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DOROTHY H. WILKEN, CLERK PB COUNTY, FL

**DECLARATION OF COVENANTS, RESTRICTIONS  
AND EASEMENTS FOR  
BLUE HERON BAY  
AT IBIS GOLF AND COUNTRY CLUB**



and Owners of Lots. Accordingly, notwithstanding anything contained herein to the contrary, there is no obligation of Declarant to complete the Project as contemplated by the present general plan of development. The Declarant, subject to the terms hereof, hereby reserves the right, at its option and sole discretion, to materially alter and substantially modify the general plan of development, including the size and design of homes or other Improvements to the extent that this Declaration shall still be and remain legally valid and enforceable. The Declarant or any person or entity developing and selling residential Units in the ordinary course of business to whom the Declarant hereafter conveys any portion of the Project (other than the Common Properties and purchasers of completed homes) shall have the right, at their sole option and discretion, to develop such property either within the scope of the Project (and subject to this Declaration) or outside the scope of this Project, to the extent the same can be accomplished. All or any portion of the Property may be removed from the lien and operation of this Declaration by an amendment executed by the Declarant for such purpose, provided there are no conveyances of Units constructed upon the Property being removed from the lien and operation of this Declaration and further provided that any such removal shall not deprive access to the Lot or Unit or any home constructed upon any portion of the Property. Declarant may, subject to the terms set forth in Article II hereof, as provided in Article XVII of this Declaration, and, without consent of any other Unit Owner or mortgagee, execute, acknowledge and record Supplemental Declarations or Amendments hereto: (a) adding all or portions of other property to the Project; or (b) removing property from the Project and the lien and operation of this Declaration; or (c) imposing further or amended conditions, covenants and restrictions to the operation, protection and maintenance of all or any portion of the Project, consistent with the common general plan of development of the Project; or (d) to correct scrivener's errors, minor errors or to clarify the intent of Declarant in interpretation of provisions of this Declaration or any amendments hereto. Nothing contained herein or in any Supplemental Declaration of amendment shall limit the Declarant's ability to eliminate, change, modify or increase the amenities contained with the Common Properties, if any, or to otherwise modify or limit the Common Properties.

**H.** Declarant hereby declares that the Lots and Units, as hereinafter defined (including their appurtenances and the Common Properties of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, reservations, covenants, conditions and equitable servitudes and other provisions of this Declaration, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability thereof, in furtherance of a general plan for the development, protection, maintenance, subdivision, improvement and sale of the Project, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the title to the Lots and Units (including their appurtenances) and the Common Properties and shall be binding upon all persons having the right, title or interest therein or any part thereof, their heirs, successors and assigns; shall inure to the benefit of the Lots and Units (including their appurtenances) and the Common Properties and their successors-in-interest, and each Owner and his respective successors-in-interest, and may be enforced by any Owner, and his successors-in-interest, by the Association and by the Declarant and its assigns.

**NOW, THEREFORE,** Declarant declares that the Property described on **Exhibit "A"** hereof shall hereafter be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, improved and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens and charges and equitable servitudes as hereinafter set forth, all of which are for the purpose of uniformly enhancing and protecting the value, desirability and attractiveness, and are in furtherance of a general plan for the protection, maintenance and improvement of the Property. The covenants, conditions, restrictions, reservations, easements, equitable servitudes, lien and charges set forth herein shall run with the Property and shall be binding upon and inure to the benefit of Declarant, its successors and assigns, all Owners of dwelling Units or other types of Units, subjected to this Declaration and located within the Project, their families, guests, tenants and invitees; and all persons having any right, title or interest in any part thereof.

**ARTICLE I**  
**DEFINITIONS**

The following terms, as used herein, and in all amendments hereto, shall have the following meanings (unless the context clearly requires otherwise) and any references in this Declaration to any Articles, sections or paragraphs refer or relate to Articles, sections or paragraphs in this Declaration unless another document is specified:

**Section 1.** "Annual Assessment" shall have the meaning for such term set forth in Article VII, Section 2.

**Section 2.** "Annual Budget" shall have the meaning for such term set forth in Article VII, Section 9.

**Section 3.** "Assessment" shall mean and refer to any annual, special, individual or other assessment established for and levied against each Lot, as such amount is determined by the Board of Directors of the Association from time to time.

**Section 4.** "Association" shall mean and refer to **Blue Heron Bay at Ibis Golf and Country Club Homeowners Association, Inc.**, a Florida corporation, not-for-profit, its successors and assigns, which has been established for the purpose of enforcing and carrying out the duties of such association under this Declaration and fulfilling its obligation and purposes hereunder; a copy of the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") of the Association are attached hereto and made a part hereof as Exhibits "B" and "C", respectively.

Pursuant to the Ibis Declaration (as defined in Section 14. of this Article I), the Association is a "Sub-Association" and is subject to all terms, conditions, and provisions of the Ibis Declaration. As a Sub-Association, the Association has duties and obligations set forth in the Ibis Declaration, including, but not limited to such duties and obligations as may be delegated to the Association by the Ibis POA (as defined in Section 15. of this Article I) pursuant to the Ibis Declaration

**Section 5.** "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

**Section 6.** "Common Areas", "Common Property" or "Common Properties" shall mean and refer to all real property intended by Declarant to be devoted to the common use and enjoyment of the Owners and conveyed or to be conveyed to the Association by deed, plat or dedicated to the Association by easement, agreement or on a recorded plat of any real property now or hereafter subject to this Declaration, including, without limitation, all Association or commonly owned recreational facilities, open spaces, off-street parking areas, private streets, entrance features, sidewalks, walls, signage, street lights, drainage easements, drainage tracts, easements, traffic islands, landscaping and landscape irrigation and other property rights now or hereafter owned or acquired by the Association.

**Section 7.** "Common Expenses" shall mean and refer to the actual and estimated costs of ownership, maintenance, management, operation, insurance, repair and replacement of the Common Properties of the Association, the cost of any and all commonly metered utilities, such as for water and sewer, for Homes or Common Areas, if applicable, cable or master television systems, if any, master security or security monitoring systems, if any, and other commonly metered charges for the Common Areas; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees or independent contractors or professionals; costs of all utilities, gardening and other services benefiting the Common Areas, and all recreational or other facilities thereon, if any; costs of fire, casualty and liability insurance, workmen's compensation insurance and other insurance covering or connected with the Common Areas and improvements thereon; costs of bonding the members of the Board and the Management

Company (as defined in Section 20. of this Article I); taxes paid by the Association, including real property taxes for the Common Areas, if any, and sales or use taxes; amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Areas, or portions thereof, and costs of any other item or items so designated by, or in accordance with other expenses incurred, or to be borne by the Association for any reason whatsoever in connection with the Common Areas or the proper conduct of the business or affairs of the Association.

Common Expenses shall also mean and refer to the actual and estimated costs of cleaning, maintenance, management, operation, insurance, repair and replacement of any portion of the Property specifically stated in this Declaration to be so cleaned, maintained, managed, operated, repaired or replaced, even if not part of the Common Properties, including, but not limited to, exterior walls and fences of all Homes, or other Improvements.

The Association shall: ( i ) maintain, repair and insure the Recreational Facilities, if any, (as that term is defined below) that may be constructed on the Common Property which is subject to the provisions of this Declaration; and ( ii ) maintain, repair and replace all lights, including fixtures and bulbs located on the Common Property and pay for all electricity use thereon, the cost of the foregoing to constitute Common Expenses.

**Section 8. "Declaration"** shall mean and refer to this instrument and all exhibits hereto, as the same may be amended or supplemented from time to time.

**Section 9. "Developer" or "Declarant"** shall mean and refer to the entity referred to in the introductory paragraph of this Declaration and its successors and assigns who may have received a specific written assignment from the Developer of all or a portion of the rights of the Developer under this Declaration, which assignment shall become effective when recorded among the Public Records of Palm Beach County, Florida.

**Section 10. "Existing Property"** shall mean and refer to the real property initially subject to this Declaration described on Exhibit "A" hereof.

**Section 11. "Blue Heron Bay at Ibis Golf and Country Club Architectural Review Board" or "Blue Heron Bay at Ibis Golf and Country Club ARB"** shall mean the committee created pursuant to Article X hereof.

**Section 12. "Home" or "Unit"** shall mean and refer to any single family or other residential dwelling constructed or to be constructed upon the Property or any part thereof, including, but not limited to, detached homes, together with all further improvements and appurtenances thereto.

**Section 13. "Ibis ARB"** shall have the meaning set forth in Article X, Section 1.

**Section 14. "Ibis Declaration"** shall mean and refer to the declaration referred to in Article III hereof.

**Section 15. "Ibis POA" or "Master Association"** shall mean and refer to the Ibis Property Owners Association, Inc., a Florida not for profit corporation, and its successors or assigns. The Ibis POA is the Master Association of the Ibis Golf & Country Club Community.

**Section 16. "Improvement(s)"** shall mean and refer to all structures of any kind, including, without limitation any building, home, fence, wall, sign, paving, grading, and addition, alteration, screen enclosure, sewer, drain, disposal system, decorative building, landscaping or landscaping device or object or other changes to the natural state of the Property and vegetation existing thereon.

**Section 17.** "Individual Assessments" shall have the meaning set forth in Article VII, Section 6.

**Section 18.** "Institutional First Mortgagee" shall mean and refer to any bank, bank holding company, trust company or subsidiary thereto, savings and loan association, insurance company, union pension fund, mortgage company approved by Declarant, an agency of the United States government, or the Declarant, which holds a first mortgage of public record on any Lot or part thereof, and the holder of any mortgage of public record given or assumed by Declarant, whether a first mortgage or otherwise, and their successors and assigns.

**Section 19.** "Lot" shall mean and refer to any platted lot, area or land within the Property upon which a Home or Unit has or may be constructed. If an area has been platted into a tract for the future replatting into single family lots upon which homes can be constructed, the tract platted shall not be considered a Lot for the purposes of being subject to assessments hereunder, except as unimproved property.

**Section 20.** "Management Company" shall mean the person, firm or corporation which may, from time to time, be retained by the Association to assist the Board in fulfilling or carrying out certain duties, powers or functions of the Association or may be expressly designated by the Association as the Management Company under this Declaration.

**Section 21.** "Member" shall mean any person or entity holding a membership in the Association as permitted in this Declaration or as permitted by the Articles or Bylaws of the Association, including the Declarant, as long as it is the owner of any of the Property and any person or entity owning fee interest in any Lot or Unit.

**Section 22.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including Declarant and Partners, as long as they own any portion of the Property under executed contracts of sale which have not yet closed, but excluding those having such interests merely as security for performance of an obligation, unless and until such holder of a security interest acquires title pursuant to foreclosure or judicial proceeding or deed-in-lieu of foreclosure. Each Owner shall be a Member of the Association.

**Section 23.** "Partners" means Ibis West Palm Partners L.P., a Delaware limited partnership, successor to the declarant under the Ibis Declaration, its successors and assigns.

**Section 24.** "Plat" when used herein shall mean and refer to any map of the Property recorded among the Public Records of Palm Beach County, Florida.

**Section 25.** "Property" or "Properties" shall mean and refer to the Existing Property subject to this Declaration and such additions thereto as may hereafter be brought under the provisions of this Declaration and within the jurisdiction of the Association by the Declarant or its assigns.

**Section 26.** "Project" shall mean and refer to Blue Heron Bay at Ibis Golf and Country Club, a planned residential community being developed by Declarant on the Existing Property and any additional land hereafter made subject to this Declaration by Declarant.

**Section 27.** "Recreational Facilities" shall mean those facilities which may be constructed or provided by Developer, if any, upon property designated as Common Area(s) and which may consist of pool, rest rooms, cabana and pool deck, landscaping, landscape irrigation, fences, walls and any additional amenities, structures or personal property and equipment related thereto and replacements thereof which may hereafter be added to such facilities.

**Section 28.** "Rules and Regulations" has the meaning set forth in Article IX, Section 1.

**Section 29.** "Residential Property" shall mean and refer to all real property located within the Project, which is, by recorded plat, declaration of condominium or otherwise divided into Lots for residential use, specifically excluding roads, rights-of-way, lakes and Common Areas.

**Section 30.** "Special Assessments" shall have the meaning set forth in Article VII, Section 5.

**Section 31.** "Supplemental Declaration" or "Amendment to Declaration" shall mean any document executed with the formalities of a deed by Declarant which shall be recorded among the Public Records of Palm Beach County, Florida, for the purpose of supplementing or amending this Declaration by adding additional real property to the Property and/or for the purpose of declaring or removing certain portions of the Project as Common Properties or Lots.

**Section 32.** "Zero Lot Line" shall mean the side or sides of each Lot upon which all or a portion of a wall to a Home may be constructed. The Declarant does plan to construct Zero Lot Line Homes on the Lots within the Property. If the Declarant does construct any Zero Lot Line Homes on the Property, then the provisions of this Declaration referring to Zero Lot Lines and easements relating to Zero Lot Line Homes shall be operative and shall apply to any Zero Lot Line Homes constructed. If the Declarant does not construct Zero Lot Line Homes on the Property, then the provisions hereof relating to such Homes shall not be operative or applicable.

The use of any gender is deemed to include all genders; the use of the singular includes the plural and the use of the plural includes the singular as the context so requires. The foregoing definitions shall be applicable to this Declaration, the Articles, the Bylaws and to any amendments and supplements thereto, unless otherwise expressly provided

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERETO

**Section 1. Legal Description and Additional Property.** This Declaration shall apply to the Existing Property as described on Exhibit "A" hereof, and such additional real property as the Developer may, from time to time, designate as being subject to this Declaration in a written instrument executed with the formalities of a deed and recorded among the Public Records of Palm Beach County, Florida. Any addition to the Existing Property shall require the written consent of Partners or Ibis POA, which consent shall not be unreasonably withheld or delayed. Nothing in this Declaration shall, however, obligate Declarant to add to the Project. All Owners, by acceptance of their deeds to, or other conveyances of, their Lots or Units thereby automatically consent to any amendment to the land plan for the Project, development order or other similar modification in any governmental approval required for the development of the land which may be added to this Declaration by the Declarant, or its assigns.

**Section 2. Withdrawal.** Declarant reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any person or entity (other than the written consent of Ibis POA, which consent shall not be unreasonably withheld or delayed) for the purpose of removing any portion of the Property from the Project and the provisions of this Declaration.

**ARTICLE III  
ADDITIONAL RESTRICTIONS**

In addition to the covenants, restrictions, landscape and architectural controls, setback requirements and other provisions contained in this Declaration, the Property shall be subject to all of the terms, assessments, liens and other provisions contained in: (i) the DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR IBIS GOLF AND COUNTRY CLUB, dated July 24, 1990, recorded July 31, 1990 at O.R. Book 6534, Page 1173, et. seq., of the Public Records of Palm Beach County, Florida, as amended and as the same may hereafter be amended from time to time ("Ibis Declaration"); and (ii) all other matters of Public Record.

**ARTICLE IV  
EASEMENTS AND PROPERTY RIGHTS**

**Section 1. Owners' Easements.** Each Owner shall have a perpetual, non-exclusive easement of ingress and egress and of use, enjoyment in, to and over the Common Areas, including roads, and access tracts (as depicted on any plat of the Property recorded or to be recorded among the Public Records of Palm Beach County, Florida) within the Project, for pedestrian and vehicular traffic and over and across the improved walkways and rights-of-way from time to time laid out on the Common Areas for use in common with all other such Owners, their tenants, agents and invitees. The portion of the Common Areas not used from time to time as improved walkways or roads shall be for the common use and enjoyment of the Owners, and each Owner shall have a perpetual non-exclusive easement across all such portions of such property and for the use of the same as common open space in such manner as may be determined and regulated by the Association. Said easements are subject, however, to the following:

A. The right and duty of the Association to levy and collect Assessments against each Lot for the purpose of maintaining the Common Areas and for Common Expenses;

B. The right of the Association to suspend the voting rights and right to use the Common Areas and facilities (other than for ingress and egress) by an Owner, Owner's family member, lessee, agent and invitee for any period during which an Assessment against the Lot remains unpaid, which suspension shall be for a period not to exceed sixty (60) days for any single infraction of its lawfully adopted rules and regulations, provided that any such suspension of voting and/or use rights shall be made only by the Board after notice and a hearing;

C. The right of the Association to grant permits, licenses and easements over, in, across and under the Common Areas, for such services, utilities, roads and other purposes that are reasonably necessary for the benefit of, and for the proper maintenance or operation of, the Property.

D. An access easement over, in, across, through and under the Property in favor of Owners and/or the providers of any equipment necessary for the provision of utilities and services to or for the benefit of the Property, and their servicemen and repairmen, which easement is necessary for the maintenance, repair and replacement of any such equipment, including but not limited to, electric, gas, light, telephone, cable television, Home security and security monitoring devices, water, sewage, drainage and waste removal.

E. An access and maintenance easement in favor of the Association, which is necessary for the Association to inspect, clean, maintain, repair and replace the Common Areas and any other Improvement or Home for which the Association has the duty and obligation to clean, maintain, repair or replace, including, but not limited to, exterior walls and fences of all Homes.

F. Restrictions, easements and matters contained on any plat, or filed separately with respect to all or any portion of the Property.

G. All of the provisions of this Declaration, the Articles and Bylaws of the Association, and all exhibits thereto, and all rules and regulations adopted by the Association, as the same may be amended from time to time.

H. All of the provisions of the Ibis Declaration, the Articles of Incorporation and Bylaws of the Ibis POA, and all exhibits thereto, and all rules and regulations adopted by the Ibis POA as the same may be amended from time to time.

I. The right of the Association to dedicate or transfer all or part of the Common Areas to any public agency, authority or utility for such purposes, and subject to such conditions, as may be approved by the Board of Directors; provided however, that such dedication or transfer shall be approved by a majority vote of the Owners present at a special meeting called for that purpose and held in accordance with the terms and provisions of the Bylaws and approved in writing by the Declarant, the Ibis POA and Partners.

The rights of an Owner to the use and enjoyment of the Common Areas and facilities thereon shall extend to the members of Owner's immediate family (as defined by the Board) who reside with Owner and the approved lessees and guests of such Owner, subject to reasonable regulation from time to time by the Association in accordance with its lawfully adopted rules and regulations.

**Section 2. Easements Appurtenant.** The easements provided in Article IV hereof to Owners shall be appurtenant to and shall pass with the title to each Lot and may not be separated from such legal title to each Lot, except for easements reserved by Declarant unto itself.

**Section 3. Utility Easements.** Non-exclusive, perpetual easements, as shown on any recorded plat of the Project, are hereby reserved by Developer, its successors and assigns, for the installation, maintenance and repair of utilities, cable television and Home security systems. No structure, planting or other material, other than sod, shall be placed upon the easements so reserved, (unless installed by the Developer or its assigns, and replacements of same) which may interfere with the installation and maintenance of utilities or drainage. Said easements shall at all times be open to Developer, its designees, successors, assigns and any public service, cable or other corporation approved in writing by Developer which may require the use of said easements. The Developer reserves the right to release and remove any portion of the easements created by this provision which are not actually used for utilities, cable television and/or Home security system purposes, which it may do by executing a release or termination of easement, amendment to this Declaration or other document intended for such purpose and recording same among the Public records of Palm Beach County, Florida. All utility companies charged with the installation and maintenance of underground utility facilities are hereby granted access to all easements within which such underground facilities are located for the purpose of installation, operation, maintenance and replacement thereof in accordance with industry standards.

**Section 4. Drainage Easements.**

A. Non-exclusive easements for the installation and maintenance of drainage facilities shall exist in favor of the Ibis POA and the Association, as shown, if any, on any recorded plat of the Property. Within these easement areas, no structure, planting or other material, other than sod, shall be placed or permitted to remain (unless installed by the Developer, its designees, successors or assigns and replacements of the same) which may interfere with such installation and maintenance, or which may obstruct or retard the flow of storm water. Notwithstanding the foregoing, sod and other plantings shall be permitted if the drainage easement is one which covers a buried pipeline, and over which no surface drainage is to be maintained. The Association and the Ibis POA shall have access to all such drainage easements, for the purpose of operation and of maintenance thereof and shall not be held liable for any damage to or removal of any Owner's sod or other plantings caused by such operation and maintenance activities

B. Each Lot and the Common Areas shall enjoy and shall be subject to a perpetual, non-exclusive cross easement of drainage and flowage in favor of all adjacent Lots and Common Areas and no Owner may construct or permit any Improvement or other structure or condition to exist upon his Lot which will interfere with storm water runoff onto or from his Lot, except if constructed by Developer or its assignee.

C. Each Lot is hereby subject to a non-exclusive drainage easement within five feet (5') of all lot lines. Within such easements, the Declarant, or its agents, shall have the right, but not the obligation, to install underground drainage pipes if in Declarant's judgment such is necessary or desirable in furtherance of the overall drainage plan for the Project and if so installed, the operation, maintenance and repair of such shall become the duty and obligation of the Association and all costs and expenses relating to such maintenance and repair shall become a Common Expense of the Association.

**Section 5. Northern Palm Beach County Improvement District Easement.**

Non-exclusive easements are hereby granted throughout the Common Areas to the Northern Palm Beach County Improvement District ("District"), which shall automatically terminate and lapse without further act or deed if such District ever abandons the use thereof, it being specifically intended by Declarant that any easement or other property right granted to the District shall not be hereafter sold, transferred, mortgaged or otherwise altered by such District and that if said District ever ceases to have any need for same, it shall automatically terminate (and revert to Declarant for the benefit of the Association), for the purpose of access to any water management easements or roadway easements dedicated to the District on any recorded plat of the Property or separate written document executed by Declarant and recorded among the Public Records of Palm Beach County, Florida, providing such use by said District shall not interfere with residential use of the Property.

**Section 6. Easement for Unintentional and Non-Negligent Encroachments.**

If (a) any portion of the Common Areas or Improvements thereon encroaches upon any other portion of the Property; or (b) any other portion of the Property, or Improvements thereon, encroaches upon the Common Areas; or (c) any encroachment shall hereafter occur pertaining to the Property as the result of: (i) construction of any building or Improvement by the Developer; (ii) settling or shifting of a Home or other Improvement constructed by Developer, its successors or assigns; or (iii) any repair to the Common Areas or any other portion of the Property, then, in any such event, a valid non-exclusive easement shall exist for such encroachment and for the maintenance, repair and replacement of same, as long as such structure shall exist.

**Section 7. Zero Lot Line Easements.** If a Home or Unit is constructed on or within three (3) feet of the side lot line of any Lot, the following easements are hereby created as to such Homes or Units and the Lots adjacent thereto:

A. Subject to the other provisions of this Declaration, a non-exclusive easement is hereby created over, under, across and through the vacant and unimproved portion of each Lot in favor of: (i) the Owner of the adjacent Lot; (ii) the Association; and (iii) any utility company providing service to such Lots, the purpose of which easement shall be for maintenance or repair of the Improvements constructed or to be constructed on or near the Zero Lot Line of the adjacent Lot, and for installation, maintenance, service, or repair of any utility equipment or meters attached to any Improvement constructed on or near the Zero Lot Line of the adjacent Lot. The Association and the Owner of an adjacent Lot, and any utility company, shall have the right, at all reasonable times, to enter upon the easement area of a Lot in order to perform work relating to the maintenance or repair of a Home or related Improvement constructed on the adjacent Lot, or for installation, maintenance, inspection, service or repair of any equipment or meters attached to any Improvement constructed on the adjacent Lot. Nothing shall be placed within the easement area which would block access to the easement area, except as to any Improvement constructed or landscaping installed by the Developer or its assigns, or replacements thereof or Improvements installed pursuant to Subsection D. of this Section

and with the approval of the Ibis ARB. The easements provided for herein are appurtenant to, and shall pass with, the title to each Lot, subject to the provisions of this Declaration.

B. The Declarant hereby specifically creates and reserves unto itself, and its successors and assigns, a three foot (3') wide non-exclusive easement for roof overhangs, gutters, drainage and footings along the boundary of each Lot for the encroachment of and/or drainage from any overhanging roof and for any encroachment or footing relating to a wall on or near the boundary of any adjacent Lot.

C. The Declarant hereby specifically creates and reserves unto itself and its successors and assigns non-exclusive, perpetual easements for any encroachments on each Lot for a wall, screen enclosure, planter or other Improvement, and for fences, gutters and down spouts. These easements shall be continuous easements and shall cover similar future encroachments which may occur in connection with the repair, maintenance or replacement of the item encroaching on any Lot(s) or Common Areas.

D. Each Lot shall enjoy and be subject to a perpetual limited right to have certain Improvements, including, but not limited to, trellises, barbecues, screen enclosures and decorative water fountains attached to the Home on the Zero Lot Line of the Lot, if any. The Owner of each Lot upon which Declarant has constructed a Zero Lot Line Home shall have the permanent right to install, replace and maintain certain Improvements, including, but not limited to, trellises, barbecues, screen enclosures and decorative water fountains on the Zero Lot side of his Lot and to attach such item to the wall of the Home on or within three (3) feet of the boundary line of the adjacent Lot, if any, provided: (i) the same shall not damage or harm the Home to which they are attached; (ii) Blue Heron Bay at Ibis Golf and Country Club ARB and the Ibis ARB have given their written approval for same; and (iii) further provided the use, maintenance and/or operation of same shall not be or become a nuisance or source of annoyance to the Owner of the Home to which such facility is attached, either by way of noise, vibration, heat or otherwise and if any such use does become a nuisance or source of annoyance, it shall be modified in a way that is acceptable to the Owner of the Home to which it is attached or it shall be discontinued. Therefore, each Lot upon which a Zero Lot Line Home is constructed shall enjoy and be subject to a perpetual limited right of attachment to the Home constructed upon the adjacent Lot for such purposes. The type of Improvement and method of attachment relating to this paragraph shall be subject to the prior written approval of Blue Heron Bay at Ibis Golf and Country Club ARB and the Ibis ARB; provided, however, no such approval shall be required for any Improvement installed by the Developer, its designees, successors or assigns or for any replacement or repair thereof made by the Owner of the adjoining Lot. Except as otherwise set forth in this Declaration, the obligation to maintain or repair any Improvement attached to a Home extending on the adjacent Lot shall belong solely to the Owner of the Lot for whose benefit the Improvement was constructed, i.e., the Owner of the Lot whose Home adjoins or has access to such Improvement and not the Owner of the Lot to which such Improvement is attached.

**Section 8. Public Service Easements.** Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual non-exclusive easement for ingress and egress over and across the Common Areas, including recreation areas, if any, and streets or rights of way shown on any plat of the Property, for proper purposes.

**Section 9. Developer Use of Common Areas.** The Developer reserves to itself (and to its contractors, subcontractors, sales agents, customers and representatives) the non-exclusive use of the Common Areas and the facilities thereon, without charge, for sales display, access, construction and ingress and egress purposes for as long as the Developer has legal title to any of the Homes, Lots or Property.

**Section 10. Easement for Repair.** The Declarant reserves to itself and grants to the Association a non-exclusive, perpetual easement for the right to replace, refinish, repair and maintain any Improvement or condition on the Common Areas, including, but not limited to the right to replace any destroyed or damaged trees, vegetation, plants,

shrubs, sod and ground cover, and to gain access to all portions of the Common Areas for such purposes.

**Section 11. Additional Easements.**

A. Non-exclusive, perpetual easements are hereby granted over roads, rights-of-way and Common Areas within the Property to the Ibis POA and to the Association, for the purpose of access to all property dedicated to the Ibis POA and the Association on any recorded plat of the Property or a portion thereof, and to permit the Ibis POA to carry out its duties and obligations under the aforementioned Ibis Declaration and to permit the Association to carry out its duties and obligations under the Declaration, Articles and Bylaws.

B. Declarant hereby reserves the right for itself and its assigns to hereafter create a non-exclusive easement of use and enjoyment in, to, over and through certain portions of certain Lots in favor of Owners of adjacent Lots. The identification and location of any such easements shall be described on a separate document to be recorded among the Public Records of Palm Beach County, Florida, by the Declarant prior to the time of closing on any of the Lots so affected. Generally, but not always, the easements referred to in this paragraph shall not extend beyond five feet (5') on either side of a platted property line. The easement shall be solely for the benefit of the Lot or Lots identified in such separate easement.

**Section 12. Restriction on Easements.** No Owner, other than the Declarant, shall grant any easement upon any portion of the Property to any person or entity, without the prior written consent of the Association and the Ibis POA, and any attempt to do so without such consents shall be null and void.

**Section 13. Association Rights.** The Association is hereby granted a right of entry onto each Lot to perform repairs, maintenance or to make replacements for which the Owner or his family is responsible, but which the Owner has failed or refused to perform, and which failure or refusal has endangered or impaired the use or value of other Lots or Common Areas within the Property, as determined by the Board. Such right of entry shall include the right, but not the obligation, to abate or eliminate any nuisance as deemed necessary by the Board. The Association shall have the right, but not the obligation, to perform such repairs, maintenance or replacements or to abate such nuisances, as set forth in Article V, Section 2.H hereof, and to perform repairs as set forth in Article X, Section 3.J hereof. The costs and expenses of any such work shall be charged to the Owner of the Lot involved.

**ARTICLE V  
RIGHTS IN THE COMMON AREAS; MAINTENANCE**

**Section 1. Ownership.**

A. A plat or plats of the Property may contain a dedication to the Association by the Developer and/or Partners. The fee simple title to all streets or roadways within the Property shall be conveyed to the Association by the Developer or its assignee at a time to be determined by the Developer in its sole discretion. The Developer shall convey and transfer the fee simple title to the Common Areas, other than streets or roadways, if any, to the Association, upon completion of construction of same and sale of all Lots, or sooner, in the sole discretion of the Developer. The Association shall be responsible for the maintenance of the Common Areas, including the streets and roadways within the Property and Improvements thereon, and shall carry out such duties in a continuous manner, acceptable to the Board. The Association's duty and obligation of maintenance shall apply prior to and after it receives legal title to the Common Areas. The Association shall also be responsible for the payment of all real estate taxes and other charges assessed against the Common Areas and any Improvements thereon, including personal property taxes accruing from and after the date of recording of this Declaration among the Public Records of Palm Beach County, Florida. The Declarant shall have the

right, but not the obligation, to maintain the Common Areas for a limited time at its own cost and expense if it so decides, in its sole discretion, but in any event, the Association shall be responsible for Common Area maintenance and expenses from and after the date that the first Home on the Property is sold to an Owner by the Developer, or its successors.

## **Section 2. Maintenance by the Association and Owner.**

A. The Association, and not the Owner of each Lot, shall have the duty and obligation to perform the following work, the costs of which shall be deemed to be part of the Common Expense of the Association: (i) landscape maintenance; and (ii) the maintenance, repair and replacement of any exterior wall or fences between Homes, but excluding the walls of Homes.\*All of the foregoing duties of the Association shall be carried out as and when needed, as determined by the Board of Directors of the Association. Any duty or obligation to repair and maintain any Lot, Home or other Improvement thereof, including exterior maintenance and repair of each Home, (and its roof) which is not specifically delegated to the Association under this Declaration, shall be the sole responsibility of the Owner of each Lot as to the Improvements thereon. The Owner of each Lot shall have the duty and obligation of maintaining, repairing and replacing the roof of his Home and other portions thereof.

B. The Owner of each Lot, and not the Association, shall have the duty and obligation to perform the following work, the costs of which shall be that of the Owner: \* (i) cleaning roofs of Homes; (ii) cleaning and maintaining driveways; (iii) cleaning and painting the exterior of Homes, and any adjoining wall or fences, including painting and pressure cleaning of same.

C. The Association shall at all times maintain in good repair, and shall replace as often as necessary, any and all Improvements situated on the Common Areas, including, but not limited to, all Recreational Facilities, if any, landscaping, landscape irrigation, paving, drainage structures, street lighting fixtures and appurtenances, sidewalks and other structures. Maintenance of street lighting fixtures shall include and extend to payment for all of the electricity consumed in their illumination and operation. The Association has authority to adopt rules and regulations concerning each Owner's obligations to keep such exterior lighting operational, and shall do so, even when the Home is not being occupied.

D. The Association shall maintain the sprinkler system of each Lot installed by the Developer, and each Owner shall provide access to his Lot to the Association or its agents in order for the Association to carry out its maintenance functions. Owners shall have the duty and obligation to monitor the operation of the sprinkler system and to promptly report any malfunctions to the Association. In no event shall the Association be liable or have any obligation to pay for any damage to property or personal injury caused by any sprinkler system, electrical lighting, drainage structure or other Improvement or the malfunction thereof. The sole obligation of the Association with respect to the landscape irrigation system shall be to make repairs to it as deemed necessary by the Association. Any repair or replacement of damage or loss to lawns, trees and plants caused by an Owner not providing the necessary access to his Lot or timely notice to the Association of malfunction of the irrigation system shall be at the sole cost and expense of such Owner.

E. The Association shall maintain all lawns and yard landscaping. In the event any Owner wishes to make any change in the landscaping originally installed by the Developer, such change must first be approved in writing by the Association and by the Master Association. If so approved, the Association has the right to elect either to maintain such new landscaping and charge the Owner therefor, or to not provide maintenance for any such change in landscaping. If the Association elects not to perform the maintenance related to the change of landscaping, the Owner of the Lot shall, at his sole cost and expense, be obligated to, and shall perform the same in a manner acceptable

to the Board, consistent with the standard of other landscaping maintenance within the Property, and the Owner shall not be entitled to any reduced assessment or other credit or consideration due to such Owner undertaking or performing landscape maintenance on his own Lot.

F. All work to be performed or carried out pursuant to this Section by the Association and all expenses of the Association hereunder shall be paid for by the Association through Assessments imposed in accordance with this Declaration and/or through reserves accumulated by the Association, as determined by the Board. This paragraph shall not change the obligation of an Owner to pay for any modified landscaping as provided above in this Article. No Owner may waive or otherwise escape liability for the Assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas.

G. The Board of Directors of the Master Association has the power, but not the obligation, to adopt minimum maintenance standards in connection with each Lot and Improvements located thereon. Such standards shall be in addition to those obligations of Owners as stated in this Article V and may be changed from time to time by the Board of Directors of the Master Association, in its sole discretion. Any minimum maintenance standards established pursuant to this Article V need not be recorded to be effective.

H. In the event any Owner fails or refuses to maintain his Lot and/or any Improvement thereon as required by this Declaration after thirty (30) days written notice from the Board (or such shorter notice period as may be provided in this Declaration), the Association shall have the right, but not the obligation, to undertake such maintenance or repairs for and on behalf of such Owner, and the cost and expense of same, together with reasonable attorneys' fees paid or incurred by the Association in the enforcement of this Declaration, whether suit be brought or not, and interest at the highest rate permitted by law shall be specially assessed against the Owner and the Lot of such Owner, which shall be the subject of a lien on the Lot until paid.

## ARTICLE VI INSURANCE

**Section 1. Common Properties.** The Association shall keep all Improvements located on the Common Properties insured against loss or damage by fire or other casualty for the full insurable replacement value thereof and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned or maintained by the Association, against loss or damage by fire, and such other hazards as the Association may deem desirable, with the Association as the owner, loss payee and beneficiary of such insurance. Insurance proceeds shall be used by the Association for repair or replacement of the property for which the insurance was carried. Except as expressly otherwise provided, premiums for all insurance carried by the Association are Common Expenses included in the Assessments made or to be made by the Association, from time to time.

**Section 2. Flood Insurance.** In the event the Property is located within an area that has been designated a special flood zone, as defined by the Federal Emergency Management Agency, the Association shall purchase and maintain a policy of flood insurance, naming the Association and the Declarant (as long as the Declarant owns any of the Property) insureds, and covering the Common Areas, and any Improvements, buildings, fixtures, personal property, equipment, supplies and materials located on and used in connection with the operation of the Common Areas, and each Owner shall purchase and maintain a similar policy covering his Unit, and shall, at the request of the Association, from time to time, provide proof of such coverage in a manner acceptable to

the Association, in its reasonable judgment. The Association coverage shall be in an amount not less than the lesser of the following: (a) the maximum coverage available under the National Flood Insurance Program for all buildings and other Improvements located on any portion of the Common Areas that fall within a designated special flood zone; or (b) one hundred percent (100%) of the current replacement cost of such Improvements, buildings and other insurable property. Any such policy shall provide that it cannot be cancelled or be substantially modified without at least thirty (30) day prior written notice to the Association, Declarant, or Owner, whoever is the insured under such policy.

**Section 3. Liability Insurance.** The Association shall purchase and maintain a policy of comprehensive general liability insurance, naming the Association and Declarant as insureds. The coverage shall be in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury, death and property damage arising out of a single occurrence. Coverage shall include liability of the Association and Declarant for bodily injury, death and property damage. Any such policy will provide that it cannot be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and Declarant. An Owner is responsible for purchasing and maintaining a policy of comprehensive general liability insurance providing coverage for his Unit as provided elsewhere in this Article.

**Section 4. Waiver or Subrogation.** As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Management Company, Declarant, and the officers, directors, agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**Section 5. Fidelity and Other Insurance.** The Association may purchase and maintain a policy of insurance or fidelity bond, naming the Association as the insured or as the obligee, to protect the Association against the wrongful acts or omissions of any officer, director, trustee, agent or employee of the Association and all other persons who handle or are responsible for handling funds or, for funds administered by the Association. Any such policy or bonds shall be in an amount determined by the Board of Directors, but in no event shall the amount of any such policy or bond be less than fifty percent (50%) of the estimated annual operating budget of the Association for the current year during the term of each such policy or bond. Each such policy or bond shall provide that it shall not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association. The Association may also obtain Workmen's Compensation insurance and other liability insurance as it may deem desirable, insuring each Lot Owner and the Association, Board and Management Company, from liability in connection with the Common Properties, the premiums of which shall be Common Expenses and included in the Assessments made against the Owners and the Lots.

**Section 6. Distribution of Proceeds:** Reconstruction of Buildings and Improvements. The proceeds of any policy of insurance or bond required to be purchased and maintained, or which may be purchased and maintained, pursuant to the terms of this Declaration shall be paid to the Association and Declarant, as their interests may appear, and shall be used as set forth in this Article VI.

A. All proceeds received by the Association and/or Declarant for any loss, damage or destruction of any buildings, Improvement, landscaping, equipment, supplies or materials located on and used in connection with the Common Areas, shall be utilized by the Association and/or Declarant to repair, replace or reconstruct any such building, Improvement, landscaping, equipment, supplies or materials. Any difference between the amount of insurance proceeds received by the Association and/or Declarant and the amount required to complete the repair, replacement or reconstruction shall be an expense of the Association for which the Association shall levy a Special Assessment against all

Owners to obtain said difference within forty five (45) days from the date such loss, damage or destruction occurred.

B. Any repair, replacement or reconstruction that is the responsibility of the Association as provided in this Declaration shall be substantially in accordance with the plan and specifications of the original building or Improvement, or as the building or Improvement was last repaired or reconstructed, and shall be of similar quality and value in the case of equipment, personal property, landscaping, supplies or materials as that previously purchased and maintained by the Association; provided, however, that such repair, replacement or reconstruction shall be modified when necessary to conform with the then current restrictions, ordinances and codes of any governmental entity that has jurisdiction on the use and occupancy of the Property.

**Section 7. Estimates for Repair, Replacement or Reconstruction.** In the event any loss, damage or destruction occurs that is covered by an insurance policy purchased and maintained by the Association pursuant to the terms of this Declaration, the Association shall, immediately after the occurrence of such loss, damage or destruction, obtain a reliable, detailed estimate of the cost to place the damaged property in as good a condition as existed immediately prior to the loss, damage or destruction. The Association shall establish a separate account with a bank or savings and loan association located in Palm Beach County, Florida, and shall deposit into such account all insurance proceeds and any Special Assessments collected by the Association by virtue of the occurrence of any loss, damage or destruction as provided in this Declaration.

A. Said account shall constitute a repair, replacement and reconstruction fund which shall be disbursed in the manner provided in this Article VI as the required repair, replacement and reconstruction progresses.

B. The Association shall make payments for such repair, replacement or reconstruction upon the written request for a disbursement by the person or entity responsible for the repair, replacement or reconstruction, which in the case of the repair, replacement or reconstruction of a building or other Improvement, shall be accompanied by an appropriate certificate signed by the architect, engineer or contractor in charge of such repair, replacement or reconstruction stating: (a) that the requested payment has either been made or is justly due, and certifying that the payment requested does not exceed the value of the services and materials already in place pursuant to such repair, replacement or reconstruction; (b) that, except for the payment requested, there are no outstanding payments for the repair, replacement or reconstruction being performed which may provide a basis for a vendor's or mechanic's lien; and (c) that the cost of the repair, replacement or reconstruction to be done subsequent to the date of such certificate does not exceed the amount of funds remaining in the repair, replacement and reconstruction fund after the requested payment is made.

C. In the event there is a balance in the repair, replacement and reconstruction fund after the Association has made all payments for any such repair, replacement or reconstruction pursuant to the terms of this Declaration, the Association shall be entitled to retain said balance and add it to the Association's reserve; provided, however, that in the event special assessments were collected and utilized for such repair, replacement or reconstruction, then a majority vote of the Owners, at a special meeting called for that purpose and held in accordance with the terms and provisions of the Bylaws, shall determine whether the balance shall be retained by the Association and added to the Association's reserves, or shall be returned prorata to the Owners who paid such special assessments.

**Section 8. Declarant Named as Insured.** Whenever the Association is required to purchase and maintain a policy of insurance or bond which shall, according to the terms of this Article VI, name Declarant as an insured, such obligation to name the Declarant as an insured shall cease upon Declarant's conveyance of title to the last Unit owned by the Declarant.

**Section 9. Review of Insurance Coverage's.** The Association shall, at least annually, review the adequacy of the insurance coverages required pursuant to this Declaration and shall make a determination as to the adequacy of the amounts and types of coverage then in effect.

**Section 10. Owner's Insurance.** EACH OWNER SHALL BE OBLIGATED TO MAINTAIN INSURANCE ON HIS LOT AND ANY IMPROVEMENTS THEREON IN AN AMOUNT EQUAL TO AT LEAST FULL INSURABLE VALUE AS TO LOSS OR DAMAGE BY FIRE OR OTHER CASUALTY, AS WELL AS LIABILITY INSURANCE AND INSURANCE INSURING HIS PERSONAL PROPERTY. EACH OWNER SHALL FURNISH PROOF OF SUCH COVERAGE TO THE ASSOCIATION UPON REQUEST WITH A CERTIFICATE REQUIRING THIRTY (30) DAYS WRITTEN NOTICE TO THE ASSOCIATION OF CANCELLATION OR NON-RENEWAL OF SAID INSURANCE COVERAGE.

## ARTICLE VII

### ASSESSMENTS AND LIEN THEREFOR; NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** Subject to the provisions of this Declaration, the Developer, as Owner of the Property or portions thereof, hereby covenants, and each Owner of any Lot within the Property, by acceptance of a deed therefor, whether or not so stated therein, covenants and agrees to promptly pay to the Association all Assessments levied or assessed under this Declaration; all such Assessments to be imposed and collected as set forth herein. The obligation of an Owner for Assessments, except as to the Developer, shall commence as to each Lot owned by an Owner upon the acquisition of title to that Lot by such Owner.

All Assessments made and levied by the Association, as to each Lot, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such costs and reasonable attorneys' fees are assessed, and shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment fell due until paid. Subject to the provisions of this Declaration protecting Institutional First Mortgagees, unless and until such Mortgagee acquires title to a Lot pursuant to foreclosure, a judicial proceeding or deed-in-lieu of foreclosure, the personal obligation for delinquent Assessments shall pass to the successors in title of such Owner. The Board shall deposit all monies collected in one or more accounts as the Board deems appropriate, in its sole discretion.

**Section 2. Annual Assessments.** The Association, through its Board of Directors, shall have the power and authority to levy and collect an annual assessment ("Annual Assessment") from each Owner, except as to the Declarant, as otherwise provided hereinafter. The Annual Assessment shall be paid in four (4) equal, quarter-annual installments or on such other periodic basis as the Board deems appropriate, from time to time, but in any event, no less frequently than annually. The Annual Assessments shall be used in accordance with the annual budget established by the Board of Directors, including, without limiting the generality of the foregoing, for payment of taxes and insurance upon property owned by the Association, the cost of operation and management of the Association, expenses and liabilities incurred by the Association in connection with the enforcement of its rights and duties against any Member of the Association or others, and the creation of reasonable reserves. Disbursements shall be made by the Board for such purposes as are deemed necessary for the discharge of the Association's responsibilities herein.

**Section 3. Due Date of Annual Assessments.** Annual Assessments shall be due and payable, quarter-annually, in advance, at the commencement of the Association's fiscal year, or as otherwise determined by the Board, from time to time. The amount of the first Annual Assessment shall be based upon the Developer's estimate of the operating

expenses for the year. In the event this Assessment proves insufficient to satisfy such expenses, the Board of Directors may levy one or more supplementary Assessments in the amount of the deficit, which supplementary Assessment shall not require the assent of the Members. The amount of the Annual Assessment may be adjusted from year to year, as deemed necessary or desirable by the Board of Directors.

**Section 4. Bases for Annual Assessment.** The Annual Assessment shall be levied against each Lot in accordance with the following (except as to Lots owned by the Developer, or its assigns, which shall not be subject to Assessments, as hereinafter set forth):

Except as may otherwise be provided for herein, each Lot shall be subject to the same Annual Assessment as every other Lot within the Property, which shall be calculated by dividing the budget by the number of Lots within the Property conveyed to Owners, other than the Declarant and Partners, or its assigns.

**Section 5. Special Assessments.** The Association, through its Board of Directors, shall have the power and authority, from time to time, to levy and collect special assessments ("Special Assessments") from each Owner (except as to Lots owned by the Developer as provided in Section 10 of this Article) for the following purposes: the acquisition of real or personal property by the Association; payment, in whole or in part, of the cost of construction of capital improvements to the Association property; the cost of construction, reconstruction, unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto; the cost of maintenance or repair of any property which the Association is obligated to maintain hereunder, including roads, Common Areas and Recreational Facilities; Common Expenses, if funds are not otherwise available therefor from Assessments or reserves; the expense of indemnification of each director and officer of the Association; and such other purposes deemed appropriate by the Board of Directors. All notices of Special Assessments from the Association to Owners shall designate the amount thereof and the date when due. All Special Assessments shall be levied upon the same basis as Annual Assessments, unless otherwise determined by the Board, and shall be collectible in such manner as the Board of Directors shall determine.

**Section 6. Individual Assessments.** The Association, through its Board of Directors, shall have the power and authority, from time to time, to fix, levy and collect individual assessments ("Individual Assessments") against an Owner for the cost of repairs or services or replacements within or without the Property for which the Owner or his family, lessees, guests or invitees are responsible (or requests, such as for additional flowers or landscaping, subject to approval of the Association), and which the Owner has failed or refused to perform or pay for, and which failure or refusal has endangered or impaired the use or value of other Lots or Common Areas within the Property, or has caused the Association to have an expense incurred as a result of the actions of such Owner, as determined by the Board. Individual Assessments shall be collectible in such a manner as the Board of Directors shall determine. The Association may also levy Individual Assessments against any Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners or their families, lessees, guests or invitees. The Association shall have the right to file a lien against the Home or Lot of any Owner not paying any assessment when due and may foreclose such lien as well as pursue any other remedies available to the Association at law or in equity, including, but not limited to, those available under this Declaration, the Articles and Bylaws.

**Section 7. Initial Capital Contribution.** All Owners, except the Developer and its assigns (who shall be exempt from the provisions of this Section 7), shall contribute and be charged an initial capital contribution to the Association in an amount equal to two (2) months Assessments based upon the Annual Assessment for each Home or Lot then being purchased, which shall be payable at the time of closing; these funds shall be placed in the Association's capital reserve account to be utilized for the purposes outlined in Section 5 of this Article VII, entitled "Special Assessments". This contribution shall be a "one time only" payment per Lot made by Owners who purchase Homes directly from the

*(See 4th Amendment)*

~~Developer, its successors or assigns, and shall not apply to successive sales of the same Home to succeeding Owners.~~ This initial capital contribution shall not apply to vacant Lots while owned by Partners, its successors and assigns other than retail owners of Homes or Units. Nothing contained in this Section shall operate to curtail the right of the Board of Directors to levy Special Assessments or Individual Assessments pursuant to Sections 5 and 6 of this Article, respectively. The capital reserve account may be invested by the Board so as to earn interest in a bank or savings account, money market fund or certificate of deposit, fully insured by an agency of the United States government.

**Section 8. Date of Commencement of Association's Obligation for Collecting Annual Assessments.** The obligation of the Association to collect Annual Assessments applicable to each portion of the Project shall commence on the day of closing of the first Lot to be conveyed by the Developer to any Owner. The amount of the Assessment shall be prorated based upon the day and month of closing within the assessment period.

**Section 9. Annual Budget and Balance Sheet Prepared by the Board of Directors.** The Board of Directors shall cause a balance sheet and operating statement of the Association to be prepared each fiscal year of the Association, reflecting income and expenditures and shall make copies of same available to Members. The Board of Directors shall prepare a written estimate ("Annual Budget") of the expenses to be incurred by the Association during each fiscal year in performing its functions under this Declaration, which budget may, but need not, include reasonable provision for contingencies and reserves. The Annual Budget, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration shall be met, shall be adopted by a majority vote of the Board of Directors.

**Section 10. Liability of Developer and Partners.**

A. Anything to the contrary herein notwithstanding, neither the Declarant nor any successor Declarant, shall be liable for any Assessments, whether Annual, Special, Individual or otherwise, imposed upon any Lots of which either is the Owner, as long as the Declarant funds any deficits in operating expenses of the Association. In calculating such deficit, only actual current expenses (other than reserves and funds which are chargeable to Owners as Special Assessments) shall be computed. The Declarant may, at any time, and from time to time, be relieved of its obligation to fund deficits by electing, for any Assessment period or periods, or any parts thereof, to pay Assessments imposed upon Lots for which it is the Owner; provided, however, that no Assessments shall be due from the Declarant for any Lot unless and until a certificate of occupancy is issued for a Home, Lot or Unit constructed thereon.

B. Anything to the contrary herein notwithstanding, the liability of Declarant for any Assessments, whether Annual, Special, Individual or otherwise, imposed upon any Lots of which it is the Owner, as long as there is no Home or Unit constructed thereon for which a Certificate of Occupancy has been issued by the City of West Palm Beach, shall be limited to its prorata share of the Annual Budget. Neither Declarant nor any successor Declarant shall be liable for any portion of any Assessment attributable to reserves or initial capital contributions to the Association.

**Section 11. Effect of Non-Payment of Assessments; Remedies.** If any Assessment made and levied hereunder is not paid on the date when due, it shall then become delinquent and shall bear interest at the maximum rate allowed by law, but not to exceed eighteen percent (18%) per annum, from the date when due until paid. If any Assessment made and levied hereunder is not paid on the date or within fifteen (15) days thereof, it shall be subject to a late fee payable by the Owner who fails to make such payment, in the amount of twenty-five dollars (\$25.00) or such other amount as may be determined by the Board, from time to time. The unpaid Assessment, together with interest thereon, late fees and the costs of collection thereof, including reasonable attorneys' fees, whether suit be brought or not, shall become a continuing lien on the property against which such Assessment is made. The lien shall bind the property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns, and

shall also be the continuing personal obligation of the Owner against whom the Assessment is levied. Any successor in title shall be held to constructive notice of the records of the Association to determine the existence of any delinquency in the payment of Assessments. Such information may be obtained from the Association.

A. The Association shall provide written notice of Assessments to each Owner. If any Assessment or installment thereof shall not be paid within fifteen (15) days of the due date, the Association may declare the entire Assessment immediately due and payable for the year and may, without waiving any other right or remedy to which it may be entitled, file a claim of lien among the Public Records of Palm Beach County, Florida, and, at any time thereafter, bring an action to foreclose the lien against the property and/or a suit on the personal obligation against the Owner, and there shall be added to the amount of the Assessment the cost of preparing and filing a complaint and the claim of lien in such action (including reasonable attorney's fees), and in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided above, and reasonable attorneys' fees to be fixed by the court, together with the costs of the action. The Assessment liens provided for in this Declaration may be foreclosed in the same manner as mortgages are foreclosed, and the Association, through its duly authorized agents, shall have the power, but not the obligation, to bid on any Lot or Unit at the foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

B. Upon payment in full of the amount secured by a lien filed by the Association against any Lot or Unit, including interest and costs, the Association shall execute and record an appropriate release of lien form among the Public Records of Palm Beach County, Florida, which shall be an expense of the Owner against whose Lot or Unit the lien was filed.

**Section 12. Subordination of the Lien of Assessments to Institutional First Mortgages.** The lien of any Assessments provided for in this Declaration shall be subordinate to the lien of an Institutional First Mortgagee recorded among the Public Records of Palm Beach County, Florida ("Institutional First Mortgage") prior to the recording of the claim of lien as to that Lot or Unit; provided, however, that in the event of a foreclosure, any purchaser at a foreclosure sale (including the holder or owner of an Institutional First Mortgage) and any mortgagee acquiring title by a deed-in-lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any Assessment accruing and becoming due after such foreclosure (or conveyance-in-lieu of foreclosure). All unpaid and accrued Assessments becoming due prior to the acquisition of title as a result of foreclosure or deed-in-lieu of foreclosure shall be deemed to be part of the Common Expenses divided equally among and payable by all Owners of Lots subject to Assessments by the Association, including the Lot as to which the foreclosure (or conveyance-in-lieu of foreclosure) took place, in the manner aforesaid, unless such Assessments are secured by a claim of lien recorded prior to the recording of the Institutional First Mortgage.

**Section 13. Additional Assessments.** The Assessments provided for hereinabove shall be in addition to all other Assessments which may be levied by the Ibis POA, in accordance with the Ibis Declaration and any other association of which the Owner may be a member.

**Section 14. Drainage Taxes.** Each Owner shall be assessed special drainage taxes levied by the District for the payment of bonds to finance and maintain drainage systems and related facilities throughout the Community. These taxes shall be paid by Owners directly to the Palm Beach County Tax Collector. Such taxes are separate and distinct from the Assessments paid or to be paid to the Association and to the Master Association, and are not governed by the covenants contained herein.

**Section 15. Waiver of Use.** No Owner may exempt himself or his Lot from personal liability for assessments duly levied by the Association, or release the Lot or Unit owned by his for the liens and charges hereof by waiver of the use and enjoyment of the Common Areas or the facilities thereon, or by abandonment of his property.

**ARTICLE VIII  
TRANSFER OF PROPERTY**

The transfer of each Lot or Home within the Property by sale, lease or otherwise is and shall be subject to the prior written approval of the Ibis POA, in accordance with the terms and provisions contained in the Ibis Declaration and the rules and regulations promulgated thereunder. An application and fee is required in connection therewith. No approval or fee is required hereunder for any transfer of a Lot from the Declarant to the purchaser from it of any Lot.

**ARTICLE IX  
GENERAL USE RESTRICTIONS**

All real property within the Project shall be held, used and enjoyed subject to the following limitations and restrictions, except as to exemptions applicable to the Declarant, as set forth herein and subject to any other restrictions or limitations in the Ibis Declaration.

**Section 1. Regulation of Uses.** Notwithstanding anything to the contrary contained herein, the Declarant reserves, until such time as Declarant transfers control of the Association to the Owners, the right to regulate the use of the Property through the establishment and publication, and amendment or revision, of rules and regulations ("Rules and Regulations"). The Board also has the right to adopt rules and regulations which shall be part of the Rules and Regulations. Owners consent to the foregoing and agree to abide by all such Rules and Regulations.

**Section 2. Land Use and Building Type.** The Lots subject to this Declaration may be used only for single family residential purposes. No business or commercial building may be erected on any Owner's property, and no business may be conducted on any part thereof. The Declarant is planning, but is not obligated to construct, one or more differing types of Homes on the Property. No Home or other structure or Improvement shall be erected upon any Lot without prior approval of the Ibis POA. No platted Lot shall be further subdivided, except by the Declarant, and except that the Declarant may: (i) replat all or a portion of the Property without approval of Owners, or (ii) convey a portion of a Lot to the Owner of an adjacent Lot, provided that, in either such case, the Property is used solely for residential purposes. Notwithstanding anything herein to the contrary, such conveyance of a portion of a Lot to the Owner of an adjacent Lot shall be deemed to be consistent with and permitted by all other provisions of this Declaration, as the same may be amended from time to time. To the extent that any conveyance of a portion of a Lot is made by the Declarant to the Owner of an adjacent Lot who may have previously been granted easement rights in the portion of the Lot so conveyed, there shall be a merger of title in the grantee with respect to the portion of the Lot conveyed to the Owner of the adjacent Lot. If any additional real property is added to this Declaration by Declarant, with written approval of Partners or the Ibis POA, which approval shall not be unreasonably withheld or delayed, then, any such additional land may, in the sole discretion of Declarant, be used for single or multi-family residential purposes, either for zero lot line homes, attached fee-simple Units or under a condominium form of ownership; provided, however, that each Owner of any such residence shall be required to be a Member of the Association as well as the applicable condominium association.

**Section 3. Clothes Drying Area.** No portion of the Property shall be used as a clothes-drying or hanging area for laundry or clothing of any kind, except to the extent permitted by any law.

**Section 4. Pre-wiring for Cable TV.** All Homes or Units shall be pre-wired during construction to accommodate cable television. Each Home or Unit shall contain at least two (2) cable television outlets upon its completion. In no manner shall this provision

be construed as a representation or warranty by Declarant that cable TV service will be provided to any Home, Lot or Unit.

**Section 5. Security Wiring.** All Homes or Units shall be pre-wired for installation of a Home security system containing at least the following features: warning system for smoke, fire, and panic with motion sensors. Each Owner should give preference when connecting the security equipment for monitoring to use the same security monitoring company that is other wise serving the Community in order to provide for uniformity and compatibility and effectiveness of service. The provisions of pre-wiring for installation of a Home security system in no manner shall be deemed a representation or warranty by Declarant, Partners, the Ibis POA or the Association of security service being provided by any of said entities, or their respective successors and assigns.

**Section 6. Underground Wires; Antennas, Aerials and Satellite Dishes.** Except as may be permitted by law, all electrical conduits and hook-ups shall be kept underground. No overhead wires, poles, or overhead facilities of any kind for electrical, telephone or TV service will be permitted. No antennas, aerials or satellite dishes of any kind shall be placed upon the roof or exterior of any Units. All antennas or aerials, if any, must be of the concealed type, installed inside the attic space of a Home or Unit and screened from view by landscaping or as otherwise approved in writing by the Ibis POA.

**Section 7. Energy Saving Devices.** All Homes shall contain energy saving devices, including energy saving water closets, refrigerators, and motors acceptable to the Declarant. Time clocks shall be installed on all underground sprinkler or irrigation systems.

**Section 8. Mailboxes.** The design, size and type of any mailbox used or installed upon the Property must be approved in writing by the Ibis POA before use and installation, except for any mailboxes which may be provided by the Declarant.

**Section 9. No Signs or Flags.** No signs, posters, displays, billboards, advertising devices or flags of any character, including, but not limited to, "For Rent", "For Sale", or "Open" signs shall be displayed to the public view or placed upon any part of the Property or upon or within any vehicle or improvement upon any Lot, without the prior written approval of the Ibis POA. This section shall not apply to the Declarant, and its agents, so long as the Declarant owns any property in the Project.

**Section 10. Use of Boats.** No motor-powered boat of any kind shall be kept or used upon any lake or waterway within the Property or within the Community and no other watercraft shall be permitted to be kept anywhere within the Community without a license therefor being issued by the Ibis POA.

**Section 11. Animals.** No animals, livestock, reptiles or fowl shall be kept or maintained on the Project, except that no more than two (2) dogs or cats (or one of each) or other common household pets, including birds, for their pleasure and use of the occupants, provided, they are not kept, bred, or maintained for any commercial purpose. All animals must be kept on a leash when outside of the Owner's property and must not be allowed to run loose or become a nuisance to other Owners by barking or other acts. Pets may be walked only in the yard of the Owner of the pet and not upon the Common Areas unless the Board specifically designates an area for such use in the future. All Owners of pets shall be responsible for cleaning up after their pet. The Board is authorized to promulgate rules and regulations regarding the keeping or maintaining of pets. The Board shall have the right to require any pet to be removed from the Home or Unit which causes an unreasonable source of annoyance to any Owner, or if the Owner violates any provision of this Declaration relating to pets or violates any of the Rules and Regulations now or hereafter existing relating to pets.

**Section 12. Vehicles.** No vans, except passenger vans with full permanent seating capacity for at least five (5) passengers, excluding the driver, and having front and rear seat side windows installed, shall be placed or parked upon any Owner's Lot or

otherwise kept in the Project. This provision shall not apply during the construction phase of any construction being performed by one utilizing a truck during construction. No trailers or habitable motor vehicles of any nature, motorcycles, service vehicles, trucks or "pick-ups" or vehicles having printing or advertising on exterior surfaces shall be kept, stored, or parked overnight on any part of the Property except within an enclosed garage. No boats, on or off trailers, may be parked on any part of the Property, except in an enclosed garage, nor shall any maintenance or repairs be performed upon any boat or motor vehicle, except within an area totally isolated from public view. No vehicles, including service vehicles, shall be permitted to park on streets overnight or between the hours of 12:01 a.m. and 7:00 a.m.

**Section 13. Nuisances.** No illegal, immoral, noxious or offensive activity shall be carried on or permitted in any Homes, Units, Improvements, Lots or Common Areas located within the Project, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any Owner or other having lawful use of any portion of the Property. No loud noises or noxious odors shall be permitted in or from any such Homes, Units, Improvements, Lots or on the Common Areas, and the Board of Directors shall have the right to determine if any noise, odor or activity constitutes a nuisance.

**Section 14. Recreational Areas.** All Recreational Facilities, if any, and Common Areas shall be used only for the intended purpose of furnishing services and facilities for enjoyment of the Owners. The Board is authorized to promulgate and enforce rules and regulations with regard to all aspects of use, operation and maintenance of the Recreational Facilities and Common Areas and may, from time to time, modify, add to or repeal any of such rules and regulations.

**Section 15. Tennis Courts and Basketball Hoops.** Tennis courts and basketball hoops and/or backboard are not permitted on any Lot or upon the Property.

**Section 16. Garages and Garage Doors.** Garages shall only be used for the storage of automobiles and other uses authorized herein and shall not, under any circumstances, be permanently enclosed or converted to other uses, including, but not limited to, incorporating the garage space, or any part thereof, into the interior living space of any Home. All garages shall be equipped with fully operational automatic garage door openers activated by a remote control garage door opener, and all garage doors must be closed, except when vehicles are entering or exiting from the garage. Each Owner shall be responsible for maintaining his own garage door opener in good working order at all times as the Owner's sole cost and expense.

**Section 17. Garbage and Trash Disposal.**

A. No garbage, refuse, trash or rubbish shall be kept or permitted on the Project; provided, however, that the requirements from time to time of the appropriate governmental authorities for disposal or collection shall be complied with by the Owner of each Home and his family, guests, lessees and others using the Home. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and no odor shall be permitted to arise therefrom.

B. All such garbage and trash shall be placed in rubberized garbage receptacles with tops or in such other containers as may hereafter be designated as acceptable by the Board. The garbage and trash shall be placed out on the street for collection the night before pick-up after sunset or on the day of collection on or before 6:00 a.m. All such garbage and trash receptacles shall be promptly picked up by each Owner and returned to such Owner's Home following the garbage and trash disposal pick-up.

**Section 18. Insurance Rates.** Nothing shall be done or kept in the Common Areas or Lots which will increase the rate of insurance of any property insured by the Association without the prior written approval of the Board, nor shall anything be done or

kept in the buildings, Lots or on the Common Areas which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law, rule or regulation of any governmental subdivision or agency.

**Section 19. Temporary Structures.** No temporary building, outhouse, shed, tent, or trailer of any kind shall be erected, altered, placed or permitted to remain on any Property except as otherwise expressly permitted herein. Nor shall any docks, bulkheads, moorings, pilings, boat houses or boat shelters or any kind be erected on the Property or over waterways of the Property without the prior written consent of the Ibis ARB and the Ibis POA. Temporary structures or trailers may be erected or placed on the Property by the Declarant during a reasonable period of construction for use as a construction office or supply office, but in no event as a residence. Said structures must be approved by the Ibis POA before being placed on the Property. All temporary construction trailers and similar facilities must be removed within ten (10) days after completion of such construction.

**Section 20. Service Area.** All exterior storage areas, side garage doors leading to service areas, and utility meters are to be screened from view from streets and adjacent properties by an enclosure, fence, wall or mature landscaping material in a manner acceptable to the Ibis POA.

**Section 21. Miscellaneous.** Children's outdoor play equipment, if any, on any Lot must be screened from view by an Ibis POA approved fence, wall or landscaping. Owners shall maintain the exterior of their Homes, Lots and yards in a neat and presentable manner and not permit children's toys, strollers, bicycles and the like to be left in front yards, driveways or in other locations which would detract from the overall appearance of the Project. No flammable material shall be kept or stored within any Home or garage. All window coverings, such as awnings, hurricane or security shutters, sun screening on windows and the like must be approved in writing by the Ibis ARB prior to installation. → See revised form

## ARTICLE X

### ARCHITECTURAL AND LANDSCAPING CONTROLS AND RESTRICTIONS

**Section 1. Architectural Control.** The Developer acknowledges that the Ibis POA has established an Architectural Review Board ("Ibis ARB") which is responsible for reviewing and approving all plans and specifications for new construction and modifications of existing buildings in the Community. The Board shall have the power to appoint an Architectural Review Board ("Blue Heron Bay at Ibis Golf and Country Club ARB") for the purpose of architectural control within the Project. **Unless and until the Board appoints such the Blue Heron Bay at Ibis Golf and Country Club ARB, review and approval of all construction and modifications of buildings in the Project shall be performed by the Ibis ARB.** In the event the Board of the Association creates and appoints members to an architectural review board for the Association, the review and approval of plans, specifications and other matters submitted to such board shall be in addition to the Ibis ARB and not in place of it. In the event of any conflict between decisions, procedures or determinations of the Ibis ARB and the Blue Heron Bay at Ibis Golf and Country Club ARB, such decisions, procedures or determinations of the Ibis ARB shall govern and supersede in all instances. The Developer shall be exempt from the provisions of this Article X and from the provisions of Articles IX and XI of this Declaration, but not the provisions of the Ibis ARB and the Ibis Declaration.

**Section 2. The Blue Heron Bay at Ibis Golf and Country Club Architectural Review Board.** The Blue Heron Bay at Ibis Golf and Country Club ARB shall consist of not less than three (3) nor more than seven (7) members, the initial members of which shall consist of persons designated by the Declarant. Each of said persons shall hold office until all Homes planned for in the Project have been constructed and conveyed to buyers, or sooner, at the option of the Declarant. The Declarant shall have the power and authority \* to appoint successors to those members of the Blue Heron Bay at Ibis Golf and Country Club ARB originally selected by the Declarant. The Blue Heron Bay at Ibis Golf and Country Club ARB shall have the power to promulgate such rules and regulations as it

deems necessary to carry out the provisions and intent of this paragraph. A majority of The Blue Heron Bay at Ibis Golf and Country Club ARB may take any action The Blue Heron Bay at Ibis Golf and Country Club ARB is empowered to take, may designate a representative to act for The Blue Heron Bay at Ibis Golf and Country Club ARB, and may employ personnel, and consultants to act for it. In the event of death, disability or resignation of any member of The Blue Heron Bay at Ibis Golf and Country Club ARB, The Board of Directors of the Association shall have full authority to designate a successor. The members of The Blue Heron Bay at Ibis Golf and Country Club ARB shall not be entitled to any compensation for services performed pursuant to this Declaration, except if the Board approves a reasonable fee for any professional engineer, architect, architectural consultant, landscape architect or other professional with special expertise desired by the Board. The Board may defer to the Ibis POA with respect to matters of architectural control.

### **Section 3. Architectural and Landscaping Standards.**

A. Approval of Improvements. No building, wall, fence or other structure or Improvement of any nature shall be erected, placed or altered on any of the Properties until the construction plans, specifications and a plan showing the location of the structure and landscaping have been approved in writing by The Blue Heron Bay at Ibis Golf and Country Club ARB and the Ibis ARB. Each building, wall, fence or other structure or Improvement of any nature, together with landscaping, shall be erected, placed or altered upon the Property only in accordance with the plans and specifications and plot plan so approved. Refusal of approval, including refusal on purely aesthetic grounds, shall be at the sole and absolute discretion of The Blue Heron Bay at Ibis Golf and Country Club ARB, and the Ibis ARB. Any change in the exterior appearance of any building, wall, fence or other structure or Improvement and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval.

B. Exterior Appearances and Landscaping. The paint, stain and other exterior finishing colors and materials on all buildings constructed on the Lots shall be maintained as that which was originally installed by the original builder, unless there is written approval to make a change by the Ibis ARB. Glass and screening on all buildings may be maintained as originally installed, without prior approval of the Ibis ARB, but prior approval by the Ibis ARB shall be necessary before such is changed. Landscaping shall not be added to or modified by any Owner unless the prior approval for any such change is obtained from the Ibis ARB. No aluminum foil or material of similar appearance may be placed on or near windows or glass doors. All interior window coverings, drapes and shades shall be white, beige or other neutral colors or lined in such colors so that a uniform appearance is maintained from the outside of every Home on the Property. No exterior changes to a Home may be made without written approval of the Ibis ARB, including the installation of screen doors, shutters, security bars and the like.

C. Time for Completion. All construction of a Home shall proceed diligently and shall be completed within one (1) year from the date of issuance of the building permit therefor, or the commencement of construction thereof, whichever is sooner. All construction shall be carried out by a general contractor licensed to do business in the State of Florida and in Palm Beach County.

D. Size of Residences. No Homes shall be permitted to have a basement. The first floor elevation of any Home shall be a minimum of 18 inches and a maximum of 30 inches above the crown of the road contiguous to such Home. The minimum living area shall not be less than 2,400 square feet for a one-story Home and 1,800 square feet for the ground floor of a two-story Home, with a minimum of 2,400 square feet for both floors combined, exclusive of garage, covered walks, and open or screened porches, patios or terraces. No Home shall be greater than two (2) stories in height. All roofs shall have a minimum pitch of 5":12" and a maximum pitch of 6":12" (the amount of vertical height over a one foot distance) unless said requirement is waived by the Ibis ARB. Asphalt shingles and tar and gravel roofs are specifically prohibited except over porches. All vents and chimney caps are to be painted the color of the roof or medium bronze, unless otherwise directed by the Ibis ARB. All roof overhangs shall be approved by the

Ibis ARB. No substantial changes in the elevations of the Lot shall be made nor any fill used to extend the Owner's property beyond his property line or beyond any lake, canal or golf course easement line.

E. Driveways. Driveway materials and colors shall be approved by the Ibis ARB. No circular drive or parking areas or oversize driveways will be permitted without the written approval of the Ibis ARB, except if constructed by Declarant.

F. Conformity with Style of Home. Each exterior Improvement or addition to an existing Home must conform to and be compatible in architectural style with exterior construction materials used in the principal Home on the Property.

G. Exterior Colors. The Developer has predetermined the exterior colors and finishes of all Homes and no changes in such colors or finishes may be made without written approval of the Developer, as long as it owns any of the Lots within the Project. As to subsequent changes, if any, colors, materials and finishes are to be coordinated on all exterior elevations of the Home to achieve design consistency to the satisfaction of the Board and the Ibis ARB. All external surfaces that are stained or painted shall be restained or repainted at sufficient intervals so as to prevent the structure from detracting from the beauty of the Project.

H. Landscaping. The landscape and landscape irrigation plan for each Owner's property must be submitted to and approved by the Ibis ARB at the same time the architectural and construction plans are approved, except as to construction by the Developer. Full sod is required for all front, rear and side yards and shall be full and complete to cover all areas of the Lot to be grassed and shall be extended to the street pavement line wherever any Owner's property is bordered by a street, regardless of whether or not such area is owned by the Owner. The area, if any, between the Owner's rear property line and the water's edge of any lake or other water body within the Property shall be landscaped and/or sodded and maintained by the Owner. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior portion of any Property. Rock gardens or other similar stone landscaping will be permitted as long as it constitutes no more than fifteen percent (15%) of the front landscaped area. Notwithstanding the foregoing, the Developer has the right, at its option, not to sod side yards and to install in such areas rock or rock features or ground cover if Developer deems such to be appropriate in areas where grass may not receive sufficient sunlight to grow in a manner which will be satisfactory from an aesthetic point of view. Any such installation by Developer, or as otherwise approved by the Ibis ARB, shall be permitted by this Declaration.

I. Irrigation. An underground sprinkler system of sufficient size and capacity to irrigate all sodded or landscaped areas shall be installed and maintained in good order on all Property. Property Owners are prohibited from drilling and installing wells and no individual water supply system or individual sewage disposal system shall be installed, maintained or used on any Lot.

J. Repair of Damage. In the event any Home or other Improvement on a Lot is damaged or destroyed, in whole or in part, the Owner of such property shall take action deemed necessary by the Board to correct any unsightly or dangerous condition resulting from such damage or destruction. The Owner of the property so damaged or destroyed shall promptly take corrective action to either restore or remove the conditions, which work shall be completed within six (6) months after the date of the damage or destruction. The Owner shall undertake such corrective action as soon as is practicable in order to avoid an unsightly or dangerous condition. In the event the Owner of a Home or other Improvement on a Lot fails or refuses to take the required corrective action, as deemed appropriate by the Board, the Association shall have the right, but not the obligation, to go upon the property, without liability, and remove or correct the damaged or destroyed property, in whole or in part, which shall be accomplished at the sole cost and expense of the Owner of the property, in which event, the Association shall have the right to place a lien on the Lot for the full amount of the corrective work, together with

attorneys' fees and costs, if any, which lien shall be enforceable in the same manner as other liens created or provided under this Declaration.

K. Screening and Patios. No rear or side yard patios may be added to any Home and no covered patio may be screened or fence-enclosed without prior written approval of the Ibis ARB and the Ibis POA. No Owner shall cause or permit the screening or other enclosure of a patio, porch or other exterior area on his Lot, except a screen installed by Declarant, and except that a roof overhang of a Home may be screen enclosed, subject to prior written approval of the Ibis ARB and the Ibis POA as to color, configuration, materials, method of attachment to the Home and shape of the enclosure.

L. Non-Waiver of Future Approvals. The approval of the Ibis ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Ibis ARB shall not be deemed to be, or constitute, a waiver of any right to withhold approval as to any similar proposals, plans and specifications or matter subsequently or additionally submitted for approval.

## ARTICLE XI SETBACKS AND BUILDING LINES

### Section 1. Setbacks for Homes.

A. Front setback to Home- ten feet (10'); If a Home has a front entry garage-twenty feet (20'); side entry garage-fifteen feet (15'); side entry garage with an extension for a golf cart, where the golf cart entry faces the road fronting such Home, the front setback to such garage, including the portion for a golf cart, shall be ten feet (10');

B. Rear setback (excluding pool, patio and screening)- ten feet (10');

C. Side setback on the non-Zero Lot Line side, if applicable-eight feet (8');

D. Corner Lot - side setback -fifteen feet (15').

The foregoing restrictions shall apply in addition to any additional or more stringent requirements or restrictions of the City of West Palm Beach, Florida.

**Section 2. Garages.** Garages must be for at least two (2) cars and must be attached to the Home. Garages may not have entrances facing the street unless set back from the front property line twenty feet (20') or more, unless approved by the Ibis POA, except for the golf cart portion of any garage, which may be set back not less than fifteen feet (15') from the road right of way, as set forth above in Section 1 A of this Article. Side entry garages shall have a fifteen feet (15') set back.

### Section 3. Swimming Pools.

A. Rear setback to pool-five feet (5').

B. Side yard setbacks- five feet (5').

C. All swimming pools must be approved in writing by the Ibis ARB, as well as the Blue Heron Bay at Ibis Golf and Country Club ARB, before they are constructed, whether or not the pools are adjacent to golf course property or otherwise. In-ground hot tubs or spas may be permitted in the rear of Lots, subject to prior written approval of the Ibis ARB as to size, location and landscaping requirements.

D. No above ground swimming pools shall be placed or constructed on any Lot. In-ground spas or hot tubs may, however, be placed or constructed partially above ground, subject to written approval of the Ibis ARB.

E. No swimming pools shall be permitted in any front yard without prior approval of the Ibis ARB, nor shall any swimming pools be permitted in the rear of any Lots abutting any portion of any golf courses in the Community, unless installed by the Developer and approved in writing by the Ibis ARB.

**Section 4. Walls and Fences.** Walls, fences, and hedges must be approved by the Ibis ARB before installation or construction. No walls or fences of any kind on any Lot, excluding the walls of a Home, shall be in excess of six feet (6') in height above grade and no hedges shall be in excess of seven feet (7') above grade.

**Section 5. Screen Enclosures.** There is a three foot (3') setback requirement for rear and sides for screening.

## ARTICLE XII ACKNOWLEDGMENT

The purchaser(s) of each Lot and his successors and assigns acknowledge and agree to the following:

**Section 1. Private Clubs.** That neither the purchaser nor any of his successors or assigns has or will have: (i) any right with respect to membership in the Ibis Golf and Country Club, Ibis Golf and Country Club Golf Courses, Ibis Bath & Tennis, or any other private clubs or facilities within the Community by virtue of his ownership of property within Ibis Golf and Country Club or otherwise; (ii) any right to join any of the private clubs at Ibis Golf and Country Club or use of any such facilities unless he is accepted for membership (which shall be in the sole discretion of the management of the club) and has paid all current membership fees, and, if so accepted, he will not have any automatic rights of renewal of such membership; (iii) any right to bring or take any action to prevent or seek any remedy against Partners or its affiliates or its or their officers, directors, partners, agents, employees, successors or assigns in the event any of the foregoing clubs or facilities are converted to an equity type membership in the future where rights to use such facilities are dependent upon the purchase and sale of an ownership interest, which shall be in the sole judgment of the owner of such facilities. The purchaser of any Lot or Improvement specifically waives and disclaims any interest in the foregoing clubs, golf courses and facilities, other than any interest each may acquire as a member, in the event he applies for membership and has been accepted.

**Section 2. Non-interference with Development and Maintenance.** That neither any purchaser of a Lot or other Improvement nor his contractors, subcontractors, nor his or their employees or agents shall restrict, interrupt, harass or in any manner interfere with the development, construction, sale or operation of any property or activity within or related to Ibis Golf and Country Club, including, but not limited to, the operation and maintenance of all golf courses at Ibis Golf and Country Club, and the implementation of any development in or relating to the master plan for the Community, as the same may be amended from time to time.

**Section 3. Fill and Grade.** That no fill shall be removed from any Lot nor shall the Owner of any Lot do anything to change or interfere with the drainage of storm water; no change shall be made with respect to the original grade and contour of swales unless first approved in writing by the Association and the Ibis ARB.

**Section 4. Unauthorized Sales Practices.** That no auctions or similar sales practices shall be conducted with respect to any Lots on or adjacent to such Lots.

**Section 5. Board of POA.** That Ibis West Palm Partners L.P. (as successor to the declarant in the Ibis Declaration) retains the right to name or appoint all members of the Board of Directors of the Ibis POA until December 31, 2010 or until it may sooner elect, in its sole discretion, to relinquish such control or as otherwise required by law.

**ARTICLE XIII  
RIGHTS OF DEVELOPER**

**Section 1. Developer's Exceptions in General.** Developer and its assigns will have the right to undertake the work of constructing Lots, Homes, Units and Improvements relating thereto. The completion of that work and the sale, rental and other disposal of Lots is essential to the establishment and welfare of the Property as a community. As used in this Declaration, the words "its successors and assigns" specifically do not include purchasers of completed Lots. In order that said work may be completed and the Property established as a fully occupied community as rapidly as possible, no Owner, nor the Association shall do anything to interfere with Developer's activities, including activities of the Developer relating to construction, sales, marketing, promotional activities, land use, platting, governmental approvals and management. Without limiting the generality of the foregoing, nothing in this Declaration shall be understood or construed to:

A. Prevent Developer, its successors or assigns, its or their contractors or subcontractors, from doing whatever they determine to be necessary or advisable in connection with the completion of said work on any property owned or controlled by any of them or upon the Property, including, without limitation, the alteration of its construction plans and designs as Developer deems advisable in the course of development (all models or sketches showing plans for future development of the Property may be modified by the Developer, its successors, assigns or designees, at any time and from time to time, without notice and without the approval of any Owner or the Association); or

B. Prevent Developer, its successors or assigns, or its or their contractors, subcontractors or representatives, from erecting, constructing and maintaining on any property owned or controlled by them or upon the Project, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Project as a community and disposing of the same by sale, lease or otherwise; or

C. Prevent Developer, its successors or assigns, or its or their contractors or subcontractors, from conducting, on any property owned or controlled by any of them or upon the Project, its or their business of developing, subdividing, grading and constructing Improvements in the Project and of disposing of Lots therein by sale, lease or otherwise; or

D. Prevent Developer, its successors or assigns, from determining in its sole discretion the nature of any type of Improvements to be initially constructed as part of the Project, consistent with the overall plan of development; or

E. Prevent Developer, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sales offices and sign or signs on any Property owned or controlled by any of them or upon the Project as may be necessary in connection with the sale, lease or other marketing of Lots in the Project or any other project being developed by Developer, or otherwise from taking such other actions deemed appropriate, subject to prior written approval of the Ibis POA.

In general, the Developer shall be exempt from all restrictions set forth in this Declaration to the extent such restrictions interfere in any manner with Developer's plans for construction, development, use and sale of the Project.

**Section 2. Developer's Exemptions from Architectural Control.** Developer shall be exempt from the provisions of Articles IX, X and XI hereof, except as to the Ibis POA and Ibis ARB.

**ARTICLE XIV  
OWNERSHIP; VOTING RIGHTS;  
DUTIES AND POWERS OF THE ASSOCIATION**

**Section 1. Membership.** Membership in the Association shall be as set forth in the Articles, as the same may be amended from time to time.

**Section 2. Owner Voting Rights.** Each Lot shall be allocated and entitled to one (1) vote in any Association matter requiring a vote of the Members of the Association. When any Lot is owned by more than one person or entity, all such persons or entities shall be Members of the Association, but in no event shall more than one (1) vote be cast with respect to any one Lot. When a Lot is owned by more than one person or entity, those persons or entities shall designate one of them for the purpose of casting the vote that is appurtenant to their Lot. When a Lot is owned by an entity, the entity shall designate a partner, officer, employee or agent to act for such entity for the purpose of casting the vote that is appurtenant to the entity's Lot. All such designations shall be made in accordance with the terms and provisions of the Bylaws. The rights of Owners to exercise voting rights hereunder shall be subject to Developer's voting rights as provided in Section 3 of this Article.

**Section 3. Developer Voting Rights.** Except as may otherwise be required by law or in this Declaration, the Developer, or its assigns shall be entitled to vote one hundred percent (100%) of the voting rights of the Association until the earlier of: **March 31, 2009**, or until all Lots in the Project have been conveyed to persons or entities other than the Developer, or until the Developer, or its assigns, has earlier elected to terminate its control of the Association, at which time the Developer's membership and said right to vote shall cease, except as to any unsold Lots or parcels of the Property which it may own at the time. Should the Developer, or its assigns reacquire the fee title to a portion of the Property, it shall again be entitled to exercise voting rights hereunder with respect to such reacquired Lots, in the same manner as any other Owner of a Lot.

**Section 4. Duties and Powers.** The Association, acting through its Board of Directors, shall have all the powers conferred upon it by this Declaration, its Articles, Bylaws and otherwise available under the law. The Association shall have the duty to carry out all of the obligations placed upon it by this Declaration and for which it was created, as set forth herein and in its Articles of Incorporation, including, but not limited to, the duty to maintain the Common Areas, maintain such policies of insurance the Board deems appropriate, levy and collect assessments and file and foreclose liens when appropriate, pay bills, taxes and expenses related to the Common Areas and Improvements thereon and Common Expenses.

**ARTICLE XV  
FINES**

**Section 1. Compliance.** Every Lot Owner and his family, tenants, guests, invitees and agents shall comply with all provisions of this Declaration, the Articles and Bylaws and all rules and regulations of the Association, as the same now exists or may hereafter be adopted by the Board of Directors.

**Section 2. Enforcement.** Failure to comply with such rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums of money for damages, injunctive relief or any combination thereof. The Board of Directors shall have the right to suspend voting rights and use of the Common Areas and Recreational Facilities in addition thereto, except as to ingress and egress to an Owner's Home or Lot.

**Section 3. Fines.** In addition to all other remedies, and in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon a Lot Owner for failure or refusal of a Lot Owner, his family, lessees, guests, invitees or agents

to comply herewith or with any rule or regulation, provided the following procedures are followed:

A. **Notice.** The Board of Directors shall notify the Lot Owner of the infraction or infractions. Included in the Notice shall be the date and time of a special meeting of the Board of Directors at which time the Lot Owner may present reasons why penalties should not be imposed. At least six (6) days' written notice of such meeting shall be given.

B. **Hearing.** The facts on non-compliance or violation shall be presented to the Board of Directors after which the Board shall hear reasons why penalties should not be imposed, if any. A written decision of the Board of Directors shall be delivered to the Lot Owner not later than thirty (30) days after the hearing.

C. **Penalties.** The Board of Directors may, in addition to all other rights and remedies, impose a Special Assessment or Assessments against the Lot owned by an Owner for violations of the provisions of this Declaration by such Owner or his family, lessee or guest as follows:

1) First non-compliance or violation- a fine not in excess of Twenty-five and No/100 Dollars (\$25.00);

2) Second non-compliance or violation- a fine not in excess of Fifty and No/100 Dollars (\$50.00);

3) Third and subsequent non-compliance or violation or violations which are of a continuing or frequent nature, a fine not in excess of One Hundred and No/100 Dollars (\$100.00).

D. **Payment of Penalties.** Fines shall be paid not later than five (5) days after notice of the imposition of same.

E. **Collection of Fines.** Fines shall be treated as an Assessment.

F. **Non-Exclusive Remedy.** The fines provided for herein shall not be construed to be an exclusive remedy of the Association, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Lot Owner shall be deducted from or offset against any damage which the Association may otherwise be entitled to recover by law.

## ARTICLE XVI PARTY WALL

**Section 1. General.** Each wall built as part of the original construction of two or more attached Homes, if any, on two or more contiguous Lots and placed on the dividing lines between Lots on which they are situated, if any, shall constitute a party wall, and each Owner of one of the Lots shall own that portion of the wall which stands on his own Lot, together with a cross-easement of support in the other portion. To the extent not inconsistent with the provisions of this Article, the general rules of laws regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all such party walls. This Article is not applicable with respect to detached Zero Lot Line or free standing Homes, even though they may be attached by a screen enclosure or exterior wall.

**Section 2. Easements.** Easements are reserved in favor of all Lots sharing a party wall for overhangs or other encroachments resulting from original construction or from restoration that conforms substantially to the original construction.

**Section 3. Sharing of Repair and Maintenance.** The costs of reasonable repair and maintenance of an interior party wall on two or more Lots shall be shared by the

Owners who make use of or are benefited by the wall, in proportion to the amount of use and benefit of such wall enjoyed by each, regardless of whether or not they make any actual use of same. In case of an interior (under roof) wall affecting two Lots, each Lot Owner shall be responsible for maintenance on his side of the wall. Exterior party walls, if any, and fences shall be maintained by the Association as a Common Expense, provided any damage done by the negligence or willful acts or omissions shall be paid for by the person causing same.

**Section 4. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has or could have used the wall may restore it, but no greater dimension of that party wall, or of any extension or restoration thereof, shall be placed upon the Lot of the other Owner who is not extending, constructing or restoring it than that existing prior to the fire or other casualty, unless the written consent of the latter is first obtained. No part of any addition to the dimensions of that party wall (or of any extension thereof already built) may be made by either one of the Owners who have used it (or by those claiming under them, respectively) shall be placed upon the Lot of the other Owner, unless the written consent of the latter is first obtained. If the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof proportionate to his use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 5. Weatherproofing.** Notwithstanding any other provision of the Article, any Owner, who, by his negligent or willful act causes a part of the party wall not previously exposed to the elements to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 6. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title to his Lot. Upon conveyance or other transfer of title, the liability of the prior Owner shall cease.

## ARTICLE XVII RIGHT TO MODIFY OR CANCEL

**Section 1. Duration.** All of the covenants and restrictions contained herein shall run with and bind the Property, and shall inure to the benefit of, and be enforceable by, the Declarant, the Association and Owners, for a term of fifty (50) years from the date of recordation of this Declaration among the Public Records of Palm Beach County, Florida, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by eighty percent (80%) of the then Owners, and by all first mortgagees of record has been recorded, agreeing to change said covenants and restrictions, in whole or in part.

### **Section 2. Amendment.**

A. This Declaration may be amended upon the recordation among the Public Records of Palm Beach County, Florida, of an appropriate instrument, subject to the following provisions:

1) Except as provided hereinbelow, the Amendment must be approved by Owners of Seventy-Five percent (75%) of the Lots; provided, however, that until **March 31, 2009**, or until such earlier date determined by the Declarant, all amendments must include the joinder of the Declarant; further provided, however, that so long as the Declarant owns one or more Lots, no such amendment will be effective which materially adversely affect the rights of the Declarant.

2) The Declaration may be amended by the Declarant, at any time, with approval of the Owners of not less than fifty-one percent (51%) of the Lots (including Lots owned by Declarant).

3) The Declaration may be amended by the Declarant, at any time, without the approval of other Owners or mortgagees (i) for the purpose of subjecting additional real property to the provisions hereof; (ii) for making corrective changes or changes which do not materially adversely affect the rights of Owners and mortgagees; (iii) to correct scrivener's errors; or (iv) to meet reasonable requirements of first mortgage lenders.

B. Any duly adopted amendment to this Declaration shall run with and bind the Property for the same period, and to the same extent, as do the covenants and restrictions set forth herein.

C. Notwithstanding anything to the contrary in the foregoing, the Declaration may not be amended without the prior written approval of the Ibis POA prior to **March 31, 2009**, except as to amendments made by the Declarant pursuant to Section 2. A of this Article XVII.

D. See page 33A

**Section 3. Enforcement.** Enforcement of these covenants, restrictions and easements shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, easement or restriction, either to restrain violation, to seek compliance and/or to recover damages, and against the real property to enforce any lien authorized by these covenants. Enforcement of the provisions of this Declaration and of the Rules and Regulations may be by the Declarant and/or the Association. In addition, the Ibis POA and any Member of the Association, shall have the right, but not the duty and obligation, to enforce the provisions hereof at law or in equity. No remedy herein conferred upon the Association is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by the Association of any right, power or remedy hereunder shall preclude any other or further exercise thereof. In the event the Declarant or the Association fails to enforce any violation or attempted violation, then any Owner may do so. The failure of the Declarant, the Association or any Owner to enforce any covenant, easement or restriction herein shall in no event be deemed a waiver of the right to do so thereafter, either as to the same violation or as to any similar violation. In the event any litigation occurs with respect to the enforcement of this Declaration or to recover damages or enforce any lien created or resulting herefrom, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees, including those relating to any appellate proceedings.

**Section 4. Severability.** Invalidation of any one or more of these covenants, restrictions or easements, in whole or in part, by judgment or court order shall, in no way, affect any other provisions hereof, which shall remain in full force and effect.

#### ARTICLE XVIII DEVELOPER'S TRANSFER OF CONTROL OF THE ASSOCIATION

The Developer shall transfer control of the Association to the Owners upon the earlier to occur of the following events or dates:

- A. March 31, 2009; or
- B. Such earlier date as Developer may, at Developer's option, determine;
- C. As may be required by applicable law.

Notwithstanding anything in the Declaration to the contrary, (including the provisions of Section 3., Developer Voting Rights, of Article XIV and Article XVIII), the turnover of control of the Association from the Declarant to unit owners of Lots shall be in accordance with the laws of the State of Florida, including, but not limited to **Section**

D. Section 12 of Article VII of this Declaration may not be amended to impair the right of an Institutional First Mortgagee to have a first mortgage lien superior to the claim of lien of the Association where the said first mortgage was recorded prior to the claim of lien of the Association.

617.307, Florida Statutes, if applicable. Under that Section of the Florida Statutes turnover and voting control of the Association shall require that:

(a) Members other than the Developer are entitled to elect at least a majority of the members of the Board of Directors of the Association when the earlier of the following events occurs:

(1) Three (3) months after ninety percent (90%) of the parcels in all phases of the Project that will ultimately be operated by the Association have been conveyed to Members; or

(2) Such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the Declaration, Articles and Bylaws in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels.

(b) The Developer is entitled to elect at least one member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least 5% of the parcels in all phases of the Project. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board.

## ARTICLE XIX MISCELLANEOUS

**Section 1. Captions and Headings.** The captions and headings pertaining to the articles and paragraphs contained in this Declaration are solely for the convenience of reference and in no way shall such captions or headings define, limit or in any way affect the substance of the provisions contained in this Declaration.

**Section 2. Conflicting Provisions.** In the event there is any conflict between the Articles and Bylaws of the Association, the terms and provisions of the Articles shall control, and in the event there is any conflict between this Declaration and either the Articles or the Bylaws of the Association, the terms and provisions of this Declaration shall control.

**Section 3. Grantee of 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, or due to merger if the Declarant reserves an easement unto itself, then any such grant or 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 shall upon reasonable request by the Declarant execute any instrument 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 4. Governing Law.** The terms, covenants and conditions of this Declaration shall be construed, governed and enforced in accordance with the laws of the State of Florida.

**Section 5. Gender and Plurality.** Whenever the context so requires, the use of the masculine gender shall include the feminine and neuter gender, the use of the singular shall include the plural, and the use of the plural shall include the singular.

**Section 6. Sales Agency and Signs.** Notwithstanding anything to the contrary contained herein, or contained in any other Declaration of Covenants and Restrictions affecting the Property, the Declarant may construct and maintain a sales agency office and/or model Home(s), together with a sign or signs on lots of its choosing, or upon Common Areas within the Property, so long as the Declarant owns any property subject to this Declaration and has approval from the Ibis POA.

**Section 7. Notices.** Any notice required to be sent or given to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when hand delivered or mailed, postage prepaid, to the last known address of the person who appears as an Owner or Member on the records of the Association at the time of such mailing.

## ARTICLE XX ASSIGNMENT BY THE DECLARANT

All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable by the Declarant, either in whole or in part. Upon any exercise of rights by the holder of said mortgage, pledge, assignment or transfer by reason of a default thereunder, any one or more of such holders, its nominees or designees, any party appointed pursuant to a mortgage, pledge, assignment or transfer and any successor or assign by foreclosure or deed-in-lieu of foreclosure, or otherwise, shall, from time to time, hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liability for the acts of any other party who previously exercised or subsequently shall exercise such rights.

## ARTICLE XXI DISCLOSURES

**Section 1. Golf Related Provisions.** Each Owner acknowledges that owning property or using amenities or rights of way adjacent or in close proximity to a golf course involves certain risks which may have an effect on the Owner's enjoyment or use of his Lot or Unit, the Common Areas, rights of way or other land within the Property or Community. Owners acknowledge that such risks may include (as example and not as a limitation on the generality of such risks), golf balls being hit into Owner's Lot or Unit, the Common Areas, rights of way, or other land within the Property or Community with the potential of causing bodily injury or physical damage to property, and golfers coming on to Owner's Lots to look for errant golf balls. Owner hereby expressly assumes such risks and agrees that neither Developer, Partners nor any other individual or entity, designing, developing, constructing, owning or managing any golf course in the Community shall be liable to Owner or anyone claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot or Unit or the Common Areas, rights of way, or other land within the Property or Community to such golf course, including, without limitation, any claim arising in whole or in part from the negligence of Developer or such other individual or entity, designing, developing, constructing, owning or managing such golf course or related facilities. Owner hereby agrees to indemnify and hold harmless Developer or any other individual or entity designing, developing, constructing, owning or managing such golf course or related facilities. Owner hereby agrees to indemnify and hold harmless Developer and any other individual or entity designing, developing, constructing, owning or managing such golf course against any and all claims by Owner, Owner's family, lessees, guests, invitees or licensees with respect to the above. Nothing in this paragraph shall restrict or limit the power of Partners or its successors and assigns to change the design of any golf course within the Community, and such changes, if any, shall not nullify, restrict or impair Owner's covenants and duties contained herein or the assumption of any risk of harm assumed by the Owner of any Home, Lot or Unit.

Section 2. Water Body Provisions. NEITHER DECLARANT, PARTNERS NOR THE ASSOCIATION NOR ANY OF THEIR OFFICERS, PARTNERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE COMMUNITY, EXCEPT (I) AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY, OR (II) TO THE EXTENT THAT OTHER EXPRESSLY APPLICABLE SECTIONS HEREOF WOULD OTHERWISE APPLY, IF AT ALL. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE COMMUNITY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES OF WATER.

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

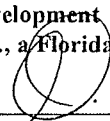
**Section 3. Use of Property Name.** All parties owning or otherwise making any use of any portion of the Property shall be deemed, by virtue of accepting such ownership or making such use, to have covenanted and agreed that (i) "Ibis Golf and Country Club Community" and any logo or other proprietary mark, symbol, name or tradename or trademark are registered trademarks and property of Partners or its successors or assigns, (or that such Partners has acquired proprietary rights thereto and to any variation thereof) and (ii) except as provided below, no usage of that mark or name or any variation thereof will be made in naming or referring to any business or activity within or outside of the Property or in describing or referring to the location of any business or enterprise conducted within or outside of the Property and (iii) generally, no usage of that mark or name will be made whatsoever without the express prior written approval of Partners. This paragraph is not intended to preclude Owners and residents from stating their address as being in Ibis Golf and Country Club.

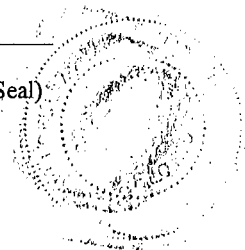
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed in its name the day and year first above written.

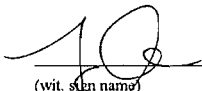
Signed, sealed and delivered  
in the presence of:

Declarant:

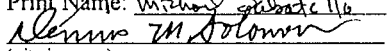
Sabatello Development Corporation  
III, Inc., a Florida corporation

By:   
Carl Sabatello, President  
(Corp. Seal)



  
\_\_\_\_\_  
(wit. sign name)

Print Name: Michael Sabatello

  
\_\_\_\_\_  
(wit. sign name)

Print Name: DENNIS M. SOLOMON

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 1 day of November, 1997 by Carl Sabatello, as the President of Sabatello Development Corporation III, a Florida corporation, for and on behalf of the said corporation, who is known to me or \_\_\_\_\_ who produced identification in the form of \_\_\_\_\_

Notary Public

Notary Seal/ID Number/ exp. date:

OFFICIAL NOTARY SEAL  
STACEY K ZAHORNACKY  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC560791  
MY COMMISSION EXP. MAY 6, 2000

**JOINER BY BLUE HERON BAY  
AT IBIS GOLF AND COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC.**

The undersigned hereby joins in and approves the foregoing Declaration of Covenants, Restrictions and Easements for Blue Heron Bay at Ibis Golf and Country Club for the sole purpose of agreeing to perform its obligations as contained therein.

IN WITNESS WHEREOF, we have set our hands and seal as of the 7 day of November, 1997.

Signed, sealed and delivered

**Blue Heron Bay at Ibis Golf and Country Club  
Homeowners Association, Inc.  
a Florida Not-For-Profit Corporation**

in the presence of:

By: \_\_\_\_\_  
Carl Sabatello, President

Print Name: Carl Sabatello

Print Name: DENNIS M. SLOWAN

(Corp. Seal)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 7 day of November, 1997 by Carl Sabatello, as the Blue Heron Bay at Ibis Golf and Country Club Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of said corporation, who is known to me, or \_\_\_\_\_ who produced identification in the form of \_\_\_\_\_

Notary Public- State of Florida

Notary Seal; ID Number; Exp.:

OFFICIAL NOTARY SEAL  
STACEY K ZAHORNACKY  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC560791  
MY COMMISSION EXP. MAY 6, 2000

10/10/1997 13:22

561-626-1725

D.M. SOLOMON

PAGE 02

**JOINDER BY IBIS PROPERTY OWNERS ASSOCIATION, INC.**

The undersigned hereby joins in and approves the foregoing Declaration of Covenants, Restrictions and Easements for the sole purpose of agreeing to perform its obligations as contained therein.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this 10 day of October 1997.

Signed, sealed and delivered in the presence of:

Michele Friedman  
Print Name: Michele Friedman

Print Name: \_\_\_\_\_

Ibis Property Owners Association, Inc.  
a Florida not-for-profit Corporation

By: Clifford G. Wilson  
Clifford G. Wilson, Pres.

(Corp. Seal)



**STATE OF FLORIDA  
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this 10 day of October, 1997 by **Clifford G. Wilson**, as President of Ibis Property Owners Association, Inc. a Florida not-for-profit corporation, who is personally known to me, or \_\_\_\_\_ who produced identification in the form of \_\_\_\_\_.

Michele Friedman  
Notary Public- State of Florida

Notary Seal; ID Number; exp. date:



MICHELE FRIEDMAN  
MY COMMISSION # CC455290 EXPIRES  
July 31, 1999  
BONDED THRU TROY FAH INSURANCE, INC.

**Exhibit "A"**  
**To**  
**Declaration of Covenants, Restrictions and Easements**  
**For Blue Heron Bay at Ibis Golf and Country Club**  
**(Legal Description)**

Ibis Golf and Country Club Plat No. 21, containing lots numbered 1 through 83, inclusive, and all Common Areas, private roads and rights appurtenant thereto, as shown on said plat, as recorded in Plat Book 81, Pages 8 & 9, Public Records of Palm Beach County, Florida.