

Record and Return to:  
This instrument prepared by:

John S. Duss, IV, Esquire  
Ford, Jeter, Bowlus, Duss, Morgan, Kenney & Safer, P.A.  
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Jacksonville, Florida 32257

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
JARDIN DE MER**

This DECLARATION is made this 1<sup>st</sup> day of November, 2002, by CASTRO Y. FERRER, INC., a Florida corporation (the "Declarant").

**WITNESSETH:**

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by all parties, the undersigned hereby declares that the real property described on **Exhibit A** hereto, shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all persons having any right, title or interest therein or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1.  
DEFINITIONS**

**Section 1.1** "Additional Lands" means the real property described on **Exhibit B** hereto, which may be made subject to the provisions of this Declaration as provided in Article 10 hereof.

**Section 1.2** "Association" means Jardin Master Association, Inc., a Florida not for profit corporation, its successors and assigns.

**Section 1.3** "The Jardin de Mer Community" means all residential developments now existing on the Property, or which may hereafter be developed and made subject to this Declaration, and which will share in the use and enjoyment of, and the expense of maintaining, the Common Areas and Common Roads.

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**Section 1.4** "Common Areas" means all property from time to time owned by the Association or designated for ownership by the Association for the common use and enjoyment of all Owners, together with all improvements, fixtures, and tangible personal property now or hereafter situated thereon and all appurtenant easements.

**Section 1.5** "Common Roads" means those portions of the Common Areas that have been paved or otherwise improved for use as streets, roads or rights-of-ways, and those streets, roads or rights-of-ways not within the Common Areas over which the Association or the Owners have been granted easements for ingress and egress, excluding however parking lots, parking areas, driveways and cul-de-sacs located within the legally described boundaries of a condominium which are maintained by the condominium association.

**Section 1.6** "Declarant" means Castro Y. Ferrer, Inc., a Florida corporation, its successors and assigns, with respect to all or substantially all of the Property, or any Person to whom Declarant has expressly assigned its rights and obligations as Declarant hereunder.

**Section 1.7** "Legal Documents" collectively means this Declaration of Covenants and Restrictions, and any supplemental declarations made in accordance herewith, as amended from time to time, the Association's Articles of Incorporation (the "Articles") and the Association's By-Laws (the "By-Laws"), as the same may be amended from time to time.

**Section 1.8** "Lot" means any plot of land shown on any recorded subdivision plat of all or a part of the Property, which is designated thereon as a residential lot including Condominium Parcels, excluding any areas designated as Common Areas or for utilities or drainage uses or dedicated to public use.

**Section 1.9** "Mortgagee" means any institutional holder of a first mortgage encumbering a portion of the Property as security for the performance of an obligation including a bank, savings and loan, insurance company, any real estate or mortgage investment trust, and other insurers or guarantors of mortgages including, without limitation, Federal National Mortgage Association, Governmental National Mortgage Association, or any lender generally recognized as an institutional lender.

**Section 1.10** "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Residential Dwelling Unit which is a part of the Properties, including contract sellers, but excluding those holding such interest merely as security for the performance of an obligation. Declarant is an Owner to the extent it owns Lots or Residential Dwelling Units.

**Section 1.11** "Person" means any natural person or artificial entity having legal capacity.

**Section 1.12 "Property" or "Properties"** means that certain real property described on **Exhibit A** together with improvements thereon, and such additional lands that hereafter may be made subject to the provisions of this Declaration in the manner provided herein.

**Section 1.13 "Surface Water or Stormwater Management System"** means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

**Section 1.14 "Regulations"** means any rules and regulations regarding the use of the Property duly adopted by the Association in accordance with the Legal Documents.

**Section 1.15 "Residential Dwelling Unit"** means any substantially completed residential property intended for use as a single dwelling unit, including without limitation, any single family detached or attached home, garden home, patio home, condominium unit, townhouse unit, cooperative apartment unit, or apartment unit, which is constructed within the Property.

**Section 1.16 "The Work"** means the initial development of all or any portion of the Property as a residential community by the construction and installation of streets, utility systems, community facilities, buildings, and other improvements, and the sale, lease, or other disposition of the Property in parcels, but does not include the construction of Residential Dwelling Units by Persons other than Declarant. Such term is to be broadly construed to include any and all activities, uses, structures, and improvements necessary, convenient, or desirable to accomplish such construction and disposition.

## ARTICLE 2. PROPERTY RIGHTS

**Section 2.1 Title to Common Areas and Owner's Easements of Enjoyment.** The Declarant will convey or cause to be conveyed to the Association within seven (7) years of the date of this Declaration the title to those Common Areas serving the Property described on **Exhibit A** hereto. As all or part of the Additional Lands are made subject to this Declaration, Declarant shall convey or cause to be conveyed to the Association title to those Common Areas intended to serve the Property or The Jardin de Mer Community within a reasonable time, not to exceed five (5) years, following the recordation of a plat, declaration of condominium, or other instrument establishing or providing for Lots or Residential Dwelling Units on the Property. Conveyances of Common Areas to the Association may be subject to taxes for the year of conveyance, restrictions, conditions, and limitations of record, and easements for drainage and public utilities. Every Owner and his lessees have a nonexclusive right and easement of enjoyment in and to the Common Areas that is appurtenant to, and

passes with, the title to every Lot and Residential Dwelling Unit, subject to the easements and other property rights granted in this Article and to the following:

2.1.1 Fees. The Association's right to charge reasonable fees for the use of any recreational facility situated upon the Common Area.

2.1.2 Suspension. The Association's right: (i) to suspend any Owner's and his lessee's right to use any recreational facility owned or controlled by the Association for any period during which any assessment against such Owner remains unpaid; and (ii) to suspend any Owner's and his lessee's right to the use of any such recreational facility for a period not to exceed sixty (60) days for any material infraction of the Association's Regulations.

2.1.3 Dedication. The Association's right to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members of the Association. Such dedication or transfer must be approved by at least two-thirds (2/3) of each class of those members present in person or by proxy and voting at a meeting duly convened for such purpose, and shall be evidenced by a recorded certificate of the Association.

2.1.4 Easements. The right of the Association by its Board of Directors to grant to any public or private utility or public authority, utility or drainage easements on any part of the Common Areas.

2.1.5 Regulations. The Association's right to adopt, amend, receive and enforce reasonable Regulations for the use of the Common Areas, including the right, but not the obligation, of the Association to control and regulate all types of traffic and parking on Common Roads including the right to regulate speed of vehicles and to prohibit the use of Common Roads by vehicles or traffic which may damage the Common Roads.

The foregoing easement is limited to using the Common Areas for their intended purposes in a reasonable manner, and with respect to any particular use or activity, it is limited to those portions of the Common Areas from time to time improved or otherwise suitable for such use or activity.

**Section 2.2** Delegation of Use. Any Owner may delegate his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

**Section 2.3** Common Roads. The Declarant hereby reserves the right to grant further non-exclusive easements over the Common Roads to property owners adjacent to the Property; provided that the adjacent property owners shall enter into an agreement with the Association agreeing on behalf of themselves and their successors and assigns to pay a pro rata

share of the maintenance and repairs for the Common Roads which shall set forth the method of computation of the respective contributions to the maintenance and repairs thereof.

**ARTICLE 3.  
MEMBERSHIP AND VOTING RIGHTS**

**Section 3.1      Membership.**

3.1.1      General. Every Owner (including Declarant) of a Lot or Residential Dwelling Unit shall be a member of the Association. Except as hereinafter provided regarding Declarant's Class B membership, membership shall be appurtenant to and may not be separated from ownership of any Lot or Residential Dwelling Unit, and no Person other than Declarant may be a member of the Association except an Owner.

3.1.2      Declarant. The Declarant is a member of the Association as to all proposed Lots or Residential Dwelling Units that, under applicable zoning ordinances and regulations, may from time to time be developed within the Property or the Additional Lands. As Declarant assigns or conveys to third parties the right to develop Lots or Residential Dwelling Units within the Property, or sells Lots or Residential Dwelling Units to Owners other than developers, Declarant shall from time to time (but not less frequently than annually) deliver to the Association a certificate signed by Declarant stating: (i) the then maximum number of Lots or Residential Dwelling Units permitted by zoning ordinances; (ii) the number of Residential Dwelling Units with reference to which Declarant has assigned or conveyed its development rights; (iii) the number of Lots and Residential Dwelling Units Declarant has sold to Owners other than such third party developers; and (iv) the remaining number of proposed Lots or Residential Dwelling Units.

**Section 3.2      Classes of Membership.** The Association shall have two classes of voting membership:

3.2.1      Class A. For so long as there is a Class B membership, Class A members shall be all Owners, with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot or Residential Dwelling Unit owned. When more than one (1) Person holds title to any Lot or Residential Dwelling Unit, all such Persons shall be members. The vote for such Lot or Residential Dwelling Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Residential Dwelling Unit or Lot, and no fractional votes are permitted.

3.2.2      Class B. The Class B member shall be the Declarant who shall be entitled to three (3) votes for each Lot or Residential Dwelling Unit owned, and for three (3) votes each proposed Lot or proposed Residential Dwelling Unit that could be developed on the remaining Property using the maximum density permitted under zoning regulations from time to time applicable to the Additional Lands. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;

(b) Seven (7) years from the date of recording this Declaration.

**Section 3.3**      **Declarant Control.** In the event that the Veterans Administration (the "VA") or the Federal Housing Administration (the "FHA") approves The Jardin de Mer Community and guarantees any mortgage on the Property, it is acknowledged and recognized that for the period of time that the Declarant is in control of the Association, the Declarant shall not amend, change or modify any provisions of this Declaration without the approval of the VA and FHA.

**Section 3.4**      **Co-Ownership.** If more than one (1) Person holds the record title to any Lot or Residential Dwelling Unit, all such Persons are members but only one vote may be cast with respect to such Lot or Residential Dwelling Unit, and no fractional votes are permitted. Each co-owner must file the name of the voting co-owner with the secretary of the Association to be entitled to vote at any meeting, unless such co-owners have filed a general voting authority with the secretary applicable to all votes until rescinded. Notwithstanding the foregoing, if title to any Lot or Residential Dwelling Unit is held by husband and wife, either co-owner is entitled to cast the vote for such Lot or Residential Dwelling Unit unless and until a written voting authority is filed with the Association designating a voting co-owner. If title is held by a corporation, the secretary of the corporation shall file with the Association a certificate designating the authorized voting representative of the corporation, which shall be effective until rescinded by the corporation.

**Section 3.5**      **Extraordinary Action.** The Association's Articles of Incorporation provide that certain actions of the Association as described in the Articles require the approval of a super-majority of the members. In addition, any such action shall require the written approval of the Declarant for so long as the Declarant is a member of the Association.

**Section 3.6**      **Amplification.** The members of the Association shall elect the Board of Directors of the Association, who shall manage the affairs of the Association. The Board of Directors shall appoint officers of the Association to administer the operation of the Association. The provisions of this Article are amplified by the Association's Articles and By-Laws, but no such amplification shall alter or amend substantially any of the rights or obligations of the Owners set forth in this Article. Declarant intends that the provisions of this Declaration and the Articles and By-Laws be interpreted and enforced to avoid inconsistencies or conflicting results. If any such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything in the Articles or By-Laws to the contrary.

**ARTICLE 4.**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 4.1**      **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot and Residential Dwelling Unit within the Properties, hereby covenants, and each Owner of any Lot or Residential Dwelling Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- 4.1.1      annual assessments; and
- 4.1.2      special assessments, as hereinafter provided; and
- 4.1.3      special assessments for property taxes assessed against the Common Areas, as hereinafter provided; and
- 4.1.4      specific assessments against a particular Lot or Residential Dwelling Unit that are established pursuant to any provisions of the Legal Documents, as hereinafter provided; and
- 4.1.5      all excise taxes, if any, that from time to time may be imposed upon all or any portion of the assessments established by this Article.

All sums assessed to a Lot or Residential Dwelling Unit, together with interest, costs of collection, and reasonable attorney's fees, shall be a charge on the land and shall be secured by a lien upon the Lot or Residential Dwelling Unit in favor of the Association. In the case of co-ownership of a Lot or Residential Dwelling Unit, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 4.2**      **Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Areas and the Common Roads in the Properties.

Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements.

**Section 4.3 Maximum Annual Assessment.**

4.3.1 Until September 15, 2002, the maximum annual assessment shall be SIX HUNDRED FIFTY NINE AND 04/100 DOLLARS (\$659.04) and shall be payable in equal monthly installments of not more than FIFTY FOUR DOLLARS AND 92/100 (\$54.92).

4.3.2 From and after September 15, 2002, the maximum annual assessment for the following year shall be set by the Board of Directors of the Association at its annual meeting, provided that the maximum annual assessment may not be increased more than fifteen percent (15%) above the prior year's maximum annual assessment, unless two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

4.3.3 The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. In the absence of Board action, the annual assessment then in effect will continue for the next fiscal year.

4.3.4 The Association in determining the annual assessments shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Common Roads.

**Section 4.4 Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas or Common Roads, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 4.5 Property Taxes.** The Association shall timely pay all ad valorem real estate taxes, special assessments and other taxes, if any, levied on the Common Areas, and shall assess each Owner for the cost thereof. The amount of the assessment shall be determined by dividing the amount of such taxes by the number of Residential Dwelling Units and Lots within the Property. At the Board's discretion, such assessment may be payable in a lump sum within thirty (30) days after notice or all or any portion thereof may be assessed as a part of the annual assessment described above. Each year the Board shall determine, within forty-five (45) days after receiving notice of the amount of taxes due, whether such assessment shall be levied, and its amount.

**Section 4.6 Specific Assessments.** Any indebtedness of an Owner to the Association arising under any provision of the Legal Documents, including any indemnity, or by contract express or implied, or because of any act or omission of the Owner or any



occupant of such Owner's Lot or Residential Dwelling Unit, also may be assessed by the Association against the Owner's Lot or Residential Dwelling Unit after the Owner fails to pay it when due and the default continues for thirty (30) days after written notice.

**Section 4.7**      **Notice and Quorum for any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than fourteen (14) days nor more than thirty (30) days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to cast a majority of all the votes of each class of membership shall constitute a quorum.

**Section 4.8**      **Uniform Rate of Assessments.** The annual maintenance assessment and any special assessments for the Common Areas must be uniform throughout the Property, except that the annual maintenance assessment against any Lot or Residential Dwelling Unit owned by Declarant and which is not being occupied as a residence may be fixed by the Board of Directors for so long as there is a Class B membership in an amount not less than twenty-five percent (25%) of the amount of the annual maintenance assessment against Lots or Residential Dwelling Units owned by the Class A members then in effect; provided that Declarant shall have agreed to fund the deficits, if any, between the aggregate amount assessed Class A members and Declarant, and the total expenses of the Association during the applicable period. Declarant shall be obligated to fund such deficits only as they are actually incurred by the Association. The Declarant shall cease to pay any portion of the deficit of the annual operating expenses of the Association under the provisions of this paragraph when Declarant is no longer entitled to elect a majority of the Board of Directors of the Association. Declarant shall not pay any assessments with reference to proposed Lots or Residential Dwelling Units which are used for determining Declarant's voting rights under Article 3 hereof.

**Section 4.9**      **Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots or Residential Dwelling Units on the first day of the month following the first conveyance of a Lot or Residential Dwelling Unit to an Owner. The Board of Directors shall fix the amount of the annual assessment against each Lot and Residential Dwelling Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The annual assessment shall be payable monthly, and unless specifically changed by the Board of Directors, shall be due on the first day of each month. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Residential Dwelling Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot or Residential Dwelling Unit is binding upon the Association as of the date of its issuance.

**Section 4.10 Effect of Nonpayment of Assessments; Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against the Lot or Residential Dwelling Unit and the exercise of one remedy by the Association shall not be deemed to be an election of remedies prohibiting the exercise of additional remedies. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or Common Road or abandonment of his Lot or Residential Dwelling Unit.

**Section 4.11 Subordination of the Lien to Mortgages.** The lien for the assessments provided in this Article is subordinate to the lien of any Mortgage. Sale or transfer of any Lot or Residential Dwelling Unit does not affect the assessment lien, except that the sale or transfer pursuant to a Mortgage foreclosure or any proceeding or conveyance in lieu thereof, extinguishes the assessment lien as to payment that became due before such sale or transfer, unless such assessment was secured by a claim of lien for assessments that is recorded prior to recording of said Mortgage. Any assessment extinguished by the foreclosure of a Mortgage or conveyance in lieu thereof, shall be deemed to be an expense of the Association collectible from all Owners (including the foreclosing mortgagee) in accordance with the Association's normal assessment procedures. No such sale or transfer relieves such Lot or Residential Dwelling Unit from liability for assessments thereafter becoming due, or from the Association's lien. The Association shall report to any Mortgagee of a Lot or Residential Dwelling Unit any assessments remaining unpaid for more than sixty (60) days and shall give such Mortgagee thirty (30) days in which to cure such delinquency before instituting foreclosure proceedings against such Lot or Residential Dwelling Unit, provided the Mortgagee has given the Association written notice of its mortgage, designating by a proper legal description the Lot or Residential Dwelling Unit encumbered and stating the address to which notices shall be given.

**Section 4.12 Exempt Property.** All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Florida shall be exempt from the assessment created herein, except no land or improvements devoted to dwelling use shall be exempt from assessments.

## ARTICLE 5. ARCHITECTURAL CONTROL

**Section 5.1 Design Criteria.** It is the Declarant's intent to create and maintain a community in harmony with its surroundings and the natural elements of The Jardin de Mer Community. Residential Dwelling Units constructed or to be constructed within The Jardin de Mer Community must be designed and constructed to be compatible with each other and to meet established construction standards.

**Section 5.2**      **Necessity of Architectural Review and Approval.** No buildings, Residential Dwelling Units, structures, or improvement of any kind, including fences, walls or other structures, which are visible from outside a Residential Dwelling Unit, other than those erected by the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition or alteration, including without limitation, a change in the exterior color, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing (as to harmony of external design and location to surrounding structures and topography) by the Declarant, or by an architectural committee composed of three (3) or more representatives appointed by the Declarant. The Declarant, or the architectural review committee may promulgate rules and regulations and architectural standards implementing the review and approval right herein established. In the event the Declarant, or their designated committee, fails to approve or disapprove such design and location within thirty (30) days after the plans and specifications have been submitted to them, they shall be deemed to have been approved. In the event that there is a disagreement between architectural board established herein and a condominium or homeowners association or their respective architectural review boards, the decision of the Declarant's architectural review board herein established shall prevail. Declarant reserves the right to assign its rights under this Article to the Association.

**ARTICLE 6.**  
**USE RESTRICTIONS**

**Section 6.1**      **Common Areas and Common Roads.** The Common Areas and Common Roads shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the use and enjoyment of the Owners. There shall be no obstruction or alteration of, nor shall anything be stored, altered or constructed in, or removed from, the Common Areas or Common Roads without the prior written consent of the Association.

**Section 6.2**      **Insurance.** No use shall be made of the Common Areas or Common Roads which will increase the rate of insurance without the prior consent of the Association. No Owner shall permit anything to be done or kept on the Common Areas or Common Roads which will result in cancellation of insurance on any part of the Common Areas or Common Roads, or which will be in violation of any law. No waste shall be committed in the Common Areas. The Association shall determine whether any activity violates this provision.

**Section 6.3**      **Nuisances.** No noxious or offensive activity shall be allowed upon the Property, nor any use or practice which is the source of annoyance or nuisance to Owners or guests or which interferes with the peaceful possession and proper use of the Property by Owners. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor shall any fire hazards be allowed to exist.

**Section 6.4** Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

**Section 6.5** Animals. No animals except usual household pets shall be kept on the Properties. No more than two (2) four-footed pets will be permitted in any household. No household pet may be kept on the Property for breeding or commercial purposes. Dogs shall be leashed at all times.

**Section 6.6** Regulations. Reasonable regulations and rules concerning the use of the Property may be promulgated, amended or rescinded from time to time by the Board of Directors of the Association, or by fifty-one percent (51%) of members of each class of those members present in person or by proxy and voting at a meeting duly convened for such purpose. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners and residents of the Properties upon request.

## ARTICLE 7. WATERWAYS

**Section 7.1** Water Level and Use. With respect to any waterways now existing or which may hereafter be contained within or adjoining the Property only the Declarant (and following transfer of control, the Association) shall have the right to pump or otherwise remove any water from such waterways for the purposes of irrigation or other use or to place any matter or object in such waterways. No docks, moorings, pilings, boat shelters or other structure shall be erected on or over the waterways, except as may be erected by the Declarant (following transfer of control, the Association). Gas and diesel driven boats shall be permitted only as designated by the Association. Canoes and small non-combustion powered boats will be permitted. All permitted boats shall be stored screened from public view or as otherwise designated by the Declarant (and following transfer of control, the Association) and, shall be stored either within existing structures on the Owner's property or in designated areas within a condominium or in other planned unit development or behind landscaping approved by the architectural review committee.

**Section 7.2** Maintenance Obligations. Subject to the provisions of Section 7.1 of this Article, the Association shall have the right and, as permitted by law, the obligation to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in and on such waterways. The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District (the "District"). Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved by the District.

Notwithstanding anything contained herein to the contrary, the embankments shall be maintained by the Owner of the adjacent Lot or Residential Dwelling Unit. Such owners may include condominium or homeowners associations when the embankments form a portion of the common elements or common areas of such association, or this Association when the embankments are within the Common Areas. The embankments shall be maintained by the appropriate Owner or association so that grass, planting or other lateral support shall prevent erosion of the embankment and the height, grade and contour of such embankments shall not be changed without the prior written consent of the Declarant or the architectural review committee established hereunder. If the owner required to maintain the embankment fails to maintain such embankment or area as part of the landscape maintenance obligations in accordance with the foregoing, the Declarant (and following transfer of control, the Association) or its agent or representative shall have the right, but not the obligation, to enter upon the Owner's property to perform such maintenance work which may be reasonably required, all at the expense of the Owner or association.

**Section 7.3 Easements for Use and Enjoyment.** Owners are hereby granted the right to reasonable use and benefit of the waterways now existing or which may hereafter be contained within, or adjoin the Property subject to governing law and the right of Association to adopt reasonable Regulations from time to time in connection with the use of the waterways by members of the Association and subject to the Declarant's reserved right to ingress and egress over the waterways. The ingress and egress to the waterways shall be solely at those access points designated by the Declarant. The Declarant (and following transfer of control, the Association) shall have the right to deny such use to any person who in the opinion of Declarant or the Association may create or participate in a disturbance or nuisance on any part of the waterways. The right to reasonable use and benefit of the waterways may be subject to riparian rights of others and may be further granted to such other Persons, as may be designated by Declarant from time to time.

**Section 7.4 Ingress and Egress Maintenance Easement.** Declarant hereby reserves a perpetual, non-exclusive easement for itself and the Association across all Lots and all waterways and over all areas of the surface water or storm water management system for access, ingress and egress for the reasonable operation maintenance, repair and care of any portion of the waterways, the stormwater management system or their respective embankments. By this easement, the Association shall have the right to enter upon any portion of any lot which is a part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the District.

**ARTICLE 8.  
EASEMENTS**

**Section 8.1**      **Reservation of Easements.** Declarant reserves for itself, its successors and assigns, a right-of-way and easement to erect, maintain and use electric and telephone poles, wires, cables, conduits, storm sewers, drainage swales, sanitary sewers, water mains, gas, sewer, water lines or other public conveniences or utilities, on, in and over the Property, which as to Lots or Residential Dwelling Units shall be limited to easements reserved on Plats or in declarations of condominiums or declarations of covenants and restrictions.

**Section 8.2**      **Drainage Easements.** Owners shall not obstruct or divert drainage flow from drainage easements or change the drainage of surface waters as established by Declarant as part of the Work. Declarant may cut drainways for surface waters and establish easements therefor wherever and whenever such action may appear to Declarant to be necessary to maintain reasonable standards of health, safety and appearance. These easements include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other action reasonably necessary to install utilities and to maintain reasonable standards of health and appearance; provided however the foregoing shall not include the right to disturb any Residential Dwelling Units or the improvements erected on Property, unless such other improvements are restored to their condition prior to such disturbance promptly thereafter.

**Section 8.3**      **Additional Easements.** Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way over portions of the Property owned by Declarant. In addition, Declarant hereby expressly reserves the right to grant easements and rights-of-way over, under and through the Common Areas or Common Roads so long as Declarant shall own any portion of the Property. The easements granted by Declarant shall not structurally weaken any improvements or unreasonably interfere with use and enjoyment of the Common Areas of Common Roads.

**Section 8.4**      **Cable Television Easement.** Declarant, reserves for itself, its successors and assigns, an exclusive easement for the installation and maintenance of radio and television cables within Common Roads and Common Areas and the rights-of-way and easement areas referred to herein.

**Section 8.5**      **Encroachments.** Declarant, may in its discretion grant Owners the right to encroach upon easements or Common Areas and Common Roads where necessary for the preservation of trees or the maintenance of overall aesthetics in The Jardin de Mer Community.

**Section 8.6**      **Access by Association.** The Association has a right of entry on to each Lot to the extent reasonably necessary to exercise any right granted, or to discharge any duty imposed, by the Legal Documents, or for any other purpose reasonably related to the

Association's performance of any duty imposed, or exercise of any right granted, by the Legal Documents. Such right of entry must be exercised in a peaceful and reasonable manner upon reasonable notice whenever circumstances permit, except in the event of an emergency and only then to the extent necessary to prevent personal injury or property damage. No Owner shall withhold consent arbitrarily to entry by the Association for the purposes herein set forth. The Association's right of entry may be exercised by its agents, employees, contractors, and managers.

## ARTICLE 9. RIGHTS OF MORTGAGEES

**Section 9.1** Rights of Mortgagees. Any Mortgagee and insurers or guarantors of Mortgages have the following rights:

9.1.1 Inspection. During normal business hours, and upon reasonable notice and in a reasonable manner, to inspect current copies of the Legal Documents and Regulations and the books, records, and financial statements of the Association; and

9.1.2 Financial Statements. Upon written request to the Secretary of the Association, to receive copies of the annual financial statements for the immediately preceding fiscal year of the Association, provided, however, the Association may make a reasonable, uniform charge to defray its cost incurred in providing such copies; and

9.1.3 Meetings. To designate a representative to attend all meetings of the membership of the Association, who is entitled to a reasonable opportunity to be heard in connection with any business brought before such meeting but in no event entitled to vote thereon.

9.1.4 Notices. By written notice to the Secretary of the Association, and upon payment to the Association of any reasonable, uniform annual fee that the Association from time to time may establish for the purpose of defraying its costs, any Mortgagee, insurer, or guarantor of a Mortgage shall be entitled to receive any notice that is required to be given to the Class A members of this Association under any provision of the Legal Documents. Additionally, any such Mortgagee, insurer, or guarantor of a Mortgage giving written notice to the Association shall be entitled to written notice of: (i) any condemnation or casualty loss affecting a material portion of the Property or any Lot or Residential Dwelling Unit encumbered by its Mortgage; (ii) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot or Residential Dwelling Unit encumbered by its Mortgage; (iii) lapse, cancellation or material modification of any insurance coverage or fidelity bond maintained by the Association; and (iv) any proposed action requiring the consent of a specified percentage of mortgage holders.

**ARTICLE 10.  
ANNEXATION OF PROPERTY**

**Section 10.1 Declarant's Annexation.** The Declarant shall have the right until seven (7) years from the date of recording the Declaration, from time to time and in its sole discretion, to annex to the Properties and subject to the provisions of this Declaration all or part of the Additional Land described in **Exhibit B**.

**Section 10.2 Members Annexation.** The Owners may annex additional lands to the Properties with the approval of two-thirds (2/3) of the Owners of Lots or Residential Dwelling Units within the Properties.

**Section 10.3 Supplemental Declarations.** Any such additions authorized in Section 1 or 2 above may be made by filing of record one or more supplemental declarations with respect to the Additional Lands or other annexed property. A supplemental declaration shall contain a statement that the real property that is the subject of the supplemental declaration constitutes additional property which is to become a part of the Properties subject to this Declaration. Such supplemental declaration shall become effective upon being recorded in the public records of Duval County, Florida.

**Section 10.4 Effect of Annexation.** In the event that any additional property is annexed to the Property pursuant to the provisions of this Article, then such lands shall be considered within the definition of Properties for all purposes of this Declaration, and each Owner of a Lot or Residential Dwelling Unit shall be a Class A Member and the votes of Class A and B members shall be adjusted accordingly. Unless and until the land described in **Exhibit B** is annexed as provided herein, this Declaration shall not be construed as a lien, encumbrance or defect on the land described on **Exhibit B**.

**Section 10.5 Additional Declarations.** Declarant intends, as the Property is developed and offered for sale to subject portions thereof to specific declarations of covenants or condominiums which apply only to each portion as defined and described in each declaration. Such additional declarations of covenants or condominiums shall be subject to the provisions hereof so that The Jardin de Mer Community remains an integrated development.

**ARTICLE 11.  
RECONSTRUCTION OR REPAIR AFTER CASUALTY**

In the event that any portion of the Common Area or Common Roads are damaged or destroyed by casualty, it shall be repaired or restored to substantially its condition prior to the damage or destruction by the Association. Repair or reconstruction of the Common Area or Common Roads shall be substantially in accordance with the plans and specifications pursuant to which the same were originally constructed. All insurance proceeds shall be applied to the restoration and repair. If the insurance proceeds are insufficient, the deficit shall be assessed



against all Owners as a special assessment. If there is a surplus of insurance proceeds, it shall become the property of the Association.

## ARTICLE 12. GENERAL PROVISIONS

**Section 12.1 Enforcement.** The Declarant, the Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Further, the District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in these Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or stormwater management system.

**Section 12.2 Severability.** Invalidation of any part of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 12.3 Binding Effect.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless sixty-seven percent (67%) of the then Owners vote to terminate the restrictions as evidenced by an instrument executed by such Owners and recorded during the six (6) month period immediately preceding the beginning of any renewal period.

### Section 12.4 Amendment.

12.4.1 **Declarant.** The Declarant reserves and shall have the sole right without the joinder or consent of any Owner, the Association, the holder of any mortgage, lien or other encumbrance affecting the Property, or any other Person: (i) to amend this Declaration to comply with any requirements of a governmental agency, institutional Mortgagee, or other Person willing to make, insure, guaranty, or purchase mortgage loans secured by a Lot or Residential Dwelling Unit; or (ii) to amend this Declaration or the other Legal Documents to cure any ambiguity or error or any inconsistency between these provisions and the other Legal Documents or any Plat.

12.4.2 **Owners.** Subject to specific provisions of this Declaration which shall supersede the provisions of this paragraph, this Declaration may be amended by the Association with the formalities from time to time required of a deed under the laws of the State of Florida and signed by not less than sixty-seven percent (67%) of all Owners. No amendment shall be effective until recorded.

12.4.3 District Approval Required. Any amendment to these Covenants and Restrictions which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the District.

**Section 12.5 Reservation of Right to Release Restrictions**. Subject to applicable zoning regulations, in each instance where a structure has been erected, or the construction thereof is substantially advanced, in such a manner that some portion of the structure encroaches upon any easement area or the Common Area or violates some provision of this Declaration, Declarant reserves for itself the right to release the Lot or Residential Dwelling Unit from the encroachment and to grant an exception to permit the violation or the encroachment by the structure over the easement area or the Common Areas without the consent or joinder of any Person irrespective of who owns the easement areas, so long as Declarant, in the exercise of its sole discretion, determines that the release or exception will not materially and adversely affect the health and safety of Owners, the value of adjacent Lots or Residential Dwelling Units and the overall appearance of the Property. Upon granting of an exception to an Owner, the exception granted shall be binding upon all subsequent Owners of the affected Lots.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Covenants and Restrictions as of this 18<sup>th</sup> day of November, 2002.

Signed, sealed and delivered in the presence of:

Castro Y. Ferrer, Inc., a Florida corporation

[Signature]  
THERESA MARIE KENNEY

[Signature]  
JOHN K. SISK

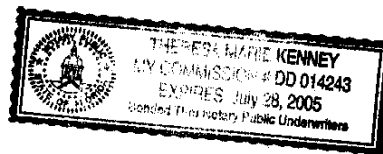
By: [Signature]  
JOHN K. SISK  
is: president

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of November, 2002, by JOHN K. SISK, the president of Castro Y. Ferrer, Inc., a Florida corporation on behalf of the corporation.

[Signature]  
(print name)

Notary Public, State and County aforesaid  
Commission No.: \_\_\_\_\_



He  (please check appropriate statement)  
 is personally known to me  
 produced identification (specify type)

EXHIBIT "A"

A PART OF THE CASTRO Y. FERRER GRANT, SECTION 38, TOWNSHIP 2 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE BEACH, DUVAL COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF BEACH BOULEVARD (STATE ROAD No. 212), AS NOW ESTABLISHED AS A 150 FOOT WIDE RIGHT OF WAY (AT THIS POINT), WITH THE WESTERLY RIGHT OF WAY LINE OF 15th (FIFTEENTH) STREET SOUTH, A 50 FOOT WIDE RIGHT OF WAY AS NOW ESTABLISHED, AND RUN THENCE SOUTH 00 DEGREES 52 MINUTES 00 SECONDS EAST, ALONG SAID WESTERLY RIGHT OF WAY LINE OF 15th STREET SOUTH, A DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, CONTINUE SOUTH 00 DEGREES 52 MINUTES 00 SECONDS EAST, ALONG SAID WESTERLY RIGHT OF WAY LINE OF 15th STREET SOUTH, A DISTANCE OF 491.67 FEET TO THE NORTHERLY LINE OF SHETTER AVE., A 50 FOOT WIDE RIGHT OF WAY; THENCE SOUTH 78 DEGREES 43 MINUTES 00 SECONDS WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE OF SHETTER AVENUE, A DISTANCE OF 101.68 FEET TO AN ANGLE POINT IN SAID RIGHT OF WAY LINE; RUN THENCE SOUTH 89 DEGREES 08 MINUTES 00 SECONDS WEST, CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY OF SHETTER AVENUE, A DISTANCE OF 446.49 FEET; THENCE NORTH 09 DEGREES 28 MINUTES 29 SECONDS WEST, DEPARTING SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 89.51 FEET; THENCE NORTH 36 DEGREES 27 MINUTES 00 SECONDS WEST, A DISTANCE OF 119.31 FEET; THENCE NORTH 80 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 94.34 FEET; THENCE NORTH 36 DEGREES 27 MINUTES 00 SECONDS WEST, A DISTANCE OF 315.68 FEET; THENCE NORTH 89 DEGREES 08 MINUTES 00 SECONDS EAST, A DISTANCE OF 129.87 FEET; THENCE NORTH 00 DEGREES 52 MINUTES 00 SECONDS WEST, A DISTANCE OF 300.00 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF BEACH BOULEVARD, A 200 FOOT RIGHT OF WAY (AT THIS POINT); RUN THENCE NORTH 89 DEGREES 08 MINUTES 00 SECONDS EAST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 25.00 FEET; RUN THENCE SOUTH 00 DEGREES 52 MINUTES 00 SECONDS EAST, DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 250.00 FEET; RUN THENCE NORTH 89 DEGREES 52 MINUTES 00 SECONDS EAST, A DISTANCE OF 750.80 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

Parcel 1:

Part of Castro Y Ferrer Grant Section 38, T2S R29E commencing at the NE corner of Edward Rea Tract as described in Deed Book 817, page 226, current public records of Duval County, Florida, thence South 50 feet along East line of said Rea parcel to new South right of way line of Hogan Beach Boulevard; thence East 150 feet along said right of way line to POB; thence South 735 feet more or less and parallel with East line of said Rea parcel to North line of proposed Shetter Avenue extension; thence Easterly 101 feet more or less along said Avenue line to a point 250 feet East of said Rea line as measured at right angles thereto; thence North 720 feet more or less and parallel to said East line of said Rea parcel to the new South line of Hogan Beach Boulevard; thence West 100 feet to POB.

Parcel 2:

Part of Castro Y Ferrer Grant, Section 38, Township 2 South, Range 29 East, Jacksonville Beach, Florida, Duval County, more particularly described as follows: Commencing at the Northeast corner of the Edward Rea Tract as described in Deed Book 817, Page 226, of Duval County Records, thence South 50 feet along the East line of said Rea parcel to the new South right of way line of Hogan Beach Boulevard, thence East 250 feet along said right of way line to the point of beginning, thence South 717 feet parallel with the East line of said Rea parcel to the North line of proposed Shetter Avenue extension, thence Easterly 111.51 feet along said Avenue line to a point 360 feet East of said Rea line, as measured at right angles thereto; thence North 699.24 feet parallel to said East line of Rea parcel to the new South line of Hogan Beach Boulevard, thence West 110 feet to the point of beginning.

EXHIBIT "B"  
cont'd

Part of the Castro Y Ferrer Grant, Section Thirty-eight (38), Township Two (2) South, Range Twenty-nine (29) East, Jacksonville Beach, Duval County, Florida, more particularly described as follows:

Commencing at the intersection of the South right of way line of Hogan Beach Boulevard, and the West boundary line of lands as described in Parcel Number Four (4) of Deed Book 610, page 215, of the current public records of Duval County for a point of beginning; thence South No (0) degrees Fifty-two (52) minutes East along the West boundary of said lands Two Hundred Fifty (250) feet to the Southwest corner of said lands; thence North Eighty-nine (89) degrees Eight (08) minutes East along the South line of said lands One Hundred Fifty-two and Twenty-nine Hundredths (152.29) feet; thence South Four (4) degrees Fifty-six (56) minutes East Four Hundred Two and Eighty-one Hundredths (402.81) feet to the Northerly right of way line of the proposed Shetter Avenue extension; thence South Seventy-nine (79) degrees Forty-two (42) minutes West along said right of way line of said Shetter Avenue Two Hundred Eighty-nine and Fifty-five Hundredths (289.55) feet; thence North No (0) degrees Fifty-two (52) minutes West Six Hundred Ninety-nine and Twenty-four Hundredths (699.24) feet to the said right of way line of Hogan Beach Boulevard; thence North Eighty-nine (89) degrees Eight (08) minutes East along said right of way line of Hogan Beach Boulevard One Hundred Four and Sixty-nine Hundredths (104.69) feet to the point of beginning. Containing Three and Twenty-six Hundredths (3.26) acres.