section 5. 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 Development, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Development. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions. The foregoing shall not apply to any lawful dredging operations nor to fuel tanks and equipment installed in the Development by Declarant or the Association for the purpose of providing fuel to vehicles engaged in the construction, sale, leasing, and marketing of the Development.

**Section 6. Pets, Livestock and Poultry.** No horses, hogs, cattle, cows, goats, sheep, poultry or other livestock, birds or reptiles shall be kept, raised or maintained in any Unit; provided however that dogs, cats and other household pets may be kept in reasonable numbers in the dwelling if their presence causes no disturbance to others. No pets or other animals shall be permitted in or about the improvements to the Common Areas except for the purpose of entering or exiting a Unit. All pets brought into the Development shall be leashed (when not in a Unit) and attended at all times.

**Section 7. Commercial Vehicles, Trailers, Campers and Boats.** No commercial vehicles, campers, mobile homes, motor homes, house

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trailers or trailers of every other description, recreational vehicles, horse trailers or vans, shall be permitted to be parked or to be stored at any place on the Development between the hours of 12:00 midnight and 6:00 am. Except as may be permitted by any rule adopted by the Board of Directors of the Association, no boat or watercraft shall be stored or parked on any portion of any Unit, except that an Owner may store a vessel in a place on his Unit that is not readily visible from the Common Areas.

Any vehicle or vessel parked or stored in violation of these or other restrictions contained herein or in the rules and regulations now or hereafter adopted may be towed or removed by the Association in accordance with applicable laws and ordinances at the sole expense of the Owner of such vehicle or vessel if such vehicle or vessel remains in violation for a period of 24 hours from the time a notice of violation is placed on the vehicle or vessel. The Association shall not be liable to the owner for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such lawful towing and once the notice is posted, neither its removal, nor failure of the Owner to receive it for any other reason outside of the direct control of the Association, shall be grounds for relief of any kind.

**Section 8. Garbage and Trash Disposal.** No garbage, refuse, trash or rubbish shall be deposited except in trash cans as permitted by the Association. The requirements from time to time of Broward County, Florida or other applicable jurisdiction or entity for disposal or collection of solid waste shall be followed. The equipment, trash bins or trash cans for the storage or disposal of such material shall be provided by the Owner for his respective Unit. The Association shall be responsible for providing proper equipment for disposal of garbage, rubbish, refuse and trash at various locations in the Common Areas. The Owner shall be responsible for keeping the equipment in a clean and sanitary condition and for disposing of all garbage, refuse, trash or rubbish in compliance with all applicable requirements. The costs of the foregoing shall be a common expense.

**Section 9. Wetlands Vegetation.** Owners are expressly prohibited from mowing, cutting, trimming or removing wetlands vegetation within the Community. This provision shall not be construed to prohibit the Association from removing Nuisance and Exotic Vegetation from wetlands pursuant to the terms of a valid permit from a governmental agency.

**Section 10A. Sprinkler System.** Each Owner shall maintain the sprinkler system in good working order and shall ensure that the sprinkler system adequately irrigates the front yard up to the facade of the Unit and the side yard, if any, which is adjacent to streets of the Unit. Failure of an Owner to maintain the sprinkler system and/or adequately irrigate said front yard and side yard shall be cause for the Association to perform any necessary repairs at the Association's discretion the cost of which shall be borne

solely by the Owner, in accordance with Article X hereof and/or subject the Owner to fines in accordance with Article X hereof.

**Section 10B.** Each Unit is constructed in such a manner that a structural wall of the dwelling abuts the boundary line of a Unit (commonly referred to as a "Zero Lot Line" dwelling), the Owner shall not possess the right to cut windows or other openings in such wall, so as to enhance the privacy of the Owner of the adjoining dwelling. Owner is strictly prohibited from changing the exterior appearance of the zero lot line wall which wall shall include a dryer vent opening.

**Section 11. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or re-channel the drainage flows after installation of drainage swells, storm sewers, or storm drains are located. No Owner shall undertake any activity affecting the drainage facilities, ditches, retention and detention ponds, landscape buffers, wetlands mitigation areas and preservation easements, culverts and related appurtenances or other Common Areas of the Community without the express consent of the Association.

**Section 12. Surface Waters.** Only unmotorized vessels shall be permitted to be used within the surface waters of Coco Bay.

**Section 13. Landscape.** Owners are expressly prohibited from removing any plants, shrubbery, trees or other vegetation in the front yard and side yard of each Unit which are required under the site plan by the City of Coconut Creek, Florida. Removal of any said plants, shrubbery, trees or other vegetation shall be cause for the Association to perform any necessary maintenance and/or replacement at the Association's discretion, the cost of which shall be borne solely by the Owner in accordance with Article X hereof.

**Section 14. Additional Rules and Regulations.** The Association may modify the rules and regulations set forth above, in whole or in part and the Association may adopt additional rules and regulations of the Association which will be incorporated herein by this reference and which may be modified, in whole or in part, at any time by the Board. Such modifications need not be recorded in the Public Records, but shall be kept in the Association's records and be available for inspection by Owners at reasonable times.

#### **ARTICLE VIII. Community Appearance Board**

**Section 1. Community Appearance - Common Areas.** No improvement of any nature shall be erected, placed or altered on any Common Areas by an Owner other than Declarant. Any change in the exterior appearance of any building, wall, fence, or other structure or



improvements, and any change in the appearance of the landscaping on any Common Area, shall be accomplished only by the Association through its Community Appearance Board (the "CAB"). The CAB shall have the power to promulgate such rules and regulations in such regard as it deems necessary to carry out the provisions and intent of this Declaration. The CAB is composed initially of:

Manuel M. Mato  
E. Daniel Lopez  
Mike Verdeja

and the address of said CAB is, until changed, in care of Next Coco Bay, Ltd., 901 Ponce de Leon Boulevard, Suite 600, Coral Gables, Florida 33134. A majority of the CAB may take any action the CAB is empowered to take, may designate a representative to act for the CAB and may employ personnel and consultants to act for it. In the event of the death, disability or resignation of any member of the CAB, the remaining members shall have full authority to designate a successor. Members of the CAB shall be appointed by the Board of Directors of the Association as a committee thereof.

Without limiting the generality of Section 1 of this Article, the foregoing provisions shall not be applicable to Declarant or to construction, sales, management or other activities conducted by Declarant.

**Section 2. Community Appearance - Units.** No improvement shall be commenced, altered, removed, painted, erected or maintained in the Development, nor shall any addition, removal, change or alteration (including paint or exterior finishing) visible from the exterior of any Unit be made, nor shall any awning, canopy or shutter be attached to or placed upon outside walls or roofs of buildings or other improvements, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been approved in writing by the CAB. The CAB shall approve proposals or plans and specifications submitted for approval only if it shall determine that: (a) the construction, alteration, removal or addition contemplated thereby in the location(s) indicated is not detrimental to the appearance of the Development as a whole; and (b) the appearance of any structure affected thereby will be in harmony with the surrounding structures and otherwise desirable. The CAB may condition its approval of proposals and plans and specifications as it shall deem appropriate, and may require submission of additional plans and specifications or other information prior to approval or disapproval of material submitted. The CAB may also issue rules or guidelines setting forth procedures for the submission of plans for approval. The CAB may require such detail in plans and specifications as it shall deem proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, and descriptions or samples of exterior materials or colors. Until the CAB shall have received all required plans and specifications, it may postpone review of any plans submitted for approval. Upon such receipt, the CAB shall have thirty (30) days in which to accept or reject any proposed

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plans; if the CAB does not reject same within such time, said plans will be deemed approved. The CAB may require the payment of reasonable fees by a party requesting its approval hereunder, and such fees may be applied to CAB-related costs, expenses and salaries at the CABs discretion.

**Section 3. Completed Work; Inspections and Corrections.** Inspection of work for approved plans and correction of defects shall proceed as follows:

(a) Upon completion of work, Owner/Applicant shall give written notice of completion to CAB;

(b) Within sixty (60) days thereafter, the CAB may inspect the work. If the CAB shall find that the work done is not in compliance with the approved plans, it shall notify the Owner/Applicant within such 60-day period and shall require corrections for compliance. The CABs failure to notify Owner/Applicant of the noncompliance within the 60-day period after receipt of written notice of completion shall be deemed an approval of the work as completed;

(c) If the Owner/Applicant shall not have corrected the noncompliance within thirty (30) days after the date of notification the CAB shall notify the Association of such failure. The Association, at its option, may remove the noncomplying work or remedy the noncompliance, and Owner/Applicant shall reimburse the Association upon demand for all expenses incurred, plus an administrative charge not to exceed twenty-five percent (25%) of said expenses. If such expenses shall not be promptly paid, the Association shall levy an individual special assessment against such Unit.

**Section 4. General Powers.** The CAB shall have the absolute power to: (a) veto any action (taken or contemplated); (b) require specific action to be taken in connection with applicable sections in this Article.

**Section 5. CAB Meetings.** All meetings of the CAB shall be open to Owners except meetings between the CAB and its attorney in connection with pending or proposed litigation.

**Section 6. Notice Requirements of CAB Meetings.** Notices of meetings shall be posed in a conspicuous place at least 48 hours in advance, except in an emergency or as the CAB provides in its by laws.

#### **ARTICLE IX. Resale and Leasing Restrictions**

**Section 1. Leasing of Units.** In order to maintain the Development as a non-transient development, no Owner, other than Declarant, may lease, and no lessee may sublease, his Unit except in accordance with this Section. All references herein to leases

shall be deemed to also include applicable subleases, and lessees to include sublessees. Any lease of a Unit must be for the entire Unit (including all appurtenances thereto) and for a term of not less than thirty (30) days. All leases shall be in the form promulgated by the Association from time to time, or in the absence of such a form, on such form of lease as is submitted to the Association and approved thereby, which approval the Association may withhold in its sole discretion. The Lessor and Lessee shall also promptly supply to the Association such additional information as it may reasonably require in connection with its determination of whether or not to grant its approval.

Within thirty (30) days of its receipt of the lease, forms and all requested additional information, the Association shall notify the involved Owner, in writing, of its approval or disapproval of the proposed lease/lessee. The Association may condition its approval on the making of reasonable modifications to the lease or on such other matters as the Association may deem appropriate.

The minimum standards for the approval of a lease shall be:

(a) the lease shall provide that the lessee (and his family, agents, guests and invitees) shall comply with all provisions of this Declaration and all applicable restrictions, rules and regulations of the Association;

(b) the lease shall provide that the Owner and lessee shall jointly and severally indemnify the Association and all other Owners for any negligent or intentional acts or omissions of the lessee committed within the Development;

(c) the lease shall provide that it may be terminated by the Association upon not more than seven (7) days, prior written notice to the Owner and lessee for the Owner's or lessee's failure to comply with the provisions of this Declaration (including, but not limited to, Article VII hereof) and all restrictions, rules and regulations of the Association;

(d) the Owner or lessee, as they between themselves may decide, shall deliver to the Association a security deposit in an amount equal to the first month's rental due under the lease from which the Association may deduct the costs of any repairs or extraordinary maintenance necessitated by the acts or omissions of the lessee without waiving any of its other rights arising therefrom, the balance to be returned to the Owner or lessee, as appropriate, within thirty (30) days of the termination or expiration of the lease and the vacating of the Unit by the lessee; and

(e) such other standards as the Association may from time to time adopt.

Nothing herein contained nor done by an Owner, lessee or the Association shall be deemed to establish a landlord-tenant or the

principal-agent relationship between the Association and the Owner or lessee, the sole purpose of the requirements of this Section being to ensure the compliance of all parties with this Declaration and applicable restrictions, rules and regulations including, without limitation, the protection of Units and Common Areas.

**Section 2. Estoppel Certificate.** No Owner may lease, sell or convey his interest in a Unit unless all sums due the Association shall be paid in full and an estoppel certificate in recordable form to such effect shall have been received by the Owner. If all such sums shall have been paid, the Association shall deliver such certificate within ten (10) days of a written request therefor. The Owner requesting the certificate shall pay to the Association a reasonable sum, not to exceed \$50.00, to cover the costs of examining records and preparing the certificate.

#### **ARTICLE X. Enforcement**

**Section 1. Compliance by Owners.** Every Owner shall comply with all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

**Section 2. Enforcement.** Failure of an owner to comply with such aforesaid restrictions, covenants or rules and regulations shall be grounds for immediate action to recover sums due the Association, for costs, damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend the right of a violating owner, his family, guests, lessees, sublessees or invitees to use the Common Areas for a reasonable period of time.

**Section 3. Fines.** In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a reasonable fine or fines, as provided in the rules and regulations (which shall provide for notice and hearing) which may be adopted from time to time, may be imposed upon an Owner for failure of an Owner, his family, guests, lessees, sublessees, invitees or employees, to comply with any covenant, restriction, rule or regulation.

#### **ARTICLE XI. General Provisions**

**Section 1. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and be enforceable by Declarant, the Association or the Owner of any Unit 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 Owners of 66 2/3% of the Units, and Declarant (as long as it owns any interest in the Development) has been recorded, agreeing to revoke said covenants and restrictions. Provided, however, that no such agreement to revoke shall be

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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.

**Section 2. Notice.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been given when personally delivered or mailed, postpaid, 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. An affidavit of an Association's employee, officer or director or an employee of the applicable management agent that notice was mailed as aforesaid or a U.S. Postal Service certificate of mailing shall be conclusive proof of the giving of such notice.

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

**Section 4. 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, or application in other circumstances, all of which shall remain in full force and effect.

**Section 5. Amendment.** In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges, liens and other provisions of this Declaration may be amended, changed or added to at any time and from time to time upon the execution and recordation of an instrument executed by Declarant for any purpose, including, but not limited to, adding additional Units and/or Common Area to be subject to this Declaration, for so long as it holds title to any Unit affected by this Declaration; or alternatively by approval at a meeting of Owners holding not less than 66-2/3% vote of the membership in the Association, provided, that so long as Declarant is the Owner of any Unit affected by this Declaration or of any portion of Coco Bay, Declarant's consent must be obtained if such amendment, in the sole opinion of Declarant, affects its interest; provided further that no amendment of this Declaration which would affect the ownership or control or responsibility for operation and maintenance of the surface water management system, including but not limited to, the drainage facilities, ditches, retention and detention ponds, landscape buffers, wetlands mitigation areas and preservation easements, culverts and related appurtenances, shall be effective without the prior written approval of the South Florida Water Management District. This Section 5 shall be subject and subordinate to the provisions of Article I, Section (i) hereof as to the rights of

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Declarant named therein (to the extent such entity so named is at any time no longer Declarant hereunder). This Section 5 may not be amended.

Notwithstanding anything contained herein to the contrary, amendments to this Declaration, or the Articles or Bylaws, must be approved by not less than 2/3rds of the votes of the Owners and by Institutional Lenders who hold mortgages encumbering at least half of the Units that are subject to mortgages held by Institutional Lenders, if the amendments materially change any of the provisions of this Declaration, or the Articles or Bylaws, relating to the following: (i) voting rights, (ii) assessments, assessment liens, or the priority of assessment liens (iii) reserves for maintenance, repair and replacement of Common Areas, (iv) responsibility for maintenance and repairs, (v) reallocation of interests in the Common Areas or rights to their use, (vi) expansion or contraction of the Subject Property, or the addition, annexation, or withdrawal of property to or from this Declaration (vii) insurance or fidelity bonds, (viii) leasing of Units, (ix) imposition of any restrictions on an owner's right to sell or transfer his Unit, (x) any provisions that expressly benefit mortgage holders, insurers or guarantors.

**Section 6. Effective Date.** This Declaration shall become effective upon its recordation in the Public Records of Broward County, Florida.

**Section 7. Withdrawal.** Anything herein to the contrary notwithstanding, Declarant reserves the absolute right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, with the sole exception of the South Florida Water Management District, for the purpose of removing certain portions of the Development from the provisions of this Declaration.

**Section 8. Conflict.** This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Association and the Articles shall take precedence over the By-Laws.

**Section 9. Standards for Consent, Approval, Completion, Other Action and Interpretation.** Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by Declarant, the Association or the CAB, 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 by Declarant or the Association shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the sole and unfettered opinion of Declarant or the Association, as appropriate. This Declaration shall be interpreted by the Board of Directors, and an opinion of counsel to the Association or Declarant rendered in good faith that a particular interpretation is not unreasonable shall conclusively establish the validity of such interpretation.

**Section 10. 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 be so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally to have been granted the benefit of such easement and the Owners designate hereby Declarant 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.

**Section 11. Covenants Running with the Land.** Anything to the contrary herein notwithstanding and without limiting the generality (but subject to the limitations) of Section 1 hereof, 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 properties subject hereto. Without limiting the generality of Section 4 hereof, 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) shall be achieved, cy pres.

**Section 12. Execution of Documents; Attorney-in-Fact.** Without limiting the generality of any other sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Association or Declarant, all documents and consents which may be required to effect the intent of any or all portions of this Declaration, and each such Owner further hereby and thereby appoints the Association and Declarant as such Owner's agents and attorneys-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents and consents. This power of attorney is coupled with an interest and is irrevocable. The provisions of this Section may not be amended without the consent of the Association and Declarant.

**Section 13. Special Provisions Regarding Institutional Lenders.**



**13.1 Notice of Action.** Upon written request to the Association by an Institutional Lender holding, insuring or guaranteeing a first mortgage encumbering any Unit, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any such holder, insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation or casualty loss which affects a material portion of the Subject Property or the Unit;

(b) Any 60-day default in the payment of Assessments or charges owed to the Association or in the performance of any obligation hereunder by the Owner of the Unit;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of Institutional Lenders.

**13.2 Consent of Institutional Lenders.** Whenever the consent or approval of any, all or a specified percentage or portion of the holder(s) of any mortgages(s) encumbering any Units is required by this Declaration, the Articles, the Bylaws, or any applicable statute or law, to any amendment of the Declaration, the Articles, or the Bylaws, or to any action of the Association, or to any other matter relating to the Subject Property, the Association may request such consent or approval of such holder(s) by written request sent certified mail, return receipt requested or equivalent delivery evidencing such request was delivered to and received by such holder(s). Any holder receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested, in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association), which response must be received by the Association within 30 days after the holder receives such request, and if such response is not timely received by the Association, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by all of the directors of the Association, which affidavit, where necessary may be recorded in the public records of the county where the Subject Property is located, and which affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained. The foregoing shall not apply where an Institutional Lender is otherwise required to specifically join in an amendment to this Declaration.

**13.3 Payment of Taxes and Insurance.** Any Institutional Lender may pay any taxes or assessments owed to any governmental authority by the Association which are in default, or any overdue insurance premiums required to be purchased by the Association pursuant to this Declaration, or may secure new insurance upon the lapse of a policy, and shall be owed immediate reimbursement

therefor from the Association plus interest at the highest rate permitted by law and any costs of collection, including attorneys' fees.

**Section 14. Consumer Price Index.** Whenever specific dollar amounts are stated in this Declaration or any exhibits hereto, unless limited by law or the specific text hereof (or thereof), such amounts shall increase 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. The provisions of this Section shall not apply, however, to the budget for the Association.

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EXECUTED as of the date first above written.

Signed, sealed, and delivered  
in our presence:

*Patricia M. Palma*

NAME Patricia M. Palma

*Stephen A. Larsen*

NAME STEPHEN A. LARSEN

NEXT COCO BAY, LTD., a Florida  
limited partnership

By: COCO BAY DEVELOPMENT  
COMPANY, LTD.  
Its: General Partner

By: COCO BAY DEVELOPMENT  
CORPORATION  
Its: General Partner

*Manuel M. Mato*  
Manuel M. Mato  
President

SWORN AND SUBSCRIBED before me this 08 day of AUGUST, 1999 by Manuel M. Mato, President of Next Coco Bay Development Corporation, general partner of Next Coco Bay Development Co., Ltd., general partner of Next Coco Bay, Ltd., and he acknowledged before me that he executed the same in the presence of two subscribing witnesses freely and voluntarily under authority vested in him by said corporation and that the affixed seal thereto is the true corporate seal of said corporation. He is personally known to me or did produce \_\_\_\_\_ as identification and who did take an oath.



OFFICIAL SEAL  
OTONIEL J. BOUDET  
My Commission Expires  
April 18, 1997  
Comm. No. CC 277102

*Otoniel J. BouDET*  
NOTARY PUBLIC, State of Florida

Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

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JOINDER

COCO BAY HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of the foregoing Declaration and Exhibits attached thereto.

IN WITNESS WHEREOF, COCO BAY HOMEOWNERS ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this 6 day of August, 1996.

WITNESSES

Stephen C. Lauen  
Patricia Paul

COCO BAY HOMEOWNERS ASSOCIATION, INC.

Manuel M. Mato  
BY: MANUEL M. MATO  
ITS: President

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NON-RECOURSE CONSENT OF MORTGAGEE AND SUBORDINATION OF  
REAL ESTATE MORTGAGE, ASSIGNMENT, AND SECURITY AGREEMENT  
AND FINANCING STATEMENTS

WHEREAS, NEXT COCO BAY, LTD., a Florida limited partnership, (the "Declarant" or "Mortgagor") by Real Estate Mortgage, Assignment, and Security Agreement dated August 28, 1995 and filed for record on September 6, 1995, mortgaged unto NATIONSBANK OF FLORIDA, N.A., a national banking association, now known as NATIONSBANK, N.A. (SOUTH), at 701 West Cypress Creek Road, Suite 101, Fort Lauderdale, Florida 33309 (the "Mortgagee") the premises therein particularly described, and any additional lands encumbered by modification to said Mortgage (the "Property") to secure the payment of the sums described therein, which mortgage was recorded in Official Records Book 23875 at Page 867 of the Public Records of Broward County, Florida, and subsequently modified of record (the "Mortgage"); and

WHEREAS, Declarant by said Mortgage assigned unto Mortgagee all of its right, title and interest in and to any and all agreements relating to the Property; and

WHEREAS, Declarant as Debtor executed and delivered to Mortgagee as Secured Party two (2) UCC-1 Financing Statements which were filed for record on September 6, 1995 in Official Records Book 23875, Page 901 of the Public Records of Broward County, Florida, and in the Office of the Secretary of State of Florida on September 7, 1995 under File No. 950000180028 (the "Financing Statements");

NOW, THEREFORE, Mortgagee, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by Mortgagor, the receipt of which is hereby acknowledged, hereby accepts, approves and consents to and subordinates the lien, operation and effect of the Mortgage and Financing Statements (the "Loan Documents") to the foregoing Declaration of Restrictions, Protective Covenants and Easements for Coco Bay (the "Declaration") with the identical effect as though the Declaration had been executed, delivered and recorded prior to the filing for record of the Loan Documents, but without in any manner releasing, satisfying or discharging the Loan Documents or in any way impairing, altering or diminishing the effect of the lien, encumbrance, security interest or other interest created by or related to the Loan Documents or any rights or remedies of Mortgagee under or with respect to the Loan Documents; provided, however, Mortgagee does not assume and is not responsible for any of the obligations and liabilities of the Declarant, and none of the representations and warranties contained in the Declaration shall be deemed to have been made by Mortgagee or impose any obligations on Mortgagee, but

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all rights, benefits and privileges in favor of Mortgagor shall inure to the benefit of Mortgagee or a receiver or third-party purchaser in the event of foreclosure or a deed given in lieu of foreclosure in the event Mortgagee shall ever succeed to the Mortgagor's interest in the Property or any part thereof. Nothing contained herein shall in any way restrict or limit any rights, benefits and privileges in favor of Mortgagee as an "Institutional Lender" as defined in the Declaration or otherwise whether now or hereafter existing.

IN WITNESS WHEREOF, the Mortgagee has caused these presents to be executed this 17th day of May, 1996.

Signed, sealed and delivered  
in the presence of:

Elizabeth C. Yuskaitis  
(Witness)

Elizabeth C. Yuskaitis

Type or Print Name

Michelle K. Felsheim  
(Witness)

Michelle K. Felsheim

Type or Print Name

"MORTGAGEE"  
NATIONSBANK, N.A. (SOUTH), a national  
banking association as successor to  
NATIONSBANK OF FLORIDA, N.A.

BY: [Signature] (Seal)  
David Albright, Vice Pres.

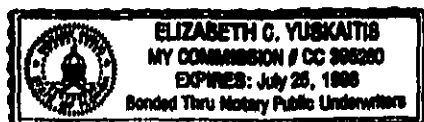
Address: 701 W. Cypress Creek Rd.  
Suite 101  
Ft. Lauderdale, FL 33309

STATE OF FLORIDA     )  
                              :   SS  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me this 17th day of May, 1996, by DAVID ALBRIGHT as Vice President of NATIONSBANK, N.A. (SOUTH), a national banking association, as successor to NATIONSBANK OF FLORIDA, N.A., on behalf of the association. He is personally known to me or has produced a Florida driver's license as identification.

(Seal)

Elizabeth C. Yuskaitis  
Notary Public Elizabeth C. Yuskaitis  
State of Florida  
My Commission Expires: July 25, 1998



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