

© Banyan Homes
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Clermont, FL 34711

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JAMES C. WATKINS, CLERK OF COURT

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
QUAIL VALLEY SUBDIVISION
PHASE 5

LAKE COUNTY
RECORDING FEES 49.00
TRUST FUND 6.50

This Declaration of Covenants, Conditions and Restrictions for **QUAIL VALLEY SUBDIVISION** is made this 21st day of October 2003, by Banyan Construction & Development, Inc. and Grassy Lake, LTD. (hereinafter referred to as Declarant), as Owners under Warranty Deeds recorded in the Official Records Book 50, pages 1-2 Public Records of Lake County, Florida, with full power and authority to protect, conserve, sell, lease, encumber or otherwise dispose of the real property herein described.

WITNESSETH:

A. The Declarant is the Owner of all real Property known as Plat Book 50 Pages 1-2 public Records of Lake County, Florida. Such real property is hereinafter referred to as "Properties."

B. The Declarant desires to subject the Properties to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the Properties will 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 will run with, the Properties: and will be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, successor-in title and assigns, and will inure to the benefit of each Owner thereof.

ARTICLE I
Definitions

1. 'Association' will mean and refer to the QUAIL VALLEY LOT OWNERS ASSOCIATION, INC. a Florida corporation, not for profit, its successors and assigns.

2. 'Properties' will mean and refer to **Quail Valley Subdivision Phase 5** according to the plat thereof recorded in Plat Book 50, pages 1-2 public Records of Lake County, Florida.

3. 'Declarant' will mean and refer to Banyan Construction & Development, Inc. and Grassy Lake LTD., Owners of the Properties as above described, and its successors-in-title and assigns, if such successors and assigns should acquire for the purposes of development or sale the undeveloped or unsold portions of the Properties.

4. 'Owner' will mean and refer to the record Owner whether one or more person or entitles of any Lot which is part of the Properties but excluding any party holding the fee simple title merely as security for the performance of an obligation.

5. 'Lot' will mean and refer to any lot shown on the plat of **Quail Valley**

Subdivision Phase 5 as recorded in Plat Book 50, pages 1-2, Public Records of Lake County.

ARTICLE II Association Membership and Voting Rights

1. **Membership.** Every person who is the record Owner of a fee or undivided fee interest in any Lot that is subject to this Declaration will be a member of the Association. The foregoing is not intended to include persons who hold an interest merely as security of the performance of an obligation, and the giving of a security interest will not terminate the Owner's membership. Membership will be appurtenant to and may not be separated from ownership of any Lot. Ownership of a lot will be the sole qualification for membership. A member or the member's spouse may exercise the rights and privileges of membership, including the right to vote and to hold office.

2. **Voting.** The Association will have two classes of membership, Class "A" and Class "B," as follows:

(a) **Class "A"** Class "A" members will be all Owners with the exception of the Declarant during the existence of Class "B" membership. Class "A" members will be entitled to one vote for each lot owned.

When more than one person holds such interest in any Lot, the vote will be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the vote will be suspended in the event more than one person seeks to exercise it. All shares allocated to any parcel will be cast as a block of votes.

(b) **Class "B."** Class "B" members will be the Declarant. The Class "B" member will be entitled to exercise total voting control until the annual meeting following the event of seventy-five percent of the total number of lots in the subdivision being owned by individuals other than the declarant, his agents or associates or until January 1, 2005, whichever occurs first. Upon this event, Class "A" members may exercise voting rights. The Class "B" member will continue to control three of the five positions on the Board of Directors until the event of seven-tenths of the lots being owned by others, and two of the five positions until nine-tenths of the lots are owned by others, and then Class "B" membership will cease to exist. No lots owned by the declarant, his agents or associates would be subject to any assessment until the annual meeting following purchase by others.

ARTICLE III Assessments

1. **Creation of Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a Deed therefore, whether or not it will be so expressed in such Deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments of charges, and (b) special assessments, such assessments to be established and collected as hereinafter provided, and (c) specific assessments against any particular Lot

which are established pursuant to the terms of this Declaration. As such assessments together with interest, costs and reasonable attorney's fees will be a charge on the land and will be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, will also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each Owner will be liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot or Parcel, and his or her grantee will be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. Assessments will be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the assessments will be paid in annual installments.

2. **Annual Assessment.** Assessments will be equal for each lot subject to assessment, and sufficient to fund the annual budget, including reasonable reserves. The Board of Directors will prepare an annual budget for presentation, amendment if necessary, and adoption at the annual meeting, subject to being overridden by a two-thirds vote of the Association Members present or voting by proxy at such meeting. The annual assessment for each lot will be determined by the total adopted budget divided by the total number of Class "A" members (lots).

3. **Special provisions regarding assessments.** During the existence of Class "B" membership, this special provision will override Section 3 above. Annual assessments will be limited to the amount announced in the initial sales agreements, and increases in that amount will be limited each year to 10%, plus a factor equal to the increase (or decrease) in the consumer price index. Further, the declarant may contribute to the annual budget such amount that he deems reasonable and necessary to carry out the responsibilities of the Association in an orderly manner. This section does not override Section 5 and 6 of this article.

4. **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, as special assessment, applicable to that year only, provided that any such assessment will have the voting assent of at least fifty (50%) percent of the Class "A" members who are voting in person or by proxy at the annual meeting or a special meeting duly called for this purpose. The Board of Directors may make such special assessments payable in installments over a period of not more than three (3) years.

5. **Specific Assessments.** In addition to other assessments, any lot owner shall be subject to specific assessments as penalties and damage resulting from violations of Association rules, or harm to Association properties or values by the owner of the subject lot, or his agents or assigns. Notice of such violation or damage will be sent in writing to the owner from the President, together with correction action required, time allowed for corrective action, and the amount of the proposed specific assessment. The owner (or agent) may correct the infraction and/or pay the specific assessment within the time indicated, or otherwise the matter will be brought to the Board of Directors in a regular or special meeting. The Board will determine the amount and terms of any specific assessment, and may further specify additional penalties for further or continuing violations. The Board may adopt more specific procedures within the Rules and

Regulations to be promulgated.

6. **Lien for Assessments.** All sums against any Lot or Parcel pursuant to this article, together with interest as provided herein will be secured by a lien in favor of the Association. Such Lien will be superior to all other liens and encumbrances on such Lot except:

(a) Liens of ad valorem taxes; and

(b) A lien for all sums unpaid on a first Mortgage, any other Mortgage in favor of the holder of the first Mortgage, or on any Mortgage to Declarant, duly recorded in the public records of Lake County, Florida, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other persons acquiring liens or encumbrances or any Lot after this Declaration, which liens or encumbrances will have been recorded in said records, will be deemed to consent that such liens or encumbrances will be inferior to future liens for assessments as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

7. **Effect of Nonpayment of Assessments:** Remedies of the Association. Any assessments which are not paid when due will be delinquent. Any assessment for a period of ten (10) days will incur a late charge in an amount as the Board may determine from time to time. The Association will cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment has not been paid within thirty (30) days a lien as herein provided for will attach and in addition the lien will include the late charge, interest on the principal amount due plus the late charge of the maximum rate allowable by law from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute a suit to collect such amounts or to foreclose its lien. Each Owner, by his or her acceptance of a deed to a Lot, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvements of real Property. The lien provided for in this article will be in favor of the Association and will be for the benefit of all other Owners. The association, acting on behalf of the Owners, will have the power to bid on the residence at any foreclosure sale or to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his or her Lot.

ARTICLE IV Purposes, Rights and Obligations of the Association

The Association is created to own and maintain the common elements of the subdivision, as these elements are turned over by the declarant to the Association, and to provide a means of preserving and enhancing the property values and quality of life within the subdivision.

1. **Rules and Regulations.** The Association, through its Board of Directors, shall establish rules and regulations concerning the use of properties. Copies of such regulations and amendments thereto will be furnished by the Association to all Owners prior to their effective date. Such regulations will be binding upon the Owners, their families, tenants, guest, invites, and agents, until and unless such regulation, rule or requirements be specifically overruled, canceled or modified in a regular or special meeting by the two-thirds majority vote of Class "A" members. The Board will have the authority to impose fines and other sanctions, and monetary fines will be collected by lien and foreclosure as provided in Article III.

2. **Services.** The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association will determine to be necessary or desirable for the proper operation of the properties, whether such personnel are furnished or employed directly to the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the properties or the enforcement of this Declaration.

3. **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE V Use of Lots and Common Elements

This is primarily a residential development, with a community commercial site for convenience of residents and others, and with an open space and park network for the enjoyment and benefit of Association members and residents. The properties shall be subject to the following covenants and restrictions, which shall be binding upon each and every owner and his or her residential unit.

1. All lots are to be used for single-family dwellings. No commercial activity is to be permitted on any lot, and no signs advertising commercial activities shall be displayed. Residences will be of sturdy conventional construction and will have a minimum living area of 1000 square feet and shall include a garage.

2. City of Minneola zoning regulations which apply to R-1 residential zones will apply to all lots. However, the Board of Directors or these deed restrictions may establish provisions which are more restrictive than city zoning; the more restrictive will apply.

3. The Association will maintain all water retention areas as required by law or governmental permits including but not limited to the operation and maintenance of all storm water management systems included in the St. John's River water management permit and recorded on the plats, and all lot storm water conveyance swales which will be indicated on the plat as to it's use in maintaining the surface storm water management

systems.

4. Fences and hedges will not exceed six (6) feet in height, and will be kept in a neat, orderly and attractive condition. No fences will be constructed further forward than 15' from the rear corners of the residential structure.

5. Nuisances will not be allowed to be created or kept on any lot. Refuse piles, trash, scrap metal, unlicensed vehicles, or non-operative household appliances or vehicles, dilapidated boats or unsightly items will not be placed or maintained on any lot.

6. No mobile home will be placed or used as a dwelling on any lot. The Board of Directors shall appoint or act as a Board of Architectural Review to resolve any question of definition between mobile home, and modular or manufactured home.

7. No signs, billboards, outdoor or indoor advertising, displays or other signs of any kind shall be permitted on any lot after the initial sale by the developer or initial builder, except "For Sale" and "Garage/Yard Sale" signs of not more than 2' x 2' and limited to one per front yard.

8. No large tractor-trailers, semi-trailers, commercial vehicles with more than two axles, large trucks or off-road equipment shall be kept or parked in the subdivision except that which is being used for the construction of the subdivision and dwellings in the subdivision. No vehicles of any kind may be parked on any portion of the lot other than driveways for a period in excess of 24 hours.

9. No mobile home, modular home, or remanufactured home shall be erected on any lot. Travel trailers, recreational vehicles and boats may be garaged or kept to the side or rear of the house, but shall not be used for living purposes at any time while on the property. All must be screened from view from the street with approved fencing.

10. All or any satellite dishes or antennas shall be located at least 20 feet from the front corner of the house on the side or in the rear of the house or in a location approved by the Architectural Control Committee. All satellite dishes must conform to current Federal Communication Commission guidelines. All other radio or television antennae must be mounted in the attic of the residence and obscured from view. Exterior clotheslines are prohibited.

11. All outside pets will be kept in a fenced area or on a chain in the rear yard. All pets will be kept on a leash when being walked in the subdivision. No animal shall be permitted to remain if it disturbs the tranquility of the community or the Owner's or tenants.

12. Following completion of a dwelling unit, an outdoor storage shed may be constructed so as to match the exterior of the dwelling. The shed may be erected behind the furthestmost rear line of the dwelling and not closer than ten (10) feet to any property line. Any such shed must have a minimum 5/12 roof pitch and have shingles to match the house. No metal sheds shall be allowed. All sheds and outbuildings must conform to the City of Minneola building codes and land development regulations.

13. Tract F will be used as a waste water treatment plant until abandoned then Tract F will remain the sole property of the developer whose intended future use is residential housing.

14. Following completion of a dwelling unit the addition of fencing or any alterations to the residence affecting the exterior color, or structure must be approved by the Architectural Review Committee.

15. Each owner shall keep and maintain the building improvements, landscaping, and surface water drainage structures located on his or her residential unit in good and presentable condition and repair consistent with the approved plans therefore, and shall otherwise keep such residential unit in neat and attractive condition at all times.

16. A set of Rules and Regulations will be issued and revised periodically by the Board of Directors, subject to being overridden in whole or part by a two-thirds vote of Association members. These Rules and Regulations will more specifically deal with nuisances, architectural guidelines, animal control, and noise abatement. The Board will establish clear penalties and procedures for enforcement of rules, and shall have power to levy specific assessments against any lot whose owners, agents, renters, occupants or users violate the rules and regulations.

ARTICLE VI Waste Water Treatment Facility

1. **Waste Water Treatment Facility.** As part of it's development plan for the Project, Declarant has agreed with the City of Minneola ("City") that it shall install at it's expense a waste water treatment facility for sewer treatment as shown on The Quail Valley Plat. The lift station for the facility has been designed and sized to accommodate the collection and transfer of all waste from Quail Valley Subdivision to the City's future waste treatment plant. Because it is the City's intent that the initial treatment facility be temporary, in the event the City decides to provide sewer service or constructs a sewer plant, upon written notice from the city, the Declarant, Association, and Owner's shall cooperate with the City to discontinue the use of the waste water treatment facility. The Declarant and/or Association or their successors and assigns shall upon request from the City, at that time transfer as requested by the City the lift station(s), tracts designated or used for lift station(s) for waste water treatment purposes and any equipment from the treatment facility to the City.
2. **Connection of Lots to City Sewer System.** All owners in the Subdivision shall be required to connect to the City sewer system when one becomes available. In anticipation of the adoption of sewer impact fees, the Declarant and the City have agreed that the lots shall be exempt from sewer or waste water impact fees subsequently adopted by the City in consideration of the payment of \$ 1,235.00 to the City by the Declarant or its successors and assigns each time a building permit is pulled. These funds shall be placed into a separate wastewater account established by the City. In the event they are

not used for waste water treatment within ten years of the date of recordation of this agreement, the amount collected per lot shall be returned to the respective lot owners after deduction of the City's costs in making such refund payments. Any income accrued on the fund shall be retained by the City and transferred to its general utility fund. The anticipated transfer of the lift station(s), tracts for those stations and any equipment referenced from the facility above is in further consideration of the exemption of further sewer or waste water impact fees.

3. **Association Responsibility for Waste Water Treatment Facility.** The association for the subdivision shall be responsible for the maintenance and operation of the wastewater treatment facility. The Association shall be responsible for establishing and collecting monthly fees for furnishing wastewater treatment to all lots. Said fees are to be billed monthly. Should any lot owner fail to pay the Association as specified, the Association remedies are limited to those set out in Article III, Paragraph 7 of this document.

ARTICLE VII General Provisions

1. **Enforcement.** Each Owner will comply strictly with the By-Laws and the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the Covenants, Conditions and Restrictions set forth in this Declaration of in the deed to his or her Lot. The Board of Directors may impose fines, specific assessments, or other sanctions, collection of which shall be as provided. The Declarant, Association, or any owner shall have the right to enforce, by proceedings at law or in equity, these covenants and restrictions, seeking injunctive relief or damages, or both. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any such action shall be entitled to recover such costs and attorney's fees, including costs and fees upon appeal, as are reasonably incurred in such action. There shall be no liability for the failure to enforce the terms of this Declaration.

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

3. **Term.** The term of these Covenants, Conditions and Restrictions will be thirty years from the date of recording the same in the Public records of Lake County, Florida. The same will be continued in perpetuity unless overridden by a vote of seventy-five (75%) percent of the Class "A" votes. In such event of vote to override, this action must subsequently be properly recorded in the Public Records of Lake County, Florida.

4. **Amendment.** The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than seventy-five (75%) percent of the Class "A" votes. Any amendment must be properly recorded in the Public Records of Lake County, Florida. Annexation of additional properties and amendment of this Declaration of Covenants, Conditions and restriction, requires HUD/VA prior approval as long as there is

a Class B membership. HUD/VA has the right to veto amendments while there is a Class B membership.

5. **Indemnification.** The Association will indemnify every officer and director against any and all expenses, including counsel fees reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the then Board of Directors) to which he may be made a party by reason of being or having been an officer or director at the time such expenses are incurred. The officers and directors will not be liable for any mistake of judgment, negligence, or otherwise, except for their own individual willful misfeasance, malfeasance, and misconduct or bad faith. The officers and directors will have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association) and the Association will indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, any former officer or director, may be entitled. The Association will as a common expense maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

6. **Purpose and Powers of the Association.** The Association will operate, maintain and manage the surface water or storm water management system(s) in a manner consistent with the St. Johns River Management District permit requirements and applicable District rules, and will assist in the enforcement of the Declaration of Covenants and Restrictions which relate to the surface water or storm water management system.

The Association will levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water or storm water management system.

7. **Dissolution.** In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or storm water management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027, FAC., and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

8. **Existence and Duration.** Existence of the Association will commence with the filing of these Articles of Incorporation with the Secretary of State, Tallahassee, Florida. The Association will exist in perpetuity.

9. **Property Description.** The property encompassed by the permit (where the surface water management system will be located) must be included in the definition of the subject property for the Declaration of Covenants and Restrictions.

10. **Definitions.** 'Surface Water or Storm water Management Systems' means a system which is designed and constructed or implemented to control discharges which necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage,

environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

11. **Duties of Association.** The Association shall be responsible for the maintenance, operation and repair of the surface water or storm water management system. Maintenance of the surface water or storm water management system(s) will mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or storm water management system will be as permitted, or if modified, as approved by the St. Johns River Water Management District.

12. **Covenants for Maintenance Assessments for Association.** Assessments will also be used for the maintenance and repair of the surface water or storm water management systems including but not limited to work within retention areas, drainage structures and drainage easements.

13. **Easement of Access and Drainage.** The Association will have a perpetual non-exclusive easement over all areas of the surface water or storm water management system for access to operate, maintain or repair the system. By this easement, the Association will have the right to enter upon any portion of any lot which is a part of the surface water or storm water management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or storm water management system as required by the St. Johns River Water Management District permit. Additionally, the Association will have a perpetual non-easement for draining over the entire surface water or storm water management system. No person will alter the drainage flow of the surface water or storm water management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

14. **Amendment.** Any amendment to the Covenants and Restrictions which alter any provision relating to the surface water or storm water management system, beyond maintenance in its original condition, including water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

15. **Enforcement by St. Johns River Water Management.** The St. Johns River Water Management District will have the right to enforce, by a proceeding law or in equity, the provisions contained in the Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or storm water management system.

16. **Swale Maintenance.** (If applicable) The declarant has constructed a drainage swale upon each Lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. Each lot owner where applicable as denoted on the plat when recorded will be responsible for the maintenance, operation and repair of the swales on the lot. Maintenance, operation and repair will mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other storm water management


capabilities as permitted by the St. Johns River Water Management District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. Any alteration of the Drainage Swales, whether caused by natural or human-induced phenomena, will be repaired and the Drainage Swale returned to its former condition as soon as possible by the Owner(s) of the Lot(s) upon which the Drainage Swale is located.

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

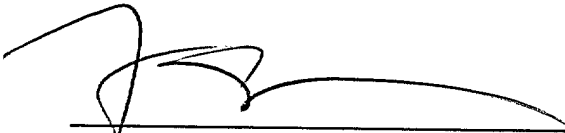
IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 21st day of October 2003.

Signed, Sealed and Delivered
In our presence:

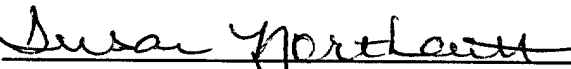
Quail Valley Subdivision



Laura Poe



Frank M. Gammon, Sr. VP/Gen. Mgr.
Banyan Construction & Development, Inc.



Susan Northcutt

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this 21st day of October 2003 by Frank M. Gammon who is personally known to me.


My commission expires:



Notary Public signature

HEIDI SABOUR

Printed signature

 Heidi H Sabour
My Commission CC929789
Expires April 20, 2004