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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204897
Party	Defendant Laguna Lakes Community Association, Inc.
Correspondence Address	DONNA M. FLAMMANG BRENNAN, MANNA & DIAMOND, P.L. 3301 BONITA BEACH RD STE 100 BONITA SPRINGS, FL 34134-7833 dmflammang@bmdpl.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Chad R. Rothschild
Filer's e-mail	crothschild@bmdllc.com
Signature	/s/ Chad R. Rothschild
Date	06/05/2012
Attachments	'897 Opposition Motion to Dismiss.pdf (19 pages)(2216972 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

John Gerard Marino,	)	**Serial No. 85/411,955**
Opposer,	)	**Opposition No. 91/204,897**
v.	)	**MOTION TO DISMISS OF APPLICANT LAGUNA LAKES COMMUNITY ASSOCIATION, INC.**
Laguna Lakes Community Association, Inc.,	)	
Applicant.	)	

Now comes Applicant, Laguna Lakes Community Association, Inc. ("Laguna" or "Applicant"), and pursuant to 37 C.F.R. § 2.127, TBMP § 503, and Fed. R. Civ. P. 12(b), hereby respectfully moves the Trademark Trial and Appeal Board (the "Board") for an Order dismissing the Notice of Opposition filed by Opposer, John Gerard Marino ("Marino" or "Opposer") in the above-captioned matter for failure to state a claim upon which relief can be granted.

The grounds for this Motion are more particularly set forth in the Memorandum in Support attached hereto and incorporated by reference herein.

Respectfully submitted,

Donna M. Flammang (Florida Bar No. 0015230)
W. Scott Harders (Ohio Bar No. 0070598)
Chad R. Rothschild (Ohio Bar No. 0088122)
Brennan, Manna & Diamond, LLC
75 East Market Street
Akron, Ohio 44308
Phone: 330-253-3715
Fax: 330-253-3745
dmflammang@bmdpl.com
wsharders@bmdllc.com
crothschild@bmdllc.com

Attorneys for Applicant

Dated: June 5, 2012

MEMORANDUM IN SUPPORT

I. Introduction and Factual Background

Laguna Lakes is a real estate development in Fort Myers, Florida consisting of various single family and condominium residences and other real estate. *See* Notice of Opposition at ¶1; *id.* at Exhibit A (depicting the same). Applicant, Laguna Lakes Community Association, Inc. ("Laguna" or "Applicant"), is a Florida not-for-profit corporation and community association. *See* Notice of Opposition at ¶2. On September 26, 2003, Laguna filed its Articles of Incorporation with the State of Florida. *See* Articles of Incorporation of Laguna Lakes Community Association, Inc.[1] Following the incorporation of Applicant Laguna in 2003, Opposer John Gerard Marino ("Marino" or "Opposer") began selling real estate located in the Laguna Lakes development in July 2005. Since that time, Marino alleges that he has used the name "Laguna Lakes" and trade name "Mr. Laguna Lakes" to promote his business of selling real estate in Laguna Lakes. *See* Notice of Opposition at ¶¶1, 4.

On August 31, 2011, Laguna filed Trademark Application Serial No. 85/411,955 (the "'955 Application") to register the standard character mark "Laguna Lakes." The '955 Application, as amended on December 22, 2011, seeks registration of the mark "Laguna Lakes" in International Class 35 for "[a]ssociation services, namely, promoting the interests of condominium association and homeowner associations; managing the business affairs of common community associations of HOAs and condominium associations, and promoting the use of and managing the maintenance of real estate."

On April 25, 2012, Marino filed his Notice of Opposition to the '955 Application. Marino alleges that he is the prior user of the name "Laguna Lakes" and trade name "Mr. Laguna

[1] The Articles of Incorporation are attached hereto and incorporated herein by reference as Exhibit 1. The Board may properly consider this evidence as discussed in Section II(B), *infra*.

Lakes." *Id.* at ¶4. Marino also makes the conclusory allegation – based on the fact that "Laguna is a non-profit entity" – that Laguna does not use standard character "Laguna Lakes" mark in "commerce" and does not use the mark "in interstate commerce at all." *Id.* at ¶5.

II. Standard of Review for Motions to Dismiss

A. Requisite Pleading Standard

The defense of failure to state a claim upon which relief can be granted can be raised by means of a motion to dismiss filed prior to answering a notice of opposition. *See* TBMP § 503.01 (*citing* Fed. R. Civ. P. 12(b); *Hollowform Inc. v. Delma Aeh*, 180 U.S.P.Q. 284, 285 (TTAB 1973), *aff'd*, 515 F.2d 1174, 185 U.S.P.Q. 790 (CCPA 1975)). "The filing of a motion to dismiss for failure to state a claim upon which relief can be granted tolls the time for filing an answer." TBMP § 503.01 (*citing Hollowform*, 180 U.S.P.Q. at 286, *aff'd,* 515 F.2d 1174, 185 U.S.P.Q. 790 (CCPA 1975)).

To survive a motion to dismiss, a notice of opposition must "state a claim to relief that is plausible on its face." TBMP § 503.02 (*quoting Bell Atlantic Corp. v. Twombly,* 550 U.S. 554, 570 (2007); *citing Ashcroft v. Iqbal*, 556 U.S. 662 (2009)); *see also Dur-A-Flex, Inc.*, Opp. No. 91192113, 2011 WL 7005537 (TTAB Dec. 21, 2011) (*citing Iqbal*, 556 U.S. 662) ("A notice of opposition must contain sufficient factual matter that, when accepted as true, states a claim to relief that is plausible on its face."). In the context of *inter partes* proceedings before the Board, a claim has facial plausibility when the opposer pleads factual content that allows the Board to draw a reasonable inference that the opposer has standing and that a valid ground for the opposition or cancellation exists. *Cf. Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 556 (2007); *see also Compagnie Gervais Danone*, 89 U.S.P.Q.2d 1251, 2009 WL 34747 at *3 (TTAB Jan. 5, 2009) (*citing Lipton Industries, Inc. v. Ralston Purina Co.,* 670 F.2d 1024, 213 U.S.P.Q. 185

(CCPA 1982) (observing that to withstand a motion to dismiss, a notice of opposition must allege such facts that, if proved, would establish that the opposer maintains standing and has a valid ground exists for seeking to oppose registration).

B. The Board Can Consider Matters Outside of the Pleadings

The Board can properly take judicial notice[2] of certain matters outside the pleadings without converting motions to dismiss into a motion for summary judgment – including the date on which Laguna Lake filed its Articles of Incorporation with the State of Florida. *See* Fed. R. Evid. 201; *Ava Enterprises Inc. v. P.A.C. Trading Group, Inc.*, 86 USPQ 2d 1659, 1660 (TTAB 2008) ("A motion for judgment on the pleadings is a test solely of the undisputed facts appearing in all the pleadings, supplemented by any facts of which the Board will take judicial notice."); TBMP § 504.02 (same); *see also eBay Inc. v. Digital Point Solutions, Inc.*, 608 F. Supp. 2d 1156, 1164, n.6 (N.D. Cal. 2009) ("The Court will take judicial notice of the fact that the corporate entity known as Digital Point Solutions, Inc. filed articles of incorporation on that date.").

The notice of final rulemaking published in the Federal Register on August 1, 2007, at 72 Fed. Reg. 42242, amplifies this practice. In light of the foregoing notice, "[b]ecause the Board does not allow a party to file a motion for summary judgment prior to the moving party's service of initial disclosures on the adverse party, the Board generally will no longer exercise its discretion to convert motions to dismiss that refer to matters outside the pleadings into motions for summary judgment . . . ." *Compagnie Gervais Danone*, 89 U.S.P.Q.2d 1251, 2009 WL 34747 at *4-5 (TTAB 2009). The Board may, in the alternative, "exclude from consideration the

[2] "[A]ny request that the Board take judicial notice of particular items, and the arguments offered in support of the merit in doing so, should be included in the moving party's brief." *Univ. of Southern California v. University of South Carolina*, Opp No. 91125615, 2003 WL 21810812 at *3 (TTAB July 31, 2003). The Board "may judicially notice a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). The Board "must take judicial notice if a party requests it and the court is supplied with the necessary information." *Id.* at 201(c)(2).

matters outside the pleadings and may consider the motion for whatever merits it may present as a motion to dismiss." *Id.* at *5.

III. Law & Argument

The Notice of Opposition fails to plead sufficient factual content such that the Board can draw the reasonable inference that valid grounds exist for the opposition lodged by Marino. The grounds for opposition claimed by Marino – (1) deceptiveness; (2) priority and likelihood of confusion; (3) that the mark is merely descriptive and primarily geographically descriptive; and (4) fraud – are not plausible on their face and do not satisfy the pleading standards established by *Twombly* and *Iqbal*. Based on the strength of the legal authority in support set forth herein, Laguna respectfully requests that the Board dismiss the Notice of Opposition.

A. Marino's allegation of fraud fails as a matter of law.

To assert a viable claim of fraud, Marino was required to allege with particularity – rather than by implied expression – that Laguna knowingly made a false, material representation in the procurement of its registration with the intent to deceive the U.S. Patent and Trademark Office ("USPTO"). *Zoba Int'l Corp. DBA CD Digital Card*, Cancellation No. 9205182, 2011 WL 1060727 (TTAB Mar. 10, 2011) (*citing In re Bose Corp.,* 580 F.3d 1240, 91 U.S.P.Q. 2d 1938, 1942 (Fed. Cir. 2009); *Enbridge Inc. v. Excelerate Energy LP,* 92 U.S.P.Q. 2d 1537 (TTAB 2009)); *see also* Fed. R. Civ. P. 9(b) (requiring that allegations of fraud be pled with particularity).

In his Notice of Opposition, Marino fails to allege that Laguna knowingly made a false, material representation in the procurement of its registration of the mark in the '955 Application with the intent to deceive the USPTO; Marino also fails to satisfy the heightened pleading standard under Fed. R. Civ. P. 9(b). All that Marino alleges is that "Laguna fraudulently

represented that it is using the mark ["Laguna Lakes"] in interstate commerce, when, in fact, it is not used in interstate commerce at all. It is not used interstate and is not used in 'commerce' since Laguna is a non-profit entity." *See* Notice of Opposition at ¶5.[3] Marino does not, however, allege that Laguna willfully deceived the USPTO. *In re Bose Corp.*, 580 F.3d at 1243 ("[D]eception must be willful to constitute fraud."). Furthermore, Marino failed to plead fraud with particularity as required by the Federal Rules of Civil Procedure. Because he fails to provide the court with any evidence to support an inference of deceptive intent, Marino cannot "satisfy the clear and convincing evidence standard required to establish a fraud claim." *Id.* at 1246. Therefore, dismissal of the ground for opposition that Laguna committed fraud on the USPTO is warranted.

B. Marino's allegation of priority and likelihood of confusion fails as a matter of law based on Laguna's prior use of the mark in the '955 Application.

In order to establish his ground of opposition under 15 U.S.C. § 1052(d), Marino must show (1) that he maintains priority of use in the mark "Laguna Lakes" and that (2) Laguna's mark, when used on the goods set forth in the application, would create a likelihood of confusion with his mark. *Hart v. New York Yankees P'ship*, 184 F. App'x 972, 973 (Fed. Cir. 2006) (*citing Hoover Co. v. Royal Appliance Mfg. Co.,* 238 F.3d 1357, 1359 (Fed. Cir. 2001); 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition,* § 20.14 (4th ed. 2004)).

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[3] That it is a logical fallacy to suggest that Laguna does not use the mark "Laguna Lakes" in commerce that because it is a not-for-profit corporation is indisputable. Courts recognize that "the names of charitable, educational, and other non-profit organizations are entitled to protection under the Lanham Act regardless of whether or not they place products into the stream of commerce." *Committee for Idaho's High Desert v. Yost,* 881 F. Supp. 1457, 1470-1471 (D. Idaho 1995) (emphasis added). The fallacies continue in Paragraph 5 of the Notice of Opposition, where Marino alleges that Laguna does not use the mark in commerce; this allegation contradicts his acknowledgment that Laguna owns and operates a website and defies the courts understanding of how the Internet impacts interstate commerce. *See* Notice of Opposition ¶2; *id.* at Exhibit A. "Offering services via the Internet has been held to constitute use in commerce, since the services are available to a national and international audience who must use interstate telephone lines to access a website." TMEP § 901.03 (*citing Planned Parenthood Federation of America, Inc. v. Bucci*, 42 U.S.P.Q. 2d 1430 (S.D.N.Y. 1997), *aff'd,* 152 F.3d 920 (2d Cir. 1998) (Table), *cert. denied*, 525 U.S. 834 (1998)). "[W]here a trademark is used on the internet so as to draw consumers to a particular website, the use in commerce prong of a Lanham Act claim is satisfied." *Transamerica Corp. v. Moniker Online Services, LLC*, 672 F. Supp. 2d 1353, 1361 (S.D. Fla. 2009).

The element of priority is determinative here. Laguna filed its Articles of Incorporation with the State of Florida on September 26, 2003 – well prior to Marino's alleged first use date of July 2005. *Compare* Laguna Articles of Incorporation (attached hereto as Exhibit 1) *with* Marino's Notice of Opposition at ¶¶1,4; *see also* the Declaration for the '955 Application (declaring under oath the contents of the application file, including the alleged first use in commerce date of at least as early as October 6, 2003). Indeed, there could be no "Mr. Laguna Lakes" as Marino refers to himself without the development. Even accepting the allegations of Marino as true, Laguna is the prior user of the mark. Therefore, Marino's allegation of priority fails as a matter of law and dismissal of this ground is proper.

C. The ground for opposition of deceptiveness is legally insufficient.

A mark is deceptive within the meaning of 15 U.S.C. § 1052(a) if it (1) misdescribes the goods or services, (2) purchasers are likely to believe the misrepresentation, and (3) the misrepresentation would materially affect their decision to purchase the goods or services. *Bureau Nat'l Interprofessionnel Du Cognac*, 6 U.S.P.Q.2d 1610, 1988 WL 252488 at *7 (TTAB 1988) (*citing In re Quady Winery Inc.*, 221 U.S.P.Q 1213 (TTAB 1984)). Similarly, if a mark is the name of a place known generally to the public, purchasers who encounter goods or services bearing the mark would think that the goods originate in that place, the goods or services do not come from the named place, and the deception is material to the purchasing decision, the mark is deceptive under 15 U.S.C. § 1052(a). *Id.*

Under either formulation, the claim that the mark "Laguna Lakes" is deceptive is not plausible on its face as required by *Twombly* and *Iqbal*. Assuming all of the facts in the Notice of Opposition to be true, it is not plausible to allege that the mark "Laguna Lakes" misdescribes

the services that Laguna, as a community association, provides for the residents of Laguna Lakes. Therefore, dismissal of this ground for opposition is appropriate.

D. The mark "Laguna Lakes," as a matter of law, is not merely descriptive under 15 U.S.C. § 1052(e)(1) and is not primarily geographically descriptive under 15 U.S.C. § 1052(e)(2), but is rather "distinctive" and therefore protectable.

"Marks that are 'merely descriptive' of goods and services are not entitled to protection" under the Lanham Act. *Coach Services, Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1377-1378 (Fed. Cir. 2012) (*citing In re Abcor Dev. Corp.,* 588 F.2d 811, 813 (C.C.P.A.1978)). Similarly, a "geographically descriptive term or phrase is one that 'designates geographical location and would tend to be regarded by buyers as descriptive of the geographic location of origin of the goods or services." *Forschner Group, Inc. v. Arrow Trading Co. Inc.*, 30 F.3d 348, 355 (2d Cir. 1994) (*quoting* 1 J.T. McCarthy, *Trademarks and Unfair Competition,* § 14.02). "That a phrase or term *evokes* geographic associations does not, standing alone, support a finding of geographic descriptiveness." *Id.*

Marino alleges that the standard character mark "Laguna Lakes" should not be registered in that it's merely geographically descriptive of a development and area in Ft. Myers, Florida." Notice of Opposition at ¶3. However, both the TMEP and the courts reject such an assertion. In § 1210.02(a), the TMEP states that the "mere fact that a term may be the name of a place that has a physical location does not necessarily make that term geographic under §2(e)(2). For example, names of amusement parks, residential communities, and business complexes which are coined by the applicant, must not be refused." Florida courts considering similar facts and circumstances agree. *See Homeowner's Association, Inc. v. Tortoise Island Realty, Inc.,* 790 So. 2d 525 (Fla. 5th DCA 2001). In *Tortoise Island,* the Fifth District reversed the trial court decision which denied the Tortoise Island Homeowners Association, Inc. relief to enjoin

infringement and dilution of its trade name/service mark by the realty company Tortoise Island Realty, Inc. *Id.* at 528. The name "Tortoise Island" was selected by a developer of a spoil island and lands, which area eventually became the community for which the homeowners' association was formed to serve. *Id.* at 528. Prior to the development, the area had no name, and beginning in the late 1970's, the name was used to advertise the community and to sell lots. *Id.* When the project was completed, it was turned over to the homeowners' association, which was a non-profit corporation whose primary duties where to maintain the common property and amenities, and enforce the pertinent covenants and restriction. *Id.*

Reversing the trial court denial of injunctive relief, the Fifth District stated that although "the name Tortoise Island [eventually] became connected to a real place and community," the name "Tortoise Island" was "arbitrary and distinctive." *Id.* at 535. An "'arbitrary' or fanciful name when attached to a place or location is generally protectable as a trade name or mark, without the necessity to prove secondary meaning." *Id.* at 533. Because in *Tortoise Island,* "no evidence was adduced" that indicated that the name had become identifiable as a geographic location, the Fifth District determined that the name "Tortoise Island" was arbitrary, distinctive and protectable as the service mark/trade name for the exclusive residential community. *Id.*

The *Tortoise Island* decision is factually dispositive of the grounds for opposition asserted by Marino that Laguna Lakes is "merely descriptive" or "merely geographically descriptive." Prior to the development, as was observed in *Tortiose Island*, Laguna Lakes had no name. The standard character mark "Laguna Lakes" mark is not merely descriptive and is not merely geographically descriptive; rather, the mark is a distinctive and protectable mark whose value is being diluted by Marino. *See Tortoise Island*, 790 So.2d at 534-35 (finding that the mark had "gained a reputation as an exclusive residential community" whose "name and logo are

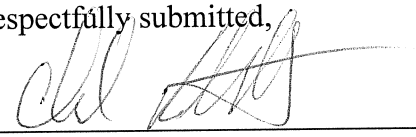
commonly used by real estate agents to advertise properties exclusively in the community," and further observing that "use by [the realtor] and others of the trade name Tortoise Island would contribute to its loss of distinctiveness and hence, its protectability").

Therefore, Marino's claim that the mark in the '955 Application is "merely descriptive" or "merely geographically descriptive" fails as a matter of law. Dismissal of these two grounds for opposition is warranted. *See also* TMEP § 1210.02(a) (discussing that "coined" locations, such as "residential communities . . . must not be refused").

IV. Conclusion

For the reasons discussion in its foregoing Motion to Dismiss, Applicant Laguna Lakes Community Association, Inc. respectfully requests that the Board dismiss the above-captioned Opposition Proceeding.

Respectfully submitted,



Donna M. Flammang (Florida Bar No. 0015230)
W. Scott Harders (Ohio Bar No. 0070598)
Chad R. Rothschild (Ohio Bar No. 0088122)
Brennan, Manna & Diamond, LLC
75 East Market Street
Akron, Ohio 44308
Phone: 330-253-3715
Fax: 330-253-3745
dmflammang@bmdpl.com
wsharders@bmdllc.com
crothschild@bmdllc.com

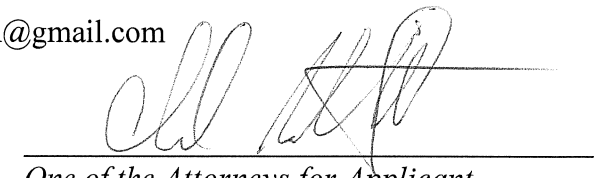
Dated: June 5, 2012

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2012, a copy of the foregoing *Motion to Dismiss of Applicant Laguna Lakes Community Association, Inc.* was served via first class U.S. mail postage prepaid and by e-mail upon:

Scott Behren, Esq.
Behren Law Firm
2893 Executive Park Drive Suite 203
Weston, FL 33331
scott@behrenlaw.com; scott.behren@gmail.com



One of the Attorneys for Applicant

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Exhibit 1

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ACCOUNT NO. : 072100000032

REFERENCE : 257768 7109989

AUTHORIZATION :

COST LIMIT : ~~$ 78.75~~ PPD

ORDER DATE : September 26, 2003

ORDER TIME : 11:42 AM

ORDER NO. : 257768-005

CUSTOMER NO: 7109989

CUSTOMER: Eric A. Simon, Esq
Eric A. Simon, P.a.

Suite 300
2825 University Drive
Coral Springs, FL 33065

DOMESTIC FILING

NAME: LAGUNA LAKES COMMUNITY ASSOCIATION, INC.

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION
____ CERTIFICATE OF LIMITED PARTNERSHIP
____ ARTICLES OF ORGANIZATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
____ PLAIN STAMPED COPY
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CONTACT PERSON: Amanda Haddan - EXT. 1155

EXAMINER'S INITIALS: _____

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ARTICLES OF INCORPORATION
OF
LAGUNA LAKES COMMUNITY ASSOCIATION, INC.

The undersigned incorporator, for the purpose of forming a corporation not-for-profit pursuant to the laws of the State of Florida, Florida Statutes, Chapter 617, hereby adopts the following Articles of Incorporation:

PREAMBLE

TRANSEASTERN LAGUNA LAKES, LLC, a Florida limited liability company ("DECLARANT"), owns certain property in Lee County, Florida (the "SUBJECT PROPERTY"), and intends to execute and record a Master Declaration for Laguna Lakes (the "DECLARATION") which will affect the SUBJECT PROPERTY. This association is being formed as the association to administer the DECLARATION, and to perform the duties and exercise the powers pursuant to the DECLARATION, as and when the DECLARATION is recorded in the Public Records of Lee County, Florida, with these Articles of Incorporation attached as an exhibit. All of the definitions contained in the DECLARATION shall apply to these Articles of Incorporation, and to the Bylaws of the COMMUNITY ASSOCIATION.

ARTICLE 1. - NAME AND ADDRESS

The name of the corporation is LAGUNA LAKES COMMUNITY ASSOCIATION, INC., hereinafter referred to as the "COMMUNITY ASSOCIATION." The initial address of the principal office of the COMMUNITY ASSOCIATION and the initial mailing address of the COMMUNITY ASSOCIATION is 3300 University Drive, Coral Springs, Florida 33065.

ARTICLE 2. - PURPOSE

The purposes for which the COMMUNITY ASSOCIATION is organized are as follows:

2.1 To operate as a corporation not-for-profit pursuant to Chapter 617 of the Florida Statutes.

2.2 To enforce and exercise the duties of the COMMUNITY ASSOCIATION as provided in the DECLARATION.

2.2.1 To promote the health, safety, welfare, comfort, and social and economic welfare of the members, and the OWNERS and residents of the SUBJECT PROPERTY, as authorized by the DECLARATION, by these ARTICLES, and by the BYLAWS.

ARTICLE 3. - POWERS AND DUTIES

The COMMUNITY ASSOCIATION shall have the following powers and duties:

3.1 All of the common law and statutory powers of a corporation not-for-profit under the laws of the State of Florida.

3.2 To administer, enforce, carry out and perform all of the acts, functions, rights and duties provided in, or contemplated by, the DECLARATION, including but not limited to, the following:

3.2.1 To own, purchase, sell, mortgage, encumber, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.

3.2.2 To make and collect ASSESSMENTS against OWNERS to defray the costs, expenses and losses incurred or to be incurred by the COMMUNITY ASSOCIATION, and to use the proceeds thereof in the exercise of the COMMUNITY ASSOCIATION'S powers and duties.

3.2.3 To enforce the provisions of the DECLARATION, these ARTICLES, and the BYLAWS.

3.2.4 To make, establish and enforce reasonable rules and regulations governing the use of COMMON AREAS, LOTS, UNITS and other property under the jurisdiction of the COMMUNITY ASSOCIATION.

3.2.5 To grant and modify easements, and to dedicate property owned by the COMMUNITY ASSOCIATION to any public or quasi-public agency, authority or utility company for public, utility, drainage and cable television purposes.

3.2.6 To borrow money for the purposes of carrying out the powers and duties of the COMMUNITY ASSOCIATION.

3.2.7 To exercise control over exterior alterations, additions, improvements, or changes in accordance with the terms of the DECLARATION.

3.2.8 To obtain insurance as provided by the DECLARATION.

3.2.9 To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the COMMUNITY ASSOCIATION and for proper operation of the properties for which the COMMUNITY ASSOCIATION is responsible, or to contract with others for the performance of such obligations, services and/or duties.

3.2.10 To sue and be sued.

3.2.11 To operate and maintain the surface water management system for the SUBJECT PROPERTY as permitted by the South Florida Water Management District (the "SFWMD"), including all lakes, retention areas, culverts and related appurtenances, as may be applicable, and to comply with the requirements of any permit issued by the SFWMD for the SUBJECT PROPERTY.

3.2.12 To contract for cable television, security and other services for the SUBJECT PROPERTY.

ARTICLE 4. - MEMBERS

4.1 MEMBERS.

4.1.1 PARCEL ASSOCIATION MEMBER. Each PARCEL ASSOCIATION shall be a MEMBER of the COMMUNITY ASSOCIATION. Such membership shall be established upon the filing of the articles of incorporation of the PARCEL ASSOCIATION with the Secretary of State of the State of Florida, and the recording of such articles of incorporation in the public records of the county in which the SUBJECT PROPERTY is located, along with, or as an exhibit to, a PARCEL DECLARATION.

4.1.2 DECLARANT. DECLARANT shall be a MEMBER of the COMMUNITY ASSOCIATION so long as DECLARANT owns any PROPERTY, or holds a mortgage encumbering any PROPERTY other than a UNIT.

4.2 MEMBERS' Voting Rights. The total number of MEMBERS' votes shall be equal to the total number of UNITS and PLANNED UNITS within the SUBJECT PROPERTY from time to time. On all matters upon which the membership shall be entitled to vote, there shall be one (1) vote for each UNIT and PLANNED UNIT.

4.2.1 Each PARCEL ASSOCIATION MEMBER shall have the number of votes equal to the number of UNITS within the PROPERTY operated by, or subject to the jurisdiction of, that PARCEL ASSOCIATION at the time of such vote. A PARCEL ASSOCIATION MEMBER shall cast its votes in the manner provided by the BYLAWS.

4.2.2 DECLARANT shall have three votes for each vote of any MEMBER other than DECLARANT, so long as DECLARANT is entitled to appoint a majority of the directors of the COMMUNITY ASSOCIATION, as hereafter provided, and thereafter DECLARANT shall have three votes for each UNIT and each PLANNED UNIT contained with the PROPERTY owned by DECLARANT, and contained within any portion of the property described in Exhibit "B" of the DECLARATION which may be added to the DECLARATION.

4.3 The BYLAWS shall provide for an annual meeting of the members of the COMMUNITY ASSOCIATION and shall make provision for special meetings.

ARTICLE 5. - TERM OF EXISTENCE

The COMMUNITY ASSOCIATION shall have perpetual existence.

ARTICLE 6. - INCORPORATOR

The name and street address of the incorporator is: Eric A. Simon, 2825 University Drive, Suite 300, Coral Springs, Florida 33065.

ARTICLE 7. - DIRECTORS

7.1 The property, business and affairs of the COMMUNITY ASSOCIATION shall be managed by a BOARD which shall consist of not less than three (3) directors, and which shall always be an odd number. The BYLAWS may provide for a method of determining the number of directors from time to time. In the absence of a determination as to the number of directors, the BOARD shall consist of three (3) directors. Directors are not required to be OWNERS.

7.2 All of the duties and powers of the COMMUNITY ASSOCIATION existing under the DECLARATION, these ARTICLES and the BYLAWS shall be exercised exclusively by the BOARD, its agents, contractors or employees, subject to approval by the members only when specifically required.

7.3 The DECLARANT shall have the right to appoint all of the directors so long as DECLARANT owns any portion of the SUBJECT PROPERTY or any property that may be added to the SUBJECT PROPERTY, or as otherwise provided by law. The DECLARANT may waive its right to elect one or more directors by written notice to the COMMUNITY ASSOCIATION, and thereafter such directors shall be elected by the members. When the DECLARANT no longer owns any portion of the SUBJECT PROPERTY or any property that may be added to the SUBJECT PROPERTY, all of the directors shall be elected by the members in the manner provided in the BYLAWS.

7.4 Directors may be removed and vacancies on the BOARD shall be filled in the manner provided by the BYLAWS, however any director appointed by the DECLARANT may only be removed by the DECLARANT, and any vacancy on the BOARD shall be appointed by the DECLARANT if, at the time such vacancy is to be filled, the DECLARANT is entitled to appoint the directors.

7.5 The names and addresses of the initial directors, who shall hold office until their successors are appointed or elected, are as follows:

Marc Schneiderman, 3300 University Drive, Coral Springs, Florida 33065
Maryann Crowell, 3300 University Drive, Coral Springs, Florida 33065
Cora DiFiore, 3300 University Drive, Coral Springs, Florida 33065

ARTICLE 8. - OFFICERS

The officers of the COMMUNITY ASSOCIATION shall be a president, vice president, secretary, treasurer and such other officers as the BOARD may from time to time by resolution create. The officers shall serve at the pleasure of the BOARD, and the BYLAWS may provide for the removal from

office of officers, for filling vacancies, and for the duties of the officers. The names of the officers who shall serve until their successors are designated by the BOARD are as follows:

President . . . . . .Marc Schneiderman
Vice President. . . . . .Maryann Crowell
Vice President/Secretary/Treasurer. . .Cora DiFiore

ARTICLE 9.- INDEMNIFICATION

9.1 The COMMUNITY ASSOCIATION shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the COMMUNITY ASSOCIATION) by reason of the fact that he is or was a director, employee, officer or agent of the COMMUNITY ASSOCIATION, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the COMMUNITY ASSOCIATION; and with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duties to the COMMUNITY ASSOCIATION unless and only to the extent that the court in which the action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the COMMUNITY ASSOCIATION; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

9.2 To the extent that a director, officer, employee or agent of the COMMUNITY ASSOCIATION has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

9.3 Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the COMMUNITY ASSOCIATION in advance of the final disposition of such action, suit or proceeding as authorized by the BOARD in the specific case upon receipt of an undertaking by or on behalf of the directors, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the COMMUNITY ASSOCIATION as authorized herein.

9.4 The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any BYLAW, agreement, vote of members or otherwise, and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

9.5 The COMMUNITY ASSOCIATION shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the COMMUNITY ASSOCIATION, or is or was serving at the request of the COMMUNITY ASSOCIATION as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the COMMUNITY ASSOCIATION would have the power to indemnify him against such liability under the provisions of this Article.

ARTICLE 10. - BYLAWS

The first BYLAWS shall be adopted by the BOARD and may be altered, amended or rescinded by the DECLARANT, the Directors and/or members in the manner provided by the BYLAWS.

ARTICLE 11. - AMENDMENTS

Amendments to these ARTICLES shall be proposed and adopted in the following manner:

11.1 A majority of the BOARD shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

11.2 Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the BYLAWS for the giving of notice of a meeting of the members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

11.3 At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes of the entire membership of the COMMUNITY ASSOCIATION.

11.4 Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

11.5 If all of the directors and all of the members eligible to vote sign a written statement manifesting their intention that an amendment to these ARTICLES be adopted, then the amendment shall thereby be adopted as though the above requirements had been satisfied.

11.6 No amendment shall make any changes in the qualifications for membership nor in the voting rights of members without approval by all of the members and the joinder of all INSTITUTIONAL LENDERS holding mortgages upon the LOTS. No amendment shall be made that is in conflict with the DECLARATION. Prior to the closing of the sale of all LOTS within the SUBJECT PROPERTY, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, the DECLARANT, unless the DECLARANT shall join in the execution of the amendment, including, but not limited to, any right of the DECLARANT to appoint directors pursuant to Article VII.

11.7 No amendment to these ARTICLES shall be made which discriminates against any OWNER(S), or affects less than all of the OWNERS within the SUBJECT PROPERTY, without the written approval of all of the OWNERS so discriminated against or affected.

11.8 Upon the approval of an amendment to these ARTICLES, the articles of amendment shall be executed and delivered to the Department of State as provided by law, and a copy certified by the Department of State shall be recorded in the public records of the county in which the SUBJECT PROPERTY is located.

ARTICLE 12. - DISSOLUTION

In the event of dissolution or final liquidation of the COMMUNITY ASSOCIATION, the assets, both real and personal, of the COMMUNITY ASSOCIATION, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the COMMUNITY ASSOCIATION. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization, to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the COMMUNITY ASSOCIATION.

If the local government declines to accept the conveyance then the surface water management system, property containing the surface water management system and water management portions of the COMMON AREAS shall be dedicated to a similar non-profit corporation.

ARTICLE 13.

INITIAL REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of the COMMUNITY ASSOCIATION shall be at 2825 University Drive, Suite 300, Coral Springs, Florida 33065. The initial registered agent of the COMMUNITY ASSOCIATION at that address is Eric A. Simon.

WHEREFORE, the incorporator, and the initial registered agent, have executed these ARTICLES on this 25th day of September, 2003. By executing these ARTICLES, the undersigned registered agent accepts the appointment as registered agent and states that the undersigned is familiar with, and accepts, the obligations of that position.

Eric A. Simon, as Incorporator and as Registered Agent

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 25th day of September, 2003, by Eric A. Simon, as Incorporator and as Registered Agent. He is personally known to me.

NOTARY PUBLIC, State of Florida at Large

Cynthia S Voller
My Commission CC965666
Expires October 07 2004

FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA
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