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**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR
BANYAN TRACE**

This Declaration of Covenants, Conditions, and Restrictions of Banyan Trace Master Association, Inc. is made this 2nd day of July, 2002 by Cape Coral Country Club, Inc., referred to as "Declarant".

WITNESSETH:

WHEREAS, Cape Coral Country Club, Inc. is the owner of the real property legally described on attached Exhibit "A";

WHEREAS, Declarant intends by this Declaration to impose upon the said described Property mutually beneficial restrictions under a general plan of improvement for the benefit of all present and future Owners of any Condominium Units in any Condominiums developed in the Banyan Trace project;

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such property as is now or may hereafter be subjected to this Declaration; and

WHEREAS, Declarant has incorporated under the laws of the State of Florida as a not-for-profit corporation, Banyan Trace Master Association, Inc., for the purpose of exercising the functions stated above and within this Declaration.

NOW, THEREFORE, Declarant declares that all of the property described in Exhibit "A" is and shall be held, transferred, sold, conveyed, and occupied, subject to the covenants, restrictions, easements, terms, and conditions, hereinafter set forth.

**ARTICLE I
DEFINITIONS**

1. "Articles", shall mean and refer to the Articles of Incorporation of the Association.
2. "Assessments" shall mean and refer to a charge against a particular Owner and his Unit, made by the Association in accordance with this Declaration and secured by a lien against such Unit as hereinafter provided.

3. "Association" shall mean and refer to Banyan Trace Master Association , Inc., a Florida not-for-profit corporation, its successors and assigns.
4. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.
5. "Common Area" shall mean all real property now or hereafter owned by the Association for the common use and enjoyment of the Owners including, without limitation or obligation, ingress/egress easements, roads and streets, all open spaces, stormwater management and drainage areas, buffer areas, and utility easements including those for sewer and water.
6. "Condominium" shall mean and refer to any condominium project located within the Property.
7. "Declarant" shall mean and refer to Cape Coral Country Club, Inc. or its successors and assigns. Declarants may assign or pledge any or all of their rights reserved under this Declaration, the exhibits thereto, or any other instrument of conveyance or assignment.
8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Banyan Trace Master Association, Inc., as the same may be amended from time to time.
9. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.
10. "Mortgage" shall mean and refer to any mortgage and any and all other similar instruments for the purpose of encumbering real property as security for the payment or satisfaction of an obligation.
11. "Mortgagee" shall mean and refer to the other of any mortgage.
12. "Owner" or "Unit Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Unit within the Banyan Trace Project, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant.
13. "Property" or "Properties" shall mean and refer to the real property described in Exhibit "A" of this Declaration and such additional real property as may be subjected to the provisions of this Declaration of Covenants, Conditions and Restrictions.

14. "Rules & Regulations" shall mean the rules and regulations adopted by the Board as same may be amended from time to time.

15. "Stormwater Management System" shall mean that portion of the property consisting of swales, inlets, culverts, lakes, outfalls, storm drains, and the like, and all connecting pipes and easements, used in connection with the retention, drainage, and control of storm and surface water.

16. "Turnover" shall mean that date upon which the Declarant transfers majority control of the Board as provided by the By-Laws.

17. "Unit" or "Condominium Unit" shall mean any individual residential Condominium Unit developed within the Banyan Trace Project.

ARTICLE II

ASSOCIATION/PROPERTY

Section 1. The Common Area shall include that Property indicated in Paragraph 5 of this Declaration.

Section 2. The Common Area shall further include fixed improvements such as weirs, culverts and any other fixed improvements as constructed by the Association or conveyed to the Association by Declarants and other parties.

Section 3. The Common Area Property shall include such personal property as may hereafter be conveyed to or purchased by the Association for Association use.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1: Membership. Every person or entity who is the record owner of a fee or undivided fee interest in any Unit that is subject to this Declaration shall be deemed to have a membership in the Association, and shall be governed and controlled by the Articles of Incorporation and the Bylaws thereof. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership.

Section 2: Initial Control. The affairs of the Association shall be managed by a Board of Directors. The initial Board of Directors shall consist of three (3) Directors, all of whom shall be appointed by the Declarant.

After Declarant relinquishes control (the "Turnover"), the Board shall consist of one Director for each separate Condominium located within the Banyan Trace Project (the "Property").

Section 3: Turnover. Turnover shall occur upon the closing of the sale by Declarant or a Retail Builder of 90% of the individual Units to be developed within the Banyan Trace Project to a purchaser or upon such earlier date as Declarant may determine in its sole and absolute discretion.

Section 4: Voting. The Association shall have two (2) classes of voting members as follows:

Class A. Class A members shall be the Condominiums. Each Condominium shall be entitled to one vote. Class A members shall be entitled to vote only after relinquishment of control by Declarant as provided in Section 3 above.

Class B. The Class B member shall be the Declarant. Class B shall be the sole Class entitled to vote until Declarant relinquishes control as provided in Section 3 above. Upon relinquishment of control by the Declarant, the Class B membership shall cease.

ARTICLE IV MAINTENANCE AND REPAIR

The Association shall be responsible for all maintenance of any Common Area, and of the stormwater drainage system and shall maintain the same in accordance with the original plans and specifications and as subsequently modified by the South Florida Water Management District of its successors. The Association shall not be required to undertake any repairs nor maintenance until such time as sufficient funds have been obtained from the Owners.

ARTICLE V INSURANCE, DESTRUCTION, DAMAGE AND RECONSTRUCTION

Section 1. Insurance. The Board of Directors of the Association shall have the right by majority vote to elect to assess Members and to purchase and continue in effect hazards and liability insurance as may be available in such amount as the Board in its sole discretion may determine to protect against loss by insurable hazards for the fixed improvements and other property of the Association. Such insurance if authorized shall be purchased by the Association for the benefit of the Association.

Section 2. Destruction of or Damage to Property; Effect. In the event of any damage to or destruction to any improvements or any part thereof maintained by the Association pursuant to this Declaration, such improvements shall be promptly repaired and restored by

the Association using the proceeds of any insurance purchased by the Association, if any. If there is no insurance, or the proceeds of such insurance are inadequate to cover the cost of such repair or restoration, Owners shall be assessed on an equitable basis according to the provisions for special assessment for the expense of such repair and restoration.

ARTICLE VI ASSESSMENTS

Section 1: Purpose of Assessments. The assessments levied by the Association shall be used for the general purposes of administering the Association; operating, maintaining, repairing, and making such additions to the stormwater management system as may be necessary; and such other purposes as deemed proper by the Board.

Section 2: Creation of the Lien and Personal Obligation of Assessments. Except as hereinafter more fully provided, the Declarant hereby covenant for each Unit within the Property and each Owner of a Unit is hereby deemed to covenant by acceptance of their deed for such Unit, whether or not it shall be so expressed in their deed, to pay to the Association: (i) annual assessments, (ii) special assessments for capital improvements and other expenditures that the Association deems appropriate, such assessments to be fixed, established, and collected from time to time as hereinafter provided, and (iii) specific assessments against any particular Unit which are established pursuant to this Declaration including but not limited to fines, costs, or charges as may be imposed in accordance with other provisions of this Declaration.

All such assessments, together with interest at the highest rate allowable under the laws of the State of Florida, costs, and reasonable attorney fees, shall be a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the joint and several personal obligation of each person who is the Owner of such Unit at the time of the assessment fell due. Each Owner shall be liable for any assessment coming due while he or she is the Owner of the Unit and his or her Grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include without limitation acceleration of the annual assessments for delinquents.

Section 3: Annual Assessments. The Annual Assessments provided for herein shall commence as to all Units on the first day of the calendar month following the conveyance of any such Unit by the Declarant ("Commencement Date").

For the year of purchase, the annual assessment shall be prorated and paid in advance; thereafter, it shall be paid annually, in full and in advance, except that the Assessment Period or schedule may be changed from time to time at the discretion of the Board of Directors.

Until such time as Declarant relinquish control of the Association as provided in this Declaration, the initial and subsequent annual assessments shall be established by the Declarant. Declarant shall not be required to pay any such assessments; however, the Declarant shall pay the difference of the cost between the sum of annual assessments collected from the Members and the actual costs of operation of the Association. In the event of an increase in the actual cost of the Association, the Declarant may increase the annual assessments prior to its relinquishment of control of the Association. After Declarant relinquishes their control of the Association, the Declarant shall not be obligated to pay any annual or special assessments on any undeveloped Units which they may own in their name. Notwithstanding any provision that may be to the contrary in this Declaration, the Declarant may at any time commence paying assessments as to Units that they own and thereby automatically terminate their obligation to fund deficits, but at any time thereafter the Declarant may again elect to follow the procedures specified in the three preceding sentences.

Section 4: Special/Specific Assessments. In addition to the Annual Assessments authorized by Section 3 hereof, the Board may levy in any Assessment Year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement within the Common Area, including the necessary fixtures and personal property related thereto, or for any other purpose deemed appropriate by the Association. The Board may levy a Specific Assessment against any Owner to reimburse the Association for costs incurred in bringing the Owner and his or her Unit into compliance with the provisions of the Declaration, the Amendments thereto, the Articles, the Bylaws, and the Association Rules and Regulations. The due date of any Assessment under this Article shall be fixed in a resolution authorizing such assessment. The Declarant shall not be obligated to pay a Special Assessment levied on any undeveloped Unit.

Section 5: Basis of Annual Assessments. The annual assessments will be based upon the total number of Units within the Banyan Trace Project and proportionately allocated among the Units on the basis of one share for each Unit.

Section 6: Annual Assessment/Computation by Board of Directors. After Turnover, it shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting, to prepare a budget covering the estimated costs of operating the Association during the coming year which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Unit for the following year to be delivered to each Member at least thirty (30) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the total Association Members or the Declarant (provided the Declarant still has the option to unilaterally subject additional property to this Declaration). Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have

been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

The Board, shall prepare a roster of the Units and assessments applicable thereto which shall be kept in the office of the Association and which shall be open for inspection for any owner. The Association shall, upon demand at any time, furnish to any owner liable for any assessment, a certificate in writing signed by an officer of the Association setting forth whether any such assessment has been paid. Said certificate duly acknowledged by an officer of the Association shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7: Effect of Non-Payment of Assessment; Remedies of Association. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for more than ten (10) days shall incur a late charge in an amount as the Board may determine from time to time. The Association shall cause a notice of delinquency to be give 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 shall attach and in addition the lien shall include the late charge, interest on the principal amount due plus the late charge at the maximum allowable rate 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 the assessment remains unpaid after sixty (60) days, the Association may as the Board may determine institute suit to collect such amounts or to foreclose its lien. Each Owner, by his or her acceptance of deed to a Unit, 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 improvement of real property. The lien provided for in this article shall be in favor of the Association and shall be for the benefit of all other Owners. The power to bid on the Unit at any foreclosure sale or to acquire, hold, lease, mortgage and convey the same, shall be held by the Association, acting on behalf of the Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, the abandonment of his or her Unit.

Section 8: Property Exempt From Assessments. All properties conveyed or transferred (by deed, dedication, grant of easement, or otherwise) to and accepted by a local, state, or federal public or regulatory authority are fully exempt from the assessments created herein.

ARTICLE VII STORMWATER MANAGEMENT SYSTEM

The Property is located within the boundaries of the South Florida Water Management District. The Surface Water Management System shall constitute a portion of Common Area and shall be maintained by the Association as such.

The Association and the South Florida Water Management District shall have a non-exclusive easement over, upon and for use of Stormwater Management System, and an easement for ingress, egress and access to enter upon any portion of the Property in order to construct, maintain or repair, as necessary, any portion of the Stormwater Management System.

Any amendment of this Declaration which would affect the Stormwater Management System must be approved by South Florida Water Management District.

The beneficiaries of the Surface Water Management System, including but not limited to all Owners, shall have the legal right to enforce the assurances that the drainage system, easements and rights-of-way will be continuously maintained.

ARTICLE VIII CONDEMNATION

If all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the direction of Voting Members representing at least two-thirds (2/3rd) of the total votes attributable to Units and of the Declarant prior to Turnover) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award for such taking shall be payable to the Association to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless, within sixty (60) days after such taking, Declarant, during the period of Declarant control and, at all times, Voting Members representing at least two-thirds (2/3rd) of the votes attributable to Units, shall otherwise agree, the Association will restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors. If such improvements are to be repaired or restored, the provisions regarding the disbursement of funds in respect to casualty, damage, or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if there are funds remaining after any such restoration or replacement is complete, then such award or funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine, in its sole discretion.

ARTICLE IX EASEMENTS

Section 1: Declarant's Reserved Easements. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserve unto themselves and their successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to the Properties and Additional Land for the benefit of Declarant, their successors, and assigns, over, under, in, and/or on the Properties, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with the Properties. The reserved easement shall constitute a burden on the title to the Properties and specifically includes, but is not limited to:

a. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Properties; and the right to tie into any portion of the Properties with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Properties.

b. The right, but not the obligation, to enter into cross easement agreements with owners of adjoining properties.

c. The right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the development of the Property by Declarant.

d. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Properties and the Additional Land, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a Quit Claim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

Section 2: Easements for Utilities. There are hereby reserved to the Association blanket easements upon, across, above, and under all property within the Properties for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Properties or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association might decide to have installed to serve the Properties. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair,

replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Association shall have the right to grant such easement.

No trees may be planted or maintained in such a way as to interfere with public utility poles, wiring or drainage, or that may change the direction of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easements. The easement areas of each Unit and all improvements therein shall be maintained continuously by the Owner of the Unit, except for those improvements for which a public authority or utility company is responsible.

In addition to any other remedies herein provided, the Declarant, their successors and assigns, or any utility company maintaining such utilities, shall have the right without prior notice to the Unit Owner, to enter the Unit and trim or remove the said trees or shrubbery so interfering. Additional drainage and utility easements, which are likewise so reserved with the Declarant, its assigns or successors, may be set forth in any recorded plat or plats of the Properties.

Section 3: Easements of Encroachment. There is hereby reserved reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3') feet, as measured from any point on the common boundary along the line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner or the Association.

Section 4: Easements for Cross Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water run-off from other portions of the Properties; provided, no Owner shall alter the natural drainage on any Unit so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner of the affected property and, also, the consent of the Association.

Section 5: Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance as may be required herein and to inspect for the purpose of ensuring compliance with this Declaration, any supplemental Declaration, Bylaws, and rules and regulations, which right may be exercised by any Member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency

personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any residence or building without the permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE X GENERAL PROVISIONS

Section 1: Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member thereof for a period of twenty-five (25) years from the date of recordation. Thereafter the covenants and restrictions shall be automatically extended for additional periods of ten (10) years each, unless otherwise terminated or modified by amendment as hereinafter provided.

Section 2: Covenants Run with the Land. All restrictions, reservations, covenants, conditions, and easements contained in this Declaration shall constitute covenants running with the land; and all grantees, devisees, or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through, or under such persons agree to be bound by the provisions of this Declaration of Master Covenants, Conditions, and Restrictions and the Articles of Incorporation and By- Laws of the Association which will be the entity responsible for the operation and maintenance of the Common Area.

Section 3: Enforcement. Declarant, the Association, or any Owner, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, and shall be entitled to recover all expenses, costs and attorney's fees related thereto. Failure by the Declarant, 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.

Section 4: Severability. Invalidation of any one 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 5: Amendments. The Declarant shall have the unrestricted right to amend this Declaration until such time as Declarant relinquish control as provided in this Declaration. Thereafter, this Declaration, or any provision of it, may only be terminated, modified, amended, or revoked as to the whole or any portion of the Property, upon the written consent of Voting Members representing two-thirds (2/3rd) or more of the total votes in the

Association. Amendments made pursuant to this section will inure to the benefit of and be binding upon all Owners, their families, tenants, guests, business and social invitees, and employees, and their respective heirs, successors, and assigns. The certificate of the secretary of the Association documenting the votes shall constitute evidence of such vote.

Section 6: Conflicts Between Documents. In case of a conflict between this Declaration, the Articles of Incorporation, or the Bylaws, the following order of priority shall apply: the Declaration, the Articles, and the By-laws.

Section 7: Indemnification. The Association shall 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 or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall 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 shall 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, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 8: Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

IN WITNESS WHEREOF, the Declarant herein, have caused this instrument to be executed as of the day and year first above written.

Signed and acknowledged
in the presence of:

DECLARANT:

CAPE CORAL COUNTRY CLUB, INC.

By: *Ronald L. Davis*
Ronald L. Davis, President

Gary A. Fluharty
1st Witness
Printed Name
Mary Fluharty
2nd Witness
Printed Name

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 2nd day of July, 2002, by Ronald L. Davis, President of Cape Coral Country Club, Inc., who is personally known to me ~~or who has produced~~ _____ as identification.

My Commission Expires:

Patricia Greenwell
Notary Public
Patricia Greenwell
Printed Name



CONSENT OF MORTGAGEE

Florida Community Bank, being the owner and holder of that certain Mortgage recorded at O.R. Book 3361, Page 4127; O.R. Book 3605, Page 0692; and O.R. Book 3669, Page 3384, all of the Public Records of Lee County, Florida, does hereby consent to the recording of the foregoing Declaration of Covenants, Conditions, and Restrictions.

EXECUTED this 16th day of July, 2002.

FLORIDA COMMUNITY BANK

By: [Signature]
Title: SR-Vice
WALTER J. ZERLON
Printed Name

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

I HEREBY CERTIFY, that before me, the undersigned authority, personally appeared, WALTER J. ZERLON, as SR-Vice President of Florida Community Bank, to me known and known to me to be the person who duly executed the above and foregoing Consent of Mortgagee for the purposes therein expressed.

SWORN AND SUBSCRIBED TO before me, this 16th day of July, 2002.

My Commission expires:



Kathleen A. Latson
Commission # CC 995643
Expires March 4, 2005
Bonded Through
Atlantic Bonding Co., Inc.


G:\GLC\Clubhouse Villas\consent banyan trace fcb.wpd

[Signature]
Notary Public
KATHLEEN A. LATSON
Printed Name

CONSENT OF MORTGAGEE

David F. Davis, Trustee of the Banyan Trace Trust Dated July 24, 2001, being the owner and holder of that certain Mortgage recorded at O.R. Book 3458, Page 3709, of the Public Records of Lee County, Florida, does hereby consent to the recording of the foregoing Declaration of Covenants, Conditions, and Restrictions.

EXECUTED this 16th day of July, 2002.




David F. Davis, Trustee of the
Banyan Trace Trust Dated July 24, 2001


STATE OF FLORIDA)
) SS
COUNTY OF LEE)

I HEREBY CERTIFY, that before me, the undersigned authority, personally appeared, David F. Davis, Trustee of the Banyan Trace Trust Dated July 24, 2001, to me known and known to me to be the person who duly executed the above and foregoing Consent of Mortgagee for the purposes therein expressed.

SWORN AND SUBSCRIBED TO before me, this 16th day of July, 2002.

My Commission expires:



Notary Public


Printed Name

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EXHIBIT A

BANYAN TRACE MASTER ASSOCIATION INC.

A CONDOMINIO
CABE COBA! E JORDA

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LEGAL DESCRIPTION:
A TRACT OF LAND SITUATED IN THE SOUTH HALF (S 1/2) OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE 23 EAST AND THE NORTH HALF (N 1/2) OF SECTION 12, TOWNSHIP 45 SOUTH, RANGE 23 EAST, BEING ALSO SITUATED IN TRACTS B-1, B-2, C-1 AND A PORTION OF TRACT C, CAPE CORAL UNIT 9 ACCORDING TO PLAT BOOK 13, PAGES 7 THROUGH 18 AND IN A PORTION OF TRACT A, CAPE CORAL UNIT 15 ACCORDING TO PLAT BOOK 13, PAGES 69 THROUGH 75 OF THE PUBLIC RECORDS OF LEE COUNTY, CITY OF CAPE CORAL, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CORNERING AT THE N 1/4 (NORTH QUARTER) CORNER OF SAID SECTION 12,
SAID CORNER BEING LOCATED S89°70'5" W A DISTANCE OF 2621.0 FEET FROM
THE CORNER CORRESPONDING TO SAID SECTION 12 AND SECTION 15, SOUTH-
SOUTH, RANGE 22 EAST AND SECTIONS 8, 9, 10, 11, 12, 13, 14, 15, SOUTH-
24 EAST; THENCE RUN N60°00'0" E ALONG THE NORTH LINE OF SAID CAPE CORAL
UNIT 9 FOR 350.00 FEET TO THE SOUTHWEST CORNER OF SAID TRACT A AND THE
SOUTHEAST CORNER OF LOT 1, BLOCK 461 OF SAID CAPE CORAL UNIT 15, BEING
ALSO THE POINT OF BEGINNING; THENCE RUN S42°00'0" W ALONG THE COMMON
TO SAID TRACT A AND SAID BLOCK 461 FOR 34.02 FEET; THENCE RUN N89°43'0"E FOR
22.91 FEET; THENCE RUN S12°15'0" E FOR 77.14 FEET TO THE SOUTHWESTERNLY CORNER
OF AN UNDESIGNATED PLANNED LUMPY SITE AS LESSED OUT PER LEGAL DESCRIPTION IN CHICAGO TITLE
INSURANCE COMPANY COMMITMENT NO. 803-12 (9-23-89); THENCE RUN S63°58'04"E ALONG THE
SOUTHWESTERNLY LINE OF SAID WATER TANK SITE FOR 145.18 FEET; THENCE RUN S90°00'0"E,
LEAVING SAID WATER TANK SITE, FOR 61.43 FEET; THENCE RUN S49°12'06" W FOR 352.85
FEET; THENCE RUN S00°00'0" E TO 22.66 FEET TO A POINT ON THE SOUTH LINE OF SAID
TRACT A; THENCE CONTINUE RUNNING S00°00'0" E TO A POINT ON THE NORTHEAST
CORNER OF PHASE 1; 1. THENCE CONTINUE RUNNING S00°00'0" E ALONG THE EAST LINE OF
SAID PHASE 1 FOR 20.35 FEET; THENCE RUN S28°57'18" E ALONG THE NORTHEASTERLY
LINE OF SAID PHASE 1 FOR 162.23 FEET TO A POINT ON THE WESTERNLY LINE OF SAID
TRACT C, BEING ALSO A POINT ON THE EASTERNLY LINE OF TRACT C-1 AS DESCRIBED IN
O.R. BOOK 1741, PAGE 975; THENCE RUN N78°25'37"E, LEAVING SAID COMMON LINE,
FOR 43.85 FEET; THENCE RUN N69°09'37"E FOR 50.00 FEET; THENCE RUN N13°41'21"
FOR 50.00 FEET; THENCE RUN N30°07'37" FOR 53.18 FEET; THENCE RUN N16°52'04"E FOR 47.88
FEET; THENCE RUN N20°55'22"E FOR 57.19 FEET; THENCE RUN N49°33'45"E FOR 40.54 FEET TO
AN INTERSECTION WITH THE LINE COMMON TO SAID SECTIONS 1 AND 12; THENCE CONTINUE RUNNING
N49°33'45"E FOR 13.09 FEET TO AN INTERSECTION WITH THE NORTHERLY LINE OF SAID TRACT C
AND THE NORTHERLY LINE OF SAID TRACT A OF SAID CAPE CORAL UNIT 15; THENCE CONTINUE
RUNNING N49°33'45"E FOR 127.54 FEET; THENCE RUN N70°40'0" E FOR 404.84 FEET; THENCE
RUN N88°27'16" E FOR 241.58 FEET; THENCE RUN S80°14'49" E FOR 135.27 FEET; THENCE RUN
S10°27'0" E FOR 124.08 FEET TO AN INTERSECTION WITH SAID SOUTHERLY LINE OF SAID TRACT A
AND SAID NORTHERLY LINE OF SAID TRACT C; THENCE CONTINUE RUNNING S10°27'0" E FOR 41.72
FEET TO AN INTERSECTION WITH SAID LINE COMMON TO SAID SECTIONS 1 AND 12, BEING S89°57'03"W,
933.48 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 12; THENCE CONTINUE RUNNING
S10°27'0" E FOR 185.65 FEET; THENCE RUN S48°50'54" W FOR 57.58 FEET; THENCE RUN N44°00'34" W
FOR 368.48 FEET; THENCE RUN S90°58'24" W FOR 230.45 FEET; THENCE RUN S65°52'04" W FOR 116.98
FEET; THENCE RUN N23°07'56" W FOR 12.00 FEET; THENCE RUN S83°53'53" W FOR 44.00 FEET;
THENCE TO AN INTERSECTION WITH SAID WESTERNLY LINE OF SAID TRACT C, BEING ALSO SAID EXTERNSLY
LINE OF SAID TRACT C-1; THENCE RUN S83°53'53" W, LEAVING SAID COMMON LINE, FOR 40.00 FEET;
THENCE RUN N66°35'56" W FOR 175.57 FEET; THENCE RUN N21°58'17" W FOR 67.27 FEET; THENCE
RUN N23°24'04" E FOR 165.56 FEET; THENCE RUN N71°55'19" W FOR 84.32 FEET TO
AN INTERSECTION WITH THE EASTERNLY RIGHT OF WAY LINE OF PALM TREE BOULE-
VARD (100 FOOT RIGHT OF WAY), BEING ALSO A POINT ON A CURVE CONGRUENT
TO THE NORTHEAST; THENCE RUN ALONG SAID RIGHT OF WAY LINE ON SAID CURVE
HAVING A RADIUS OF 350.00 FEET AND A CENTRAL ANGLE OF 05°13'32"
(CHORD=1527.56', 31.91 FEET) FOR 31.92 FEET; THENCE RUN N90°00'0" E, LEAVING
RIGHT OF WAY LINE, FOR 154.77 FEET; THENCE RUN N40°00'0" E FOR 79.35 FEET;
THENCE RUN S80°00'0" W FOR 25.00 FEET TO THE POINT OF BEGINNING.

12

40°(P)

11

40°(P)

10

40°(P)

9

40°(P)

8

40°(P)

7

40°(P)

6

40°(P)

5

40°(P)

4

LESS THE FOLLOWING CONDOMINIUM PARCELS:
THE CLUBHOUSE WILDS II AT BAYVIEW TRACE, A CONDOMINIUM
THE CLUBHOUSE WILDS II AT BAYVIEW TRACE, A CONDOMINIUM
THE FAIRWAY WILDS AT BAYVIEW TRACE, A CONDOMINIUM
THE FAIRWAY WILDS II AT BAYVIEW TRACE, A CONDOMINIUM
THE FAIRWAY WILDS III AT BAYVIEW TRACE, A CONDOMINIUM
THE FAIRWAY WILDS IV AT BAYVIEW TRACE, A CONDOMINIUM
THE FAIRWAY WILDS V AT BAYVIEW TRACE, A CONDOMINIUM

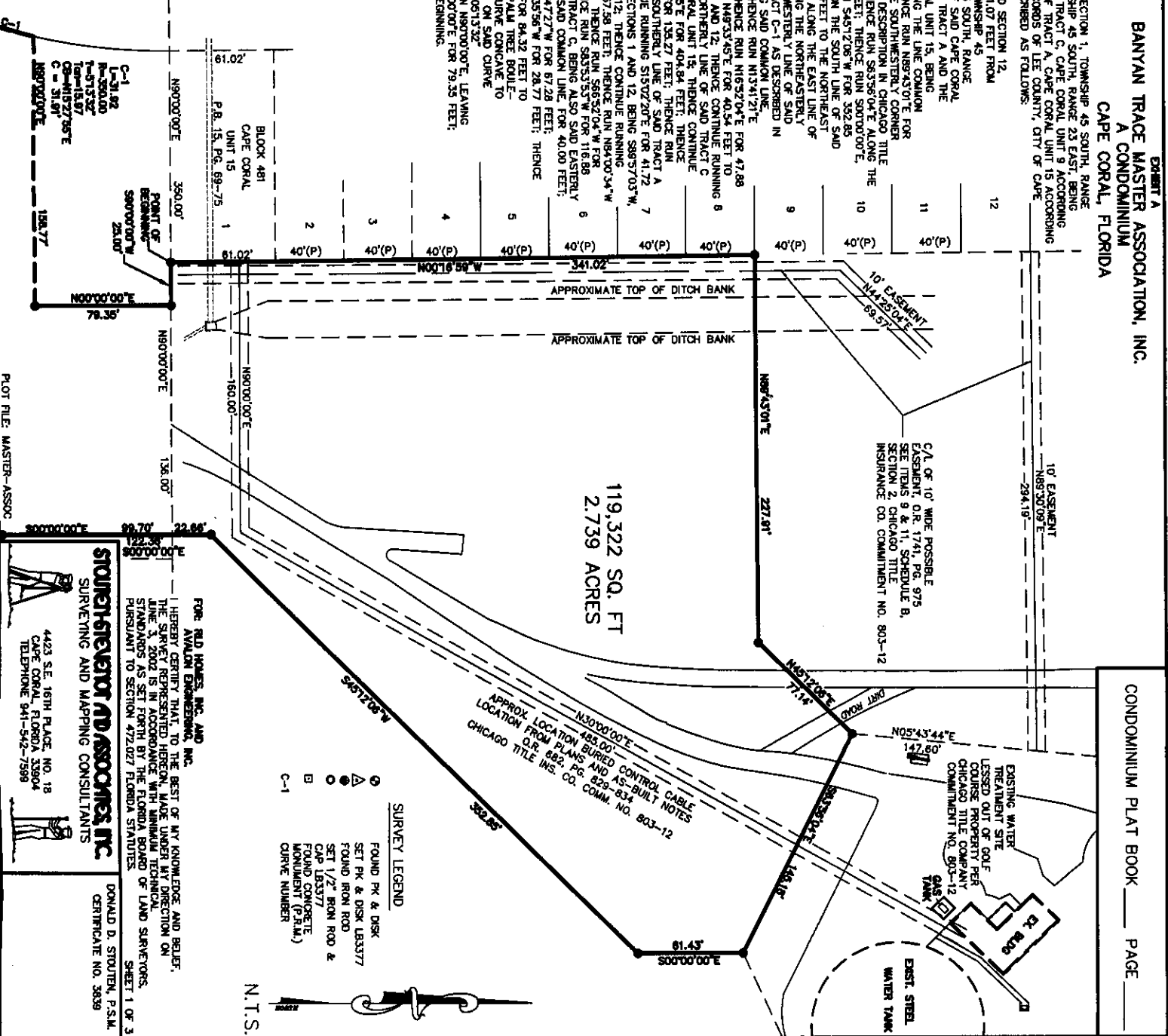
SAID TRACT CONTAINS XXX,XXX SQUARE FEET (XX,XXX ACRES),
MORE OR LESS.

SUBJECT TO EASEMENTS AND RESERVATIONS OF RECORD,
HEREBY TO HAVE AND TO HOLD THE FOREGOING

POINT OF COMMENCEMENT
NORTH 1/4 CORNER OF
SECTION 12, T.45S., R.23E.

1. BASIS OF BEARINGS: NORTH LINE OF TRACTS B & C, CAPE CORAL UNIT 9 AS N90°00'00"E (DUE EAST) (PLAN).
2. UNDERGROUND STRUCTURES, IF ANY, NOT INCLUDED.
3. SUBJECT TO EASEMENTS AND RESERVATIONS OF RECORD.

PALM TREE
BOULEVARD



PLOT FILE: MASTER-ASSOC

FOR: **BLD HOMES, INC. AND
AVILON DEVELOPMENT, INC.**

— I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF,
THE SURVEY REPRESENTED HEREON, MADE UNDER MY DIRECTION ON
JUNE 3, 2002 IS IN ACCORDANCE WITH MINIMUM TECHNICAL
STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF LAND SURVEYORS,
PURSUANT TO SECTION 472.007, FLORIDA STATUTES.

STOUT & STOUT ASSOCIATES, INC.
SURVEYING AND MAPPING CONSULTANTS

4423 S.E. 16TH PLACE, NO. 18
CAPE CORAL, FLORIDA 33904
TELEPHONE 941-542-7598

DONALD D. STOUTEN, P.S.M.
CERTIFICATE NO. 3839

SHEET 1 OF 3

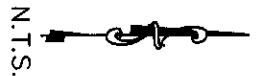
N.T.S.

A-1



EXHIBIT A
BANYAN TRACE MASTER ASSOCIATION, INC.
A CONDOMINIUM
CAPE CORAL, FLORIDA

CONDOMINIUM PLAT BOOK _____ PAGE _____



MATCH LINE

TRACT A
CAPE CORAL
UNIT 15
P.B. 13,
PG. 69-75

THE FAIRWAY VILAS IV
AT BANYAN TRACE,
A CONDOMINIUM
36,794 SQ. FT.

TRACT A
CAPE CORAL
UNIT 15
P.B. 13,
PG. 69-75

TRACT A CAPE CORAL UNIT 14
P.B. 13, PG. 61-68

240,924 SQ. FT
5.531 ACRES

THE FAIRWAY VILAS II
AT BANYAN TRACE,
A CONDOMINIUM
38,919 SQ. FT.

THE FAIRWAY VILAS III
AT BANYAN TRACE,
A CONDOMINIUM
38,227 SQ. FT.

TRACT C
CAPE CORAL UNIT 9
P.B. 13, PG. 7-18
O.R. 1741, PG. 975

THE FAIRWAY VILAS
AT BANYAN TRACE,
A CONDOMINIUM
36,083 SQ. FT.

TRACT C
CAPE CORAL UNIT 9
P.B. 13, PG. 7-18
O.R. 1741, PG. 975

NORTH LINE SECTION 12
S89°57'03"W
920.25'

PARCEL "A" TRACT C
S89°57'03"W
933.48'

NORTHEAST CORNER OF
SECTION 12, TOWNSHIP 45
SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

FOR: RED HORN, INC. AND
ANALAN ENGINEERING, INC.

I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF,
THE SURVEY REPRESENTED HEREON WAS MADE IN ACCORDANCE WITH THE
STANDARD PRACTICES AND PROCEDURES OF THE FLORIDA BOARD OF LAND SURVEYORS,
Pursuant to SECTION 472.027, FLORIDA STATUTES.

STOUTENSTADT AND ASSOCIATES, INC.
SURVEYING AND MAPPING CONSULTANTS

DONALD D. STOUTEN, P.S.M.
CERTIFICATE NO. 3839

SHEET 3 OF 3



4423 S.E. 16TH PLACE, NO. 18
CAPE CORAL, FLORIDA 33904
TELEPHONE 941-542-7599

PLOT FILE: MASTER-ASSOC