

DECLARATION OF CONDOMINIUM

FOR

TUSCANY COURT, A CONDOMINIUM

Instrument prepared by and after recording return to:

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OF
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DECLARATION OF CONDOMINIUM OF TUSCANY COURT, A CONDOMINIUM

TUSCANY COURTS, LLC, (the "Developer") hereby makes this Declaration of Condominium to be recorded among the Public Records of Lee County, Florida, and states and declares:

1. SUBMISSION TO CONDOMINIUM OWNERSHIP: The Developer hereby submits the real property described in Exhibit "A" as Phases 4 and 2 ("Initial Phases") and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, located on and intended for use in connection therewith, to the Condominium form of Ownership and use in the manner provided by Chapter 718, the Florida Condominium Act, as it exists on the date of recordation of this Declaration (the "Condominium Act"), excluding therefrom, however, all public utility installations, cable television lines, and other similar equipment, if any, owned by the utilities furnishing services to the Condominium. The real property described in Exhibit "A-1" as Phases 1 and 3 ("Additional Phases") is not being submitted to condominium ownership by this Declaration, but rather is described in order to comply with the requirements of Section 718.403, Fla. Stat., and may be added pursuant to the provisions of Section 2. This Declaration is not effective until it is recorded in the Public Records of Lee County, Florida. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future Owners of Condominium parcels. The acquisition of title to a Unit or any other interest in the Condominium property, or the lease, occupancy, or use of any portion of a Unit or the Condominium property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

2. DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:

2.1 Survey and Plot Plans. Attached hereto and made a part hereof as Exhibit "B", is a site plan of the land being submitted to Condominium, as well as other adjoining land which may be submitted in future Phases or conveyed to the Association, and a plot plan with the floor plans for the Initial Phases, which graphically describes the improvements in which Units in the Initial Phases are located, including their identification numbers, locations and approximate dimensions, and also attached as included within Exhibit "B" is a survey of the land. The Initial Phases, as represented in the survey Exhibit has been certified by a Florida Registered Land Surveyor indicating statutory compliance with Section 718.104, F.S. (also included in Exhibit "B"). The legal description of a Unit consists of the identifying number of such Unit as shown on Exhibit "B".

2.2 Reservation of Right to Add Additional Phase and Description of Phases of the Condominium. The Developer may and hereby reserves the right to develop the Condominium in up to 4 phases, to be designated as Phases 1 through 4. All land that may become a part of the Condominium is situated in Lee County, Florida. There will be no time-share estates created with respect to any of the phases that are or might be developed as part of this Condominium complex.

A. Initial Phase. The Initial Phases of this Condominium are declared and submitted to Condominium pursuant to this Declaration as set forth in Section 1.

B. Additional Phases. Until 7 years after the date of the recording of this Declaration of Condominium, the Developer has and hereby reserves the right to amend this Declaration, by recording in the Public Records of Lee County, Florida, an amendment or amendments executed solely by the Developer for the purposes of: submitting to the Condominium form of Ownership, and expanding this

Condominium to include the Additional Phases of the Condominium legally described in Exhibit "A-1" attached hereto. The addition of any or all of the Additional Phases is optional by the Developer.

C. Effect on Condominium Documents. If and when the Additional Phases are submitted to Condominium as part of this Condominium, all definitions and provisions of this Declaration, and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association apply to all Units, Common Elements and Limited Common Elements in such Additional Phases except for descriptions and size of particular Units, Common Elements and Limited Common Elements which may differ.

D. Amendment. An amendment to this Declaration executed by the Developer pursuant to this Section 2.2 is effective at the time of filing of the amendment in the Public Records of Lee County, Florida, and shall be effective and binding on all Unit Owners and Units within the Condominium. The joinder or consent of Unit Owners or mortgagees is not necessary for such an amendment to be effective.

E. No Obligation. The Developer is not obligated to submit the Additional Phases (legally described in Exhibit "A-1") to the terms of this Declaration as an additional part of the Condominium, or to submit them if it declares the Initial Phases to be a part of the Condominium property. The Developer hereby reserves the right to develop (including as a separate Condominium or Condominiums or separate non-condominium community) or to sell any, all or a portion of the Additional Phases in any manner or to any person or entity free of any restriction hereunder, together with an easement of ingress/egress for vehicular, pedestrian and construction purposes over the phases that have been submitted to the terms of this Declaration, including the right to use the Recreation Facilities and any other commonly used facilities, including roadways and utility installations located in any phases that have been submitted to this Condominium or otherwise subjected to this Declaration. Said easement and use rights are hereby reserved in favor of the Developer, and its successors and assigns, including any future owner of the Additional Phases and the owners of residential units located thereon, without the necessity of executing and recording any additional instruments. The easement and use rights reserved above are conditioned upon the owners of the Additional Phases paying their pro-rata share of the expenses associated with the maintenance, repair, replacement, operation and insurance of the Recreation Facilities and any other commonly used facilities, including any roadways and utility installations. Each residential unit owner's pro-rata share shall be determined by a fraction, the numerator of which is 1 and the denominator of which is the total number of residential units constructed in the real property legally described in Exhibits "A" and "A-1". The condominium association(s) that operate(s) and maintain(s) the separate condominium(s) shall be obligated to collect its owners' share of the maintenance costs as a common expense of that condominium(s), and remit same to the Association within ten (10) days of a written request.

F. No Rights. Except for any easements set forth in this Declaration or any other recorded instrument, Unit Owners in any declared Phase have no rights in any other Additional Phases, unless and until an amendment pursuant to this Section 2.2 is recorded in the Public Records of Lee County, Florida with respect to any such phase(s). If the Condominium is not expanded to include the Additional Phases within the time period described in Section 2.2, the Unit Owners in the property which has then been submitted hereunder (which at that time would contain all of the Units of the Condominium) are entitled to 100% ownership of all Common Elements within such property. If and when the Condominium is expanded to include any or all of the Additional Phases as a part of the Condominium, the Unit Owners in all Phases then submitted will own the Common Elements within all of such Phases. The share of each Unit Owner in the Common Elements, common surplus and share of common expenses shall be a fraction, the numerator of which is 1 and the denominator of which is the number of Units that have been submitted to the terms of this Declaration. Each Unit shall have 1 vote in Association matters for which a Unit

Owner vote is required or permitted.

G. Changes. The Developer reserves the right to make non-material changes in the legal description of any Phase or the Recreation Facilities.

H. Similar Buildings. Although Developer does not intend to do so, it reserves the right to make residential buildings and Units which may be added to the Condominium substantially different from the residential buildings and Units in the Initial Phases of the Condominium, and from the Exhibits to the Declaration of Condominium. The Units may vary in design shape and structure within the size limitations set forth in subsection (I) below. Any such change, if any, will vary the Unit Owner's share in the Common Elements, surplus or expenses as determined pursuant to this Declaration.

I. Description of Initial Phases and Additional Phase. The maximum number of Units built will be 60. Phase 4, consisting of 24 units in 2 Buildings, each with 12 Units, and Phase 2, consisting of the Recreation Facilities, are hereby submitted to the condominium form of ownership. Phase 1, if submitted, will consist of a minimum and maximum of 12 Units in 1 building, and Phase 3, if submitted, will consist of a minimum and maximum of 24 Units in 2 buildings, each with 12 Units. However, the Developer is not and shall not be obligated to build any or all of the Units herein described or submit any or all of the Phases to condominium ownership. There shall be 2 types of Units in the Condominium. The "D'ella" ("A") Units are planned to have 2 bedrooms + den/2 bathrooms and 1,675 sq. ft. of air-conditioned living area. The "Sienna" ("B") Units are planned to have 2 bedrooms + den/2 bathrooms and 1,527 sq. ft. of air-conditioned living area. Each Unit shall be assigned a Limited Common Element, detached 1 car garage. The minimum square footage of each Unit shall not be less than 1,500 sq. ft. of air-conditioned living area and the maximum square footage shall not be greater than 1,700 sq. ft. of air-conditioned living area. The maximum number of residential buildings, if completed, shall be 5.

J. Notice. Developer shall notify each Unit Owner by certified mail of the election not to add the Additional Phases.

3. NAME AND ADDRESS: The name by which this Condominium shall be identified is Tuscany Court, A Condominium (the "Condominium"), and its street address is 3800 Agualinda Boulevard, Cape Coral, Lee County, Florida.

4. DEFINITIONS: The terms used in this Declaration and its exhibits shall have the meanings stated below and in the Condominium Act (as defined above) unless the context otherwise requires.

4.1 "Apartment" has the same meaning as the term "Unit" as defined in the Condominium Act.

4.2 "Apartment Owner" or "Owner" has the same meaning as the term "Unit Owner" as defined in the Condominium Act, except for the purpose of interpreting use and occupancy restrictions related to Units. In cases where primary occupants have been designated for a Unit because of its ownership, the word "Owner" refers to the primary occupants and not the record owner.

4.3 "Assessments" means a share of the funds required for the payment of common expenses from which time to time is assessed against the Units.

4.4 "Association" means Tuscany Court Condominium Association, Inc., a Florida not-for-

profit corporation, the entity responsible for the operation of this Condominium.

4.5 "Association Property" means all property, real or personal, owned or leased by the Association for the use and benefit of the Unit Owners.

4.6 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body that is sometimes referred to in the Condominium Act as the "Board of Administration".

4.7 "Condominium Documents" means and includes this Declaration and all recorded exhibits hereto, and any unrecorded Rules and Regulations and Resolutions, as amended from time to time.

4.8 "Developer" means TUSCANY COURTS, LLC, a Florida limited liability company, its successors and assigns as to which Developer's rights are specifically assigned. All or any of the rights, privileges, powers, obligations and immunities granted or reserved to the Developer in the Condominium Documents or under the Condominium Act may be assigned by the Developer to any person or entity without the consent of any Unit Owner or any holder of a mortgage secured by any Unit. In the event of the foreclosure of any mortgage on real property owned by the Developer, or deed in lieu of foreclosure, the person first acquiring title to such interest shall succeed to the rights, powers, privileges and immunities (but not the obligations) of the Developer and shall have the right to assign those rights, powers, privileges, and immunities.

4.9 "Family" or "Single Family" means 1 natural person (as opposed to an artificial entity); or a group of 2 or more natural persons living together, each of whom is related to each of the others by blood, marriage, legal custody or adoption; or not more than 2 persons not so related, who reside together as a single housekeeping unit, along with their children, if any.

4.10 "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the Unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

4.11 "Guest" means any person who is not the Unit Owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

4.12 "Institutional Mortgagee" means the mortgagee (or its assignee) of a mortgage against a Condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.13 "Lease" means the grant by a Unit Owner of a temporary right of use of the owner's Unit for valuable consideration.

4.14 "Limited Common Elements" means and includes those Common Elements that are reserved for the use of a certain Unit or Units to the exclusion of other Units.

4.15 [reserved].

4.16 [reserved].

4.17 "Primary Institutional Mortgagee" means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more Units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of Units encumbered, and not by the dollar amount of such mortgages.

4.18 "Recreation Facilities" means the real property legally described in Phase 2 and as depicted in Exhibit "B" attached hereto, consisting of a swimming pool, spa, cabana and restrooms.

4.19 "Rules and Regulations" means those rules and regulations set forth in Exhibit "E" to this Declaration as they may be further amended by the Board of Directors, as more particularly described in the Condominium Documents.

4.20 "Voting Interest" means and refers to the arrangement established in the Condominium documents by which the owners of each Unit collectively are entitled to one vote in Association matters. The voting interest of a particular Unit shall be a fraction, numerator of which shall be 1 and the denominator of which shall be the number of Units submitted to this Condominium.

5. UNIT BOUNDARIES:

5.1 Survey, Plot Plans and Floor Plans. Attached to this Declaration as Exhibits, and herein designated as Exhibit "B" and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which Units are located, and which show all the Units including their identification numbers, locations and approximate dimensions and the Common Elements and Limited Common Elements.

5.2 Unit Boundaries. Each Unit shall include that part of the building that lies within the following boundaries:

A. Upper Boundaries. The upper and lower boundaries of the Unit are the following boundaries, extended to their intersections with the perimeter boundaries:

(1) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the Unit.

(2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the Unit.

B. Perimeter Boundaries. The perimeter boundaries of the Unit are the vertical planes of the unfinished interior surfaces of the plasterboard walls bounding the Unit as shown in Exhibit "B", extended to their intersections with each other and with the upper and lower boundaries.

C. Interior Walls. No part of the interior partition walls within a Unit shall be considered part of the boundary of a Unit.

D. Apertures. Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the Unit shall extend to the interior unfinished surfaces of the coverings of such openings, and the frameworks thereof.

In cases not specifically covered in this Section 5.2 or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth in Exhibit "B", hereto shall control in determining the boundaries of a Unit, except the provisions of 5.2(D) above shall control over Exhibit "B".

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1 Shares of Ownership. The Condominium will initially contain 24 Units. The owner of each Unit shall also own an undivided share in the Common Elements and the common surplus that is set forth in Exhibit "F" attached hereto.

6.2 Appurtenances to Each Unit. The owner of each Unit shall have certain rights and own a certain interest in the Condominium property, including without limitation the following:

A. An undivided ownership share in the Land and other Common Elements and the common surplus, as specifically set forth in Section 6.1 above.

B. Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "C" and "D", respectively.

C. The exclusive right to use the Limited Common Elements reserved for the Unit, and the right to use the Common Elements.

D. An exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time. An easement in airspace that is vacated shall be terminated automatically.

E. Other appurtenances as may be provided in this Declaration and its exhibits.

Each Unit and its appurtenances constitutes a "Condominium parcel".

6.3 Use and Possession. A Unit Owner is entitled to exclusive use and possession of his Unit. He is entitled to use the Common Elements in accordance with the purposes for which they are intended, but no use of the Unit or the Common Elements may unreasonably interfere with the rights of other Unit Owners or other persons having rights to use the Condominium property. No Unit may be subdivided, and no fractional portion may be sold, leased or otherwise transferred. The use, occupancy, alteration, transfer and appearance of the Units, Common Elements and Limited Common Elements shall be governed by the Condominium documents and by the rules and regulations adopted by the Board of Directors.

7. COMMON ELEMENTS: EASEMENTS:

7.1 Definition. The term "Common Elements" means all of the property submitted to Condominium ownership that is not within the Unit boundaries set forth in Section 5 above. The Common Elements include without limitation the following:

- A. The Land.
- B. All portions of the building and other improvements outside the Units, including all Limited Common Elements.
- C. Easements through each Unit for conduits, ducts, plumbing, wiring and other facilities for furnishing utility services to other Units or the Common Elements.
- D. An easement of support in every portion of the Condominium which contributes to the support of a building.
- E. The fixtures and installations required for access and utility services to more than one Unit or to the Common Elements.

7.2 Easements. Each of the following easements and easement rights is reserved through the Condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of Unit Owners with respect to such easements.

A. Utility and other Easements. The Association, subject to the prior written consent of Developer (which consent shall be required until Developer has conveyed title to the last residential dwelling which may be built on the lands described in Exhibits "A" and "A-1" attached hereto), has the authority, without the joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the Common Elements or Association Property, and to grant easements or relocate any existing easements in any portion of the Common Elements or Association Property, as the Association shall deem necessary or desirable, or which may be necessary or desirable to effectuate the Developer's development scheme. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Units. The Association, subject to Developer's prior written consent, as described above may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred. The Developer has the authority, with respect to any real property described in Exhibits "A" and "A-1" that has not been submitted to the condominium form of ownership, and without the joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, and to grant easements or relocate any existing easements in any portion of such property, as the Developer shall deem necessary or desirable, or which may be necessary or desirable to effectuate the Developer's development scheme. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Units. The Developer may also transfer title to utility-related equipment, facilities or material, and to take any other action to

satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred. All roadways and parking spaces now or hereafter located in the real property described in Exhibits "A" and "A-1", are subject to a perpetual, non-exclusive easement of ingress, egress and use for vehicular, pedestrian, parking, construction, and utility purposes, in favor of utility providers and the owners of residential units now or hereafter located in the real property described in Exhibits "A" and "A-1", regardless of whether such real property, improvements, installations or residential units have been submitted to this Declaration.

B. Encroachments. If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any Common Element encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

C. Ingress and Egress. A non-exclusive easement shall exist in favor of each Unit Owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian and vehicular traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use, and for pedestrian and vehicular traffic over, through, and across such portions of the Common Elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public way.

D. Sales Activity. The Developer, its designees, successors and assigns, shall have the right to use any Units and parts of the Common Elements and Association Property for model units and sales offices, to show model units, the Common Elements and Association Property to prospective purchasers and tenants of the Units, and to erect on the Condominium Property signs and other promotional material to advertise Units and certain Limited Common Elements for sale or lease. These rights shall also include the right to use Units and parts of the Common Elements to advertise and promote condominiums and communities other than this Condominium. Developer shall retain all rights set forth in this Section 7.2.E. until the Developer does not own any Units or property that may be submitted to this Condominium. Developer shall at all times retain the right to use any portion of the land that is not submitted to this Condominium for the purpose of advertising and promoting condominiums and communities other than this Condominium.

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the Common Elements and common surplus appurtenant to a Unit cannot be conveyed or separately described. As long as the Condominium exists, the Common Elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Units.

8. LIMITED COMMON ELEMENTS:

8.1 Description of Limited Common Elements. Certain Common Elements have been reserved for the use of a particular Unit or Units, to the exclusion of the other Units. The Limited Common Elements and the Units to which their exclusive use is appurtenant, are as described in this Declaration and as further identified on the survey and plot plan attached hereto as Exhibit "B". In the event of a conflict between the depiction of Limited Common Elements in Exhibit "B" and this Declaration, Exhibit "B" shall control. The Developer will assign the exclusive right to use the following Common Elements that are hereby designated as Limited Common Elements:

A. Garages. Each Unit shall be assigned exclusive use of a detached garage, as designated on the survey and plot plan as a Limited Common Element appurtenant to that Unit. Each Owner who has been assigned exclusive use of a detached garage shall maintain, at his or her sole expense, the interior of the garage, and any garage door hardware or opening mechanism. The Association shall maintain the rest of the garage structures as a common expense.

B. Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a Unit, which furnish air conditioning or heating exclusively to that Unit, shall be Limited Common Elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the Unit, except as otherwise provided in Section 11.4 below.

C. Balconies. Any balcony that is attached to and serves only one single Unit shall be a Limited Common Element.

D. Others. Any part of the Common Elements that is connected to or exclusively serves a single Unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the Unit Owner, shall be deemed a Limited Common Element appurtenant to that Unit, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware therefor.

9. ASSOCIATION. The operation of the Condominium is by Tuscan Court Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit "C".

9.2 Bylaws. A copy of the Bylaws of the Association is attached as Exhibit "D".

9.3 Delegation of Management. The Association may contract for the management and maintenance of the Condominium property and employ a licensed manager or management company (which may be an affiliate of Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in the Condominium Act.

9.4 Membership. The membership of the Association shall be the record owners of legal title to the Units, as further provided in the Bylaws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the Unit Owners is specifically made necessary by some provision of the Condominium Act or these Condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Unit Owners. The officers and Directors of the Association have a fiduciary relationship to the Unit Owners. A Unit Owner does not have the authority to act for the Association by reason of being a Unit Owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in

the Condominium Act and the Governing Documents. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Association Property. The Association may impose fees for the use of Common Elements or Association Property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, whether or not the lands or facilities are contiguous to the lands of the Condominium, for the use and enjoyment of the Unit Owners.

9.7 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase one or more Units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

9.9 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.8 above, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the total voting interests.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, leased or otherwise encumbered by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the Unit Owners. Any real property owned by the Association, may be conveyed by the Board of Directors, but only after approval by at least a majority of the total voting interests. The Board of Directors shall have the authority to convey personal property without the need for authorization by the Unit Owners.

9.11 Roster. The Association shall maintain a current roster of names and mailing addresses of Unit Owners, based upon information supplied by the Unit Owners. A copy of the roster shall be made available to any member upon request.

9.12 Limitation on Liability. Notwithstanding its duty to maintain and repair Condominium or Association Property, the Association shall not be liable to Unit Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or Unit Owners or other persons.

9.13 Merger of Association. This Association may be merged with another condominium association in the manner required by law. However, as long as Developer offers any Unit in the Condominium for sale or lease in the ordinary course of business, the Association shall not be merged with any other corporation without Developer's prior written consent, which consent may be denied in Developer's absolute discretion.

10. ASSESSMENTS AND LIENS: The Association has the power to levy and collect assessments against each Unit and Unit Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both

"regular" assessments for each Unit's share of the common expenses as set forth in the annual budget, and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual Unit for any amounts, other than for common expenses, which are properly chargeable against such Unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced, subject to any limitations as provided in the Bylaws, and as follows:

10.1 Common Expenses. Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the Common Elements and Association Property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the Units shall be a common expense. If the Association contracts for pest control within Units or cable or master antennae television programming services in bulk for the entire Condominium, the cost of such services shall be a common expense.

10.2 Share of Common Expenses. The owner of each Unit shall be liable for a share of the common expenses equal to his share of ownership of the Common Elements and the common surplus, as set forth in Section 6.1 above.

10.3 Ownership. Assessments and other funds collected by or on behalf of the Association become the property of the Association; no Unit Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Unit. No owner can withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.

10.4 Who is Liable for Assessments. The owner of each Unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a Condominium parcel is transferred for any reason, the new owner is jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and remain unpaid without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

10.5 No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Elements, by abandonment of the Unit on which the assessments are made, or by interruption in the availability of the Unit or the Common Elements for any reason whatsoever. No Unit Owner may be excused from payment of his share of the common expenses unless all Unit Owners are likewise proportionately excused from payment, except as otherwise provided in Section 10.11 below as to Developer and in Section 20.3 below as to certain mortgagees.

10.6 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before 10 days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the Unit Owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

10.7 Liens. The Association has a lien on each Condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due and the due dates, and upon such recording, the lien shall relate back to the date this Declaration was recorded in the Public Records of Lee County, Florida. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments which are due and which may accrue subsequent to the recording of the Claim of Lien, but prior to the entry of a Certificate of Title, as well as interest and all reasonable costs and attorney's fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a Satisfaction of Lien.

10.8 Priority of Lien. The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the least extent required by the Condominium Act, as amended from time to time. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by law or as stated above. Any lease of a Unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

10.9 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

10.10 Certificate as to Assessments. Pursuant to Section 718.116(8), Florida Statutes, within 15 days after request by a Unit Owner purchaser or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the Unit Owner with respect to the Condominium have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may impose a reasonable fee in connection with issuing the estoppel letter. The Association or its authorized agent shall not be required to provide a prospective purchaser or lienholder with information about the Condominium or the Association other than information or documents required by the Condominium Act to be made available or disclosed. The Association or its authorized agent may impose a reasonable fee to a prospective purchaser, lienholder, or the Owner for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than information required by law, provided that such fee shall not exceed \$150.00 plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with the Association's response.

10.11 Developer's Guaranty of Common Expenses. If Developer elects to activate its guaranty by checking off the applicable box located adjacent to its signature prior to recording the Declaration, the Developer shall be excused from the payment of the share of the common expenses for a period commencing upon the recording of the Declaration of Condominium and ending on the earlier of either: (a) December 31, 2005; or (b) the date control of the Association is turned over to Unit Owners other than the Developer (the "Guaranty Expiration Date"). However, during such period, the Developer guarantees that the quarterly common expenses and assessments levied upon each Unit (regardless of Unit Type) will not exceed \$735.99. During the Guaranty period, Developer and all Units owned by Developer shall not be subject to assessment for common expenses as provided herein. Instead, the Developer will fund the

difference, if any, between assessments at the guaranteed level and the actual common expenses incurred during the Guaranty period. Except for a special assessment levied in the case of the limited circumstances set forth in Section 6.6 of the Bylaws (uninsured casualty loss from a natural disaster or act of God), if at any time during this period funds collected from assessments are not sufficient to provide payment, on a timely basis, of all common expenses, the Developer will fund deficits at the time such payment is due. Developer has the option, in its sole discretion, to extend the initial Guaranty period beyond the Guaranty Expiration Date, not more than 6 times for additional periods of up to 6 months each, provided that in no event shall the Guaranty extend past the date control of the Association is turned over to Unit Owner other than the Developer. The Developer may exercise each such option to extend the Guaranty period by notice to the Association at any time prior to the expiration of the then current guaranty period. The Developer will be obligated to pay common expenses in the same manner as any other Unit Owner if Developer checks off the box adjacent to its signature that indicates there will not be a guaranty of assessments. If Developer elects to activate its Guaranty, then subsequent to the expiration of the Guaranty, Developer shall be obligated to pay common expenses in the same manner as any other Unit Owner.

10.12 Capital Improvements. As long as Developer holds any Unit for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer: assessment of the Developer as a Unit Owner for capital improvements; and any action by the Association which would be detrimental to the sale of Units by the Developer.

11. MAINTENANCE: LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS. Responsibility for the protection, maintenance, repair and replacement of the Condominium property, and restrictions on its alteration and improvement shall be as follows:

11.1 Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all Common Elements and Association Property (other than the Limited Common Elements that Unit Owners are elsewhere herein required to maintain). The cost is a common expense. The Association's responsibilities include without limitation:

- A. Electrical wiring up to the circuit breaker panel in each Unit.
- B. Rough plumbing.
- C. All installations, fixtures and equipment located within one Unit but serving another Unit, or located outside the Unit, for the furnishing of utilities to more than one Unit or the Common Elements.
- D. The exterior surface of the entrance doors to the Units.
- E. Fire alarm systems and sprinkler systems (if any).
- F. All exterior building walls.
- G. All interior corridor and atrium walls.
- H. Railings on balconies.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a Unit and servicing only that Unit. All incidental damage caused to a Unit or Limited Common Elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made to the Common Elements or Limited Common Elements by Unit Owners.

11.2 Unit Owner Maintenance. Each Unit Owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own Unit and certain Limited Common Elements. The owner's responsibilities include, without limitation:

- A. Maintenance, repair and replacement of screens, hurricane shutters, windows and window glass.
- B. The main entrance door to the Unit and its interior surface.
- C. All other doors within or affording access to the Unit.
- D. The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the Unit or serving only the Unit.
- E. The circuit breaker panel and all electrical wiring going into the Unit from the panel.
- F. Appliances, water heaters, smoke alarms and vent fans.
- G. All air conditioning, and heating equipment, thermostats, ducts and installations serving the Unit exclusively.
- H. Carpeting and other floor coverings.
- I. Door and window hardware, locks and weatherstripping.
- J. Shower pans.
- K. The main water supply shut-off valve for the Unit.
- L. Other facilities or fixtures which are located or contained entirely within the Unit and serve only the Unit.
- M. All interior, partition walls which do not form part of the boundary of the Unit.

The Association shall retain the right to maintain, repair and replace any of the items described above, as part of a common plan of improvement to the Condominium, and the cost shall be a common expense.

11.3 Other Unit Owners Responsibilities. The Unit Owner shall have the following

responsibilities:

A. Balconies. Where a Limited Common Element consists of a balcony area, the Unit Owner who has the right to exclusive use of the balcony area shall be responsible for the day-to-day cleaning and care of the interior surfaces of the walls, floor and ceiling bounding said area. The Unit Owner shall also be responsible for any fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Unit Owner shall be responsible for maintenance and repair of balcony screens. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs.

B. Interior Decorating. Each Unit Owner is responsible for all decorating within his own Unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

C. Flooring. The installation of ceramic tile or hardwood floors inside Condominium Units above the ground floor is restricted to floors installed over adequate sound insulating material meeting specifications approved by the Board. The Unit Owner shall secure written permission of the Board as described in Section 11.12 hereof. The Board reserves the right to inspect the installation to assure compliance. If the Unit Owner fails to give the notice and secure written permission as described in Section 11.12, or does not allow the Board to inspect the installation as it is being made, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the Unit Owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending Unit Owner. No indoor-outdoor carpet or river rock may be used on balconies and terraces. Tile and its bedding and grout must be of such materials and applied in a manner as to be waterproof.

D. Window Coverings. The covering and appearance of windows and doors whether by draperies, shades, reflective film or other items, whether installed within or outside of the Unit, visible from the exterior of the Unit, shall be subject to the rules and regulations of the Association.

E. Modifications and Alterations. If a Unit Owner makes any modifications, installations or additions to his Unit or a Limited Common Element, the Unit Owner and his successors in title shall be financially responsible for the maintenance, repair and replacement of the modifications, installations or additions, as well as the cost of repairing any damage to the Common Elements resulting from such modifications or additions.

F. Use of Licensed and Insured Contractors; Construction Lien Law. Whenever a Unit Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Unit or Common Elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

11.4 Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for water heaters within Units and/or air-conditioning compressors and/or air handlers serving individual Units, which the Board of Directors determines is to the benefit of the Owners to consider, then the Association may enter into such contractual undertakings upon the

approval of 2/3 of the total voting interests in the Association. The expenses of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the Unit Owner.

11.5 Alteration of Units or Common Elements by Unit Owners. Except for Developer, no Owner shall make or permit the making of any material alterations or substantial additions to his Unit or the Common Elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the Unit, are subject to regulation by the Board of Directors. The installation of hurricane shutters shall be subject to regulation by the Board of Directors. The Board of Directors shall adopt hurricane shutter specifications which shall include required color, style and other factors deemed relevant by the Board of Directors. No Owner may alter the landscaping of the Common Elements in any way without prior Board approval.

11.6 Combining Units. The Developer may remove the party wall between two Units in order that the Units might be used together as one integral living space, provided that all assessments, voting rights and the share of Common Elements shall be calculated as such Units were originally designated on the exhibits attached to this Declaration, notwithstanding the fact that several Units are used as one, with the intent and purpose that the Developer shall be treated as the owner of as many Units as have been combined. In accordance with Section 718.110(4), Fla. Stat., the Developer's rights herein shall be subject to obtaining approval of an amendment evidencing a Unit combination from a majority of the total voting interests. In addition, approval of the holders of liens against such Units shall be secured. No other Unit Owners are permitted to combine Units.

11.7 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the Common Elements and Association Property is the responsibility of the Association and the cost is a common expense. Prior to transition of control of the Association from Developer appointees to Unit Owner representatives, the Board of Directors shall have the authority to make material alterations or substantial additions to the Common Elements and Association Property. Subsequent to transition, the Association shall make no material alteration of, nor substantial additions to, the Common Elements or the real property owned by the Association costing more than \$10,000 in the aggregate in any fiscal year without prior approval of at least two-thirds (2/3) of the total voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the Common Elements or Association Property or to comply with any local, state or federal law or regulation also constitutes a material alteration or substantial addition to the Common Elements, no prior Unit Owner approval is required. In all cases, as long as Developer offers Units for sale in the ordinary course of business, the Developer, as a Unit Owner, shall not be subject to assessment for capital improvements unless Developer consents in writing.

11.8 Enforcement of Maintenance. If after reasonable notice the owner of a Unit fails to maintain the Unit or its appurtenant Limited Common Elements as required in this Declaration, the Association shall have the right to institute legal proceedings to enforce compliance, or, if permitted by law, to perform the necessary maintenance or repair, and to assess the Owner for the costs thereof as a special charge against the Unit.

11.9 Negligence: Damage Caused by Condition in Unit. The owner of each Unit shall be liable for the expenses of any maintenance, repair or replacement of Common Elements, other Units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each Unit Owner has a duty to maintain his Unit, any Limited Common Element appurtenant to the Unit, and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, the Common Elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other Units, the Common Elements, Association Property or property within other Units, the owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the Units involved is not occupied at the time the damage is discovered, the Association may enter the Unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread.

11.10 Association's Access to Units. The Association has an irrevocable right of access to the Units for the purposes of protecting, maintaining, repairing, and replacing the Common Elements or portions of a Unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more Units. The exercise of the Association's rights of access to the Unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the Unit. The Association may retain a pass-key to all Units. If it does, no Unit Owner shall alter any lock, nor install a new lock, which prevents access when the Unit is unoccupied, unless the Unit Owner provides the Association with a key. If the Association is not provided with a key to the Unit, the Unit Owner shall pay all costs incurred by the Association in gaining entrance to his Unit, and also shall be responsible for any damage done to his Unit in gaining entrance thereto, and shall also be liable for any damage resulting from delay in gaining entrance to his Unit caused by the unavailability of a key.

11.11 Pest Control. The Association may supply pest control within Units with the cost thereof being part of the common expenses.

11.12 Board Approval of Alterations or Construction. In all cases in which the Board must approve construction in or alterations to a Unit or the Common Elements requested by a Unit Owner, the Unit Owner shall provide the Board with not less than 30 days written notice of the Unit Owner's intention, together with plans and specifications indicating the proposed construction. The Board shall indicate its approval or disapproval of the proposed construction in writing within such 30-day period. The Board reserves the right to consult with a licensed Florida architect or professional engineer and to pass such costs on to the Unit Owner and to require that any plans and specifications be prepared by a licensed Florida architect or engineer. The Board may extend the time in which it must render its decision by an additional 30 days in the event it determines a licensed Florida architect's or professional engineer's review is necessary.

11.13 [Intentionally Deleted].

11.14 Alteration of Boundaries and Appurtenant Dimensions. Developer reserves the right to change the arrangement of Units, or to alter the boundaries between Units as long as Developer owns such Units, provided that the Condominium Documents are amended as needed to reflect the changes, which amendments must be approved by a majority of the total voting interests. In addition, the Board of

Directors shall secure the approval of the affected Unit owners and the holders of liens against such Units.

12. USE RESTRICTIONS: The use of the Condominium property shall be in accordance with the following provisions:

12.1. Units. Each Unit shall be occupied by only one family at any time, as a residence and for no other purpose. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements; (c) the business activity involves only telephone calls and correspondence to and from the Unit and does not involve persons coming into the Condominium who do not reside in the Condominium or door-to-door solicitation of occupants of the Condominium; and (d) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other occupants of Units.

The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

The foregoing prohibitions shall not apply to Developer’s use of Units as models or sales offices, as elsewhere provided for in this Declaration.

The use of a Unit as a public lodging establishment shall be deemed a business or trade use.

12.2 Reserved. All occupants under 18 years of age shall be supervised on the Condominium property by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

12.3 Pets. No Unit Owner or tenant is permitted to keep a domestic pet (dogs, cats and other usual and non-exotic household pets), whether permanent or temporary, in his home without the prior written permission of the Board of Directors. Pets may be kept in a Unit in reasonable numbers, as determined by the Board of Directors. No pet shall weigh more than thirty-five (35) pounds at maturity. Such permission in one instance shall not be deemed to institute a blanket permission in any other instance and any such permission may be revoked at any time in the sole discretion of the Board. However, under no circumstances shall a pit bull, “wolf hybrids” or other dogs prone to or exhibiting aggressive behavior be permitted on any portion of the Condominium. Any pet must be carried or kept on a leash when outside of a Unit. A Unit Owner or tenant shall immediately pick up and remove any solid animal waste deposited by his pet. The Unit Owner or tenant shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from having any animal in the Condominium. If a dog or any other pet becomes a source of unreasonable annoyance to other Unit Owners by barking or otherwise, the Unit Owner or tenant therefore must cause the problem to be corrected; or if it is not corrected, the Unit Owner or tenant, upon written notice by the Association, will be required to remove the

animal from the Condominium. Owners and tenants may not leave pets unattended in balconies. The Common Elements and Association Property shall not be used to accommodate pets. Guests who occupy a Unit may not keep pets.

12.4 Parking. The following restrictions shall govern the keeping of vehicles on the condominium property:

A. Vans, sport utility vehicles and pick-up trucks shall be considered to be automobiles and may be parked in the Common Element parking spaces if the vehicle is used for the primary purpose of transportation of passengers and their personal goods. If the vehicle is used primarily for the transportation of goods then it shall be considered to be a truck. Inoperable automobiles, commercial vehicles, golf carts, recreational vehicles, all-terrain vehicles, ambulances, police cars, hearses, motorcycles, motorbikes, watercraft, aircraft, house trailers, camping trailers, other trailers, vehicles with commercial markings, racks or tools in the bed are permitted, but they must be kept inside the Owner's assigned garage. Motorcycles and motorbikes may be used in the Common Elements solely in order to provide the owner access to the Unit; engines shall not be permitted to be "revved up" or idled unnecessarily. Bicycles may be kept in designated areas.

B. No commercial vendor vehicle of any kind shall be permitted to be parked for a period of more than 12 hours unless such vehicle is necessary and being used in the actual construction or repair of the Common Elements or a Unit, or for grounds maintenance.

C. Unit owners must park their primary vehicle in their assigned Limited Common Element parking space. Parking spaces located outside of the buildings are Common Elements and are available on a "first come, first served" basis. Owners and their families, or their tenants, shall not park in areas designated for "guest" parking, as those are reserved for temporary use.

D. None of the foregoing restrictions shall apply to commercial vehicles, pick-up trucks or other vehicles which may be utilized by Developer, its contractors and subcontractors for purposes of completing construction or repairs to the Condominium.

12.5 Nuisances. No owner shall use his Unit, or permit to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another Unit, or which would not be consistent with the maintenance of the highest standards for a first class residential Condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each Unit shall be consistent with existing laws and the Condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.6 Signs. No Unit Owner other than the Developer may post or display any signs anywhere on the Condominium Property including "For Sale", "For Rent", "Open House" or other similar signs.

12.7 Use of Common Elements. Common hallways, stairways and other Common Elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking (however, use of electric grills is permitted), for cleaning of rugs or other household items, or for storage of bicycles or other personal property. Notwithstanding the foregoing, a Unit Owner may display certain flags, as described in Rule 3 of the Rules and Regulations.

12.8 Rules and Regulations. The Rules and Regulations attached hereto as Exhibit "E" may be amended from time to time by the Board of Directors, subject to Developer's prior written approval prior to transition from Developer control of the Board of Directors. Subsequent to turnover, and as long as Developer holds Units for sale in the ordinary course of business, the Board may not amend the Rules and Regulations in a manner which is detrimental to the Developer's sale of Units, unless the Developer consents in writing. Copies of the regulations and amendments shall be furnished by the Association to all Unit Owners.

12.9 Developer Exemption. The restrictions set forth in this Section 12 shall not apply to Developer or to Units owned by or leased to the Developer except to the extent required by Florida law as of the date of recording of this Declaration with respect to Developer observing restrictions on pets and leasing. The Developer and its subcontractors shall be exempt from the restrictions on permissible vehicles to the extent that impermissible vehicles may be used for purposes of completing construction of the Condominium.

13. LEASING OF UNITS: In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of Units by their owners shall be restricted as provided in this section. All leases of Units must be in writing. A Unit Owner may lease only his entire Unit, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc.

13.1 Procedures.

A. Notice by the Unit Owner. An owner intending to lease his Unit shall give to the Board of Directors or its designee written notice of such intention at least 20 days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The applicant must sign for having received copies of the rules and regulations of the Association as provided by the Unit Owner.

B. Board Action. After the required notice and all information have been provided, the Board shall have 10 days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

C. Disapproval A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:

(1) the Unit Owner is delinquent in the payment of assessments at the time the application is considered;

(2) the Unit Owner has a history of leasing his Unit without obtaining approval, leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his Unit, and otherwise violating the Association's leasing restrictions;

(3) the real estate company or rental agent handling the leasing transaction on behalf of the Unit Owner has a history of screening lessee applicants inadequately, recommending undesirable

lessees, or entering into leases without prior Association approval;

(4) the application on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

(5) the prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;

(6) the prospective lessee has a history of conduct which evidences disregard for the rights and property of others.

(7) the prospective lessee evidences a strong possibility of financial irresponsibility;

(8) the lessee, during previous occupancy, has evidenced an attitude of disregard for the Association rules;

(9) the prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid.

(10) the Owner fails to give proper notice of his intention to lease his Unit to the Board of Directors.

D. Failure to Give Notice or Obtain Approval If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee without securing consent to such eviction from the Unit Owner.

E. Applications: Assessments. Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying Condominium assessments may not be delegated to the lessee.

F. Committee Approval To facilitate approval of leases proposed during times when many of its members are not in residence, the Board of Directors may by resolution delegate its approval powers to: an ad hoc committee, which shall consist of at least 3 Unit Owners, one of whom must be a Director; one or more Directors; or to the Association's management company or manager. The Board of Directors may also authorize a Director who is not an officer, or the Association's management company or manager to execute a document which evidences Association approval of a lease.

13.2 Term of Lease and Frequency of Leasing. The minimum lease term is 30 days and no Unit may be leased more than 4 times in any 1 calendar year. For purposes of this restriction, the first day of occupancy under the lease shall conclusively determine in which year the lease occurs. No lease may be for a period of more than 1 year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed. The foregoing prohibition on an option for the lessee to extend or renew the lease for any additional period shall not apply to model Units sold and leased back by Developer.

13.3 Occupancy During Lease Term. No one but the lessee, his family members within the first degree of relationship by blood, adoption, legal custody or marriage, and their spouses and guests may occupy the Unit. A lessee in residence may not have overnight guests for more than 10 days in any calendar month, and such guests must be registered with the manager. A leased unit may not be occupied by more than 2 persons per bedroom. Tenants may not keep pets.

13.4 Occupancy in Absence of Lessee. If a lessee absents himself from the Unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the Unit and may have house guests subject to all the restrictions in Sections 12 and 13.3 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the Unit.

13.5 Use of Common Elements and Association Property. To prevent overtaxing the facilities, a Unit Owner whose Unit is leased may not use the Recreation Facilities or parking facilities of the Condominium during the lease term, except that the Unit Owner may temporarily park in guest parking in order to inspect his or her Unit.

13.6 Regulation by Association. All of the provisions of the Condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a Unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

13.7 Fees and Deposits for the Lease of Units. Whenever herein the Board's approval is required to allow the lease of a Unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. No fee may be charged for approval of a renewal or extension of a lease with the same lessee.

13.8 Unapproved Leases. Any lease of a Unit not approved pursuant to this Section 13 shall be void and unenforceable unless subsequently approved by the Board.

14. TRANSFER OF OWNERSHIP OF UNITS. In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Unit shall be subject to the following provisions:

14.1 Forms of Ownership:

A. A Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

B. Co-Ownership. Co-ownership of Units is permitted. If the co-owners are to be other than husband and wife, or 2 individuals who reside together as a single housekeeping unit, the Board shall condition its approval upon the designation by the proposed new owners of not more than 2 approved

natural persons as "primary occupants". The use of the Unit by other persons shall be as if the primary occupants were the only actual owners. The intent of this provision is to prevent multiple individuals or families from using a unit on a transient basis. Any subsequent change in the primary occupants shall be treated as a transfer to ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any 12-month period.

C. Ownership by Corporations, Partnerships or Trusts. A Unit may be owned in trust, or by a corporation, partnership or other entity that is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Unit may be used as short-term transient accommodations for several individuals or families. The approval of a trust, or corporation, partnership or other entity as a Unit Owner shall be conditioned upon designation by the Owner of not more than 2 natural persons to be the "primary occupants". The use of the Unit by other persons shall be as if the primary occupants were the only actual owners. Any subsequent change in the primary occupants shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any 12-month period.

D. Designation of Primary Occupants. Each owner of a Unit which is owned in the forms of ownership stated in preceding subsections 14.1(B) and (C) shall designate not more than two primary occupants in writing to the Association. If any Unit Owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.

E. Life Estate. A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 14.2 below. In that event, the life tenant shall be the only Association member from such Unit, and occupancy of the Unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the Unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 14.1(B), above.

14.2 Transfers.

A. Sale. No Unit Owner may transfer a Unit or any ownership interest in a Unit by sale (including agreement for deed) without prior written approval of the Board of Directors.

B. Devise, Gift or Inheritance. If any Unit Owner acquires his title by devise, gift or inheritance, his right to occupy or use the Unit shall be subject to the approval of the Board of Directors under Section 14.3(A)(2) below. The approval shall not be denied to any devise or heir who was the prior Owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.

C. Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the Unit before being approved by the Board of Directors under the procedures outlined in Section 14.3 below.

D. To facilitate approval of transfer during times when many of its members are not in

residence, the Board of Directors may by resolution delegate its approval powers to: an ad hoc committee, which shall consist of at least 3 Unit Owners, one of whom must be a Director; one or more Directors; or to the Association's management company or manager. The Board of Directors may also authorize a Director who is not an officer, or the Association's management company or manager to execute a Certificate of Approval, and any such authorized person shall be deemed a Vice President for purposes of executing the Certificate of Approval.

14.3 Procedures.

A. Notice to Association.

(1) Sale. An owner intending to make a sale of his Unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least 20 days before the intended closing date, together with the name and address of the proposed purchaser, a copy of the executed sales contract, if any, and such other information as the Board may reasonably require. The Board may require an interview (which may be by phone) with any purchaser and his or her spouse, if any, as a pre-condition to approval.

(2) Devise, Gift, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the Unit following the procedures in this Section or Section 13.

(3) Demand. With the notice required in Subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the Unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Unit determined as provided below.

(4) Failure to Give Notice. If no notice is given, the Board of Directors, at its election may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a Unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

B. Board Action. Within 20 days after receipt of the required notice and all information or interview requested, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

C. Disapproval

(1) With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes. Only the following may be deemed to constitute good cause for disapproval:

(a) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;

(b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(c) The application on its face gives the Board reasonable cause to believe that the applicant intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

(d) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;

(e) The person seeking approval has evidenced an attitude of disregard for association rules by his conduct in this Condominium as a tenant, Unit Owner or occupant of a Unit;

(f) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process.

(g) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

(2) Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause (but for a non-discriminatory reason), and if the Owner or transferee has made the demand set forth in Section 14.3(A)(3), then within 30 days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner the name of an approved purchaser (which may be the Association) who will purchase the Unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the owner and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the purchaser and selling owner, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and Condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than 60 days after the date of Board disapproval or 30 days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

(3) If the Board fails to deliver the name of the approved purchaser within 30 days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

14.4 Exception. The provisions of this Section 14 are not applicable to: sales or transfers of title with respect to any Unit owned by Developer to any person; the acquisition of title by a mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure, nor shall the Association's approval be required for the subsequent resale or lease of a Unit by such mortgagee of the Unit so acquired, but shall apply to the acquisition of title by any other person.

14.5 Unapproved Transfers. Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

14.6 Fees and Deposits Related to the Sale of Units. Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a Unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law.

15. INSURANCE: In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 By the Unit Owner. Each Unit Owner is responsible for insuring his own Unit, and the personal property therein, including all alterations, additions and improvements made to the Unit by the Unit Owner or his predecessors in title, all floor, wall and ceiling coverings, built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures if located within the Unit and the Unit Owner is required to repair or replace such equipment. The Unit Owner shall also insure any items that are excluded from the Association's insurance responsibilities pursuant to any amendment to the Condominium Act. Effective January 1, 2004, the Unit Owner shall be required to insure all floor, wall and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets, and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a Unit and serve only one Unit, and all air conditioning compressors that service only an individual Unit, whether or not located within the Unit boundaries. The Association may exclude any items which are the Unit Owner's responsibility to insure from the Association's property and casualty insurance responsibilities. Each Unit Owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance. Each insurance policy issued to an Owner for the above-referenced items shall be without rights of subrogation against the Association.

15.2 Association Insurance: Duty and Authority to Obtain. The Board of Directors shall use its best efforts to obtain and keep in force the insurance coverage that it is required to carry by law and under the Condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Unit Owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure. The Board may obtain insurance policies containing deductibles.

15.3 Required Coverage. The Association shall use its best efforts to obtain and maintain adequate insurance covering all of the buildings and the Common Elements as well as all Association Property, in amounts determined annually by the Board of Directors, such insurance to afford the

following protection:

A. Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards (including leakage, seepage and wind-driven rain) covered by what is commonly known as an "All Risk" property contract.

B. Flood. If the Condominium is located in the category of flood zone such that mortgagees require the Association and Unit Owners to obtain flood insurance, in amounts deemed adequate by the Board of Directors, and any mortgagees, as available through the National Flood Insurance Program.

C. Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner. The Association shall also obtain workers' compensation insurance if required by law.

D. Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

E. Association Funds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association, as required by Section 718.111, F.S.

F. Directors and Officers Liability.

15.4 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and Unit Owners. Some of the more common options include:

A. Additional flood insurance.

B. Boiler and Machinery coverage (including common element air conditioning breakdown, if available).

C. Broad Form Comprehensive General Liability Endorsement.

D. Medical Payments,

15.5 Description of Coverage. A detailed summary of the coverages included in the master policies, and copies of the master policies, shall be available for inspection by Unit Owners or their authorized representatives upon request.

15.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association Unit Owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

15.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the

benefit of the Association, the Unit Owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the Unit Owners and their respective mortgages in the following shares:

A. Common Elements. Proceeds on account of damage to Common Elements shall be held in as many individual shares as there are Units, the shares of each Unit Owner being the same as his share in the Common Elements.

B. Units. Proceeds on account of damage within the Units shall be held in undivided shares based on the prorated amount of damage within each damaged Unit as a percentage of the total damage within all Units.

C. Mortgage. If a mortgagee endorsement has been issued as to a Unit, the shares of the mortgagee and the Unit Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against Unit or Units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.8 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Unit Owners in the following manner:

A. Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being paid jointly to them.

B. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them.

15.9 Association as Agent. The Association is hereby irrevocably appointed as agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium property.

16. RECONSTRUCTION OR REPAIR AFTER CASUALTY: If any part of the Condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

16.1 Damage to Units. Where loss or damage occurs within one or more Units, any Association insurance proceeds received on account of the loss or damage shall be distributed to the owner(s) of the damaged Unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged Unit(s) shall be responsible for reconstruction and repair, including any costs in excess of the insurance proceeds from the Association insurance.

16.2 Damage to Common Elements-Less than Very Substantial Where loss or damage

occurs to the Common Elements, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

A. The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

B. If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Common Elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Unit Owners in proportion to their shares in the Common Elements for the deficiency. Such special assessments need not be approved by the Unit Owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

16.3 Very Substantial Damage. As used in the Declaration, the term "very substantial" damage shall mean loss or damage whereby 51% or more of the total Units are rendered uninhabitable. Should such "very substantial" damage occur then the Board and its officers are authorized, regardless of any other provision herein, to take such action as is reasonably necessary under the circumstances to evacuate or shore-up structures and salvage property, to engage security, to alter the Condominium property as may be reasonable under the circumstances. The Board shall have the authority to utilize any and all available Association funds, including reserves, for such purpose. Further, the Board shall:

A. The Board of Directors shall obtain reliable and detailed estimates of the cost of repair and restoration as soon as is reasonable and practical under the circumstances.

B. A membership meeting shall be called by the Board of Directors to be held not later than 60 days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds, reserves and other Association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that a special assessment exceeding 15% of the total annual budget for the year in which the casualty occurred will not be required, then the Condominium shall be restored or repaired unless at least two-thirds (2/3) of the total voting interests and 51% of the Institutional Mortgagees shall vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general types of Units, in either of which cases the Condominium shall be terminated.

(2) If the insurance proceeds, reserves and other Association funds available for restoration and repair are not sufficient to cover the estimated cost thereof so that a special assessment exceeding 15% of the total annual budget for the year in which the casualty occurred will be required, then unless two-thirds (2/3rds) of the total voting interests and 51% of the Institutional Mortgagees vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If two-thirds (2/3rds) of the total voting interests and 51% of the Institutional Mortgagees approve the special assessment, the Board of Directors shall levy such assessment and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

(3) All "reserves" referenced above shall be utilized for their intended, restricted purpose unless their use for other purposes is approved in advance by the required vote of the membership specified in Section 718.112, Florida Statutes.

C. If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all Unit Owners.

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the Unit Owners, except as otherwise provided in Section 15.7(C) above.

16.5 Equitable Relief. In the event of damage to the Common Elements which renders any Unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the owner of the uninhabitable Unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within 12 months following the damage or destruction, and is completed within 18 months thereafter. However, compliance with the foregoing timeframes shall be excused for circumstances constituting impossibility of performance under Florida law.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original building, or according to different plans and specifications approved by the Board or Directors, by the owners of at least three-fourths (3/4ths) of the Units, and by 51% of the Institutional Mortgagees.

17. CONDEMNATION:

17.1 Deposit of Awards with Association. The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, but the size of the Condominium will be reduced, the owners of condemned Units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty

17.4 Association as Agent. The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purposes of realizing just compensation.

17.5 Units Reduced but Habitable. If the condemnation reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the awards for the taking of a portion of that Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

A. Restoration of Unit. The Unit shall be made habitable. If the cost of restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the Unit.

B. Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the owner and mortgagees.

C. Adjustment of Shares in Common Elements. If the floor area of a Unit is reduced by the taking, the number representing the share in the Common Elements appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the Common Elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

17.6 Unit Made Not Habitable. If the condemnation is of an entire Unit or reduces the size of a Unit so that it cannot be made habitable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

A. Payment of Award. The fair market value of the Unit immediately prior to the taking shall be paid to the owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the owner and mortgagee(s).

B. Addition to Common Elements. If possible and practical, the remaining portion of the Unit shall become a part of the Common Elements and shall be placed in condition for use by some or all Unit Owners in a manner approved by the Board of Directors.

C. Adjustment of Shares in Common Elements. The shares in the Common Elements appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the Common Elements among the reduced number of Units. This shall be done by restating the shares of the continuing Units in the Common Elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.

D. Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Unit Owner and to condition the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for those purposes shall be raised by special assessment against Units that will continue as Units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those Units in the Common Elements after the changes affected by the taking.

E. Arbitration. If the fair market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and the Association within 30 days after notice by either party, the value shall be determined by appraisal in accordance with the following. The Unit Owner, the first mortgagee, if any, and the Association shall each appoint one certified real property appraiser, who shall appraise the Unit and determine the fair market value by computing the arithmetic average of their appraisals of the Unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

17.7 Taking of Common Elements. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustment of these shares on account of the condemnation, if any. If a Unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the Unit.

17.8 Amendment of Declaration. Any changes in Units and in the Common Elements, in the ownership of the Common Elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration. Such amendment must be approved only by a majority of all Directors, and the consent of Unit Owners or mortgagees is not required for any such amendment.

18. TERMINATION: The Condominium may be terminated in the following manner:

18.1 Agreement. The Condominium may be terminated at any time by written agreement of the owners of 100% of the Units, and joinder of 100% of Institutional Mortgagees.

18.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 16.3 above, and it is not decided as therein provided that it will be reconstructed or repaired, the Condominium form of ownership of the property in the Condominium will thereby terminate without agreement.

18.3 General Provisions. Upon termination, the Association shall hold legal title as Trustee, on behalf of the former Unit Owners, who shall be the equitable owners, as tenants in common, of all Condominium and Association Property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the Common Elements. The mortgagee or lienor of a Unit Owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other assets of the Association which he may become entitled to receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association, executed with the formalities of a deed, and certifying as to the facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Lee County, Florida. The recording of said Certificate shall automatically divest all Unit Owners of legal title, and shall vest all legal title to all real and personal property which was formerly the Condominium or Association Property, and the assets of the Association in the Association, as Trustee, without need for further conveyance. However, the Association may name a Florida financial institution with trust powers to act as the Trustee, either in the Certificate, or subsequent to recording of the Certificate, by appropriate legal instructions.

18.4 New Condominium. The termination of the Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

18.5 Partition Sale. Following termination, the former Condominium property and Association Property may be partitioned and sold upon the application of any Unit Owner or by Board initiative. If following a termination, at least 75% of the total voting interests agree to accept an offer for the sale of the property, then the Trustee (whether the Association or the Association's assignee) shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the Unit Owners have not authorized a sale of the former Condominium and Association Property within 1 year after recording of the Termination Certificate, then the Trustee may proceed to sell the property without agreement of the former Unit Owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Trustee to the equitable owners thereof, as their interests may appear.

18.6 Last Board. The termination of the Condominium does not, by itself, terminate the Association. The members of the last Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association.

18.7 Provisions Survive Termination. The provisions of this Section 18 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

18.8 Notification to Division. When the Board of Directors intends to terminate or merge the condominium, or dissolve or merge the Association, the Board(s) shall notify the Division of Florida Land Sales, Condominiums and Mobile Homes before taking any action to terminate or merge the condominium or the Association. Upon recordation of the instrument evidencing consent to the termination, the Association shall, within 30 business days, notify the Division of Florida Land Sales of the termination and the date the document was recorded, the county where the document was recorded, and the book and page number of the public records where the document was recorded, and shall provide the Division of Florida Land Sales, Condominiums and Mobile Homes a copy of the recorded termination notice certified by the Clerk of Courts.

19. ENFORCEMENT:

19.1 Duty to Comply; Right to Sue. Each Unit Owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act and the Condominium Documents. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

- A. The Association;
- B. A Unit Owner;
- C. Directors appointed by the Developer, for actions taken by them prior to the time control of the Association is assumed by Unit Owners other than the Developer;

- D. Any Director who willfully and knowingly fails to comply;
- E. Any occupant of a Unit, including a tenant, invitee or guest.

19.2 Waiver of Rights. The failure of the Association or any member to enforce a right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future.

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, Unit Owner or the Association to comply with the requirements of the Condominium Act, and the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the arbitrator/court, including any appellate proceeding. Actions brought under this Section 19 and Section 718.303 (1) of the Condominium Act shall not be deemed to actions for specific performance.

19.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or Unit Owners under the law and the Condominium Documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

20. RIGHTS OF MORTGAGEES:

20.1 Approvals. Written consent of the Institutional Mortgagee of a Unit shall be required for any amendment to the Declaration which would decrease the Unit's share of ownership of the Common Elements, except as otherwise provided in Sections 17.5(C), 17.6(C) and 17.8.

20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceeding, or very substantial damage to, or destruction of, any Unit or any part of the Common Elements, the record holder of any first mortgage on an affected Unit shall be entitled to notice.

20.3 Mortgage Foreclosure. If the mortgagee of a first mortgage of record acquires title to a Condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the mortgagee of title shall be liable for the share of common expenses or assessments attributable to the Condominium parcel, which came due prior to the mortgagee's acquisition of title, to the fullest extent provided by the Condominium Act, as the same may be amended from time to time. Any unpaid share of common expenses for which such acquired is exempt from liability becomes a common expense collectible from all Unit Owners. No acquirer of title to a Condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

20.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any Unit, the Association, on behalf of one or more Unit Owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the Unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the Unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the

Unit at the foreclosure sale.

20.5 Right to Inspect Books. The Association shall make available to Institutional Mortgagees requesting same current copies of the Condominium documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

20.6 Financial Statement. Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.

20.7 Lender's Notices. Upon written request to the Association, any Institutional Mortgagee shall be entitled to timely written notice of:

A. Any 60 day or longer delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds a mortgage.

B. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

C. Any proposed action that requires the consent of a specified percentage of Institutional Mortgagees. Whenever the prior written consent of a mortgagee or lienholder is required in the Condominium Documents, the prior written consent shall not be unreasonably withheld.

21. AMENDMENT OF DECLARATION: Amendments to this Declaration shall be proposed and adopted in the following manner:

21.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors, or by written petition to the Board signed by the owners of at least one-fourth (1/4th) of the Units.

21.2 Procedure. Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can still be given.

21.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium Documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the total voting interests in the Association. An amendment to Sections 11.6, 12.6, 21.3 and 21.6 of the Declaration shall require approval from eighty percent (80%) of the total voting interests in the Association.

21.4 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida.

21.5 Proviso. Except as set forth in Sections 11.6 and 11.14, no amendment may change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to

the Unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the Unit, and all record owners of liens against the Unit join in the execution of the amendment, and all the record owners of all other Units approve the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17.

21.6 Developer's and Institutional Mortgagee's Rights as to Amendments. Prior to turnover of control of the Association, the Developer may amend the Condominium Documents, without the need for approval from the Unit Owners or prior notice to Unit Owners, provided that except as specifically permitted elsewhere in this Declaration, the Developer shall be bound by Section 21.5 above. As long as Developer holds Units for sale in the ordinary course of business, no amendment to the Condominium Documents shall be made which is detrimental to the Developer's sale of Units, unless the Developer consents in writing. Amendments materially affecting the rights or interests of Institutional Mortgagees (as provided in Section 718.110(11), Fla. Stat.) must have the approval of the holders of institutional mortgages of record representing 51% of the votes of units subject to such mortgages who have requested the Association to notify them on any proposed action specified in this Section. A change to any of the following shall be considered material: those matters set forth in Section 21.5 (in which case 100% approval from Unit Owners and lienholders (including Institutional Mortgagees) is required); hazard and fidelity insurance requirements (other than an amendment to this Declaration which conforms the Association's insurance obligations with amendments to the Condominium Act); restoration or repair of the Condominium following casualty or condemnation in a manner other than that set forth in the original plans and specifications; and any provision of the Condominium Documents which expressly benefits Institutional Mortgagees. Whenever the prior consent of an Institutional Mortgagee is required in the Condominium Documents, the prior consent of the Institutional Mortgagee shall not be unreasonably withheld. Approval of the South Florida Water Management District shall be required for certain amendments, as more particularly described in Section 22 of this Declaration.

22. SURFACE WATER MANAGEMENT SYSTEM The Surface Water Management System shall mean any portions of the Condominium Property or the land described in Exhibit "A-1" as Additional Phases, including improvements thereon, which are designed and constructed or implemented for the management and/or storage of surface waters, drainage and flood protection in any permits issued by South Florida Water Management District and/or any other applicable governmental agency including but not limited to retention areas, conservation areas, culverts, catch basins and pipes.

22.1 Maintenance. The Association shall be responsible for maintaining the Surface Water Management System in compliance with all approvals, codes, permits, and regulations of the South Florida Water Management District and any other applicable governmental authorities, regardless of whether it is part of the Condominium Property. The foregoing obligations shall include, but need not be limited to, maintenance, repair, replacement, and monitoring of all lakes, ponds and other bodies of water which also serve as part of the drainage system; all wetlands; all conservation and preservation areas and easements; all other landscape buffers, conservation buffers and easements, and preservation buffers; all requirements arising out of protected species and/or vegetation management plans approved as a condition of permit issuance by any municipal, county, state, or federal agency or required by the applicable zoning ordinances, as such plans, permits, or ordinances may from time to time be amended, and all permit conditions of the South Florida Water Management District, as set forth in Permit # _____, and all successor agencies relating to consumptive use and/or surface water management, and all permit conditions legally imposed by the City of Cape Coral or other governmental or quasi-governmental agencies or authorities having jurisdiction. All costs associated with the operation, maintenance, repair,

replacement and monitoring of the Surface Water Management System, including all monitoring, administrative, and implementation expense required and resulting from a condition of any and all development permits including, but not limited to, maintenance of all conservation and preserve tracts and easements, compliance with all development permit conditions, compliance with all animal and vegetation management plans approved pursuant to development permit approvals, and compliance with all South Florida Water Management District and United States Army Corps of Engineers, or City requirements, or those of any successor agencies, shall be a common expense.

22.2 Modifications To System Or Declaration. No modifications shall be made to the Surface Water Management System which changes the flow or drainage of surface water nor shall any amendment be made to this Declaration which would affect the Surface Water Management System or the responsibility of the Association to maintain and operate such system, without the approval of the South Florida Water Management District and any other applicable governmental agencies. All Unit Owners acknowledge that due to ground water elevations, priorities established by governmental authorities, and other causes outside of the reasonable control of the Developer and the Association, water levels may fluctuate at certain times during the year and such fluctuations may be material. Neither the Developer nor the Association shall have any liability for aesthetic conditions, objectionable odors, damage to plantings or direct or consequential damages of any nature caused by the fluctuation of water levels or water quality, or complying with the permitting requirements of government agencies. The Developer shall establish any and all landscape buffers, conservation areas, preservation areas, wetlands preserves and/or other areas, and any management plans for those areas as may be required for the protection of wildlife and vegetation, as required by any applicable zoning ordinances and/or any permit conditions of any state or federal agency, and any such areas shall be maintained and monitored by the Association in accordance with all original permit conditions and/or zoning requirements. The conservation and preservation tracts and easements may not be altered from their natural state with the exception of permitted activities. Activities prohibited within the conservation and preservation tracts and easements include, but are not limited to, construction or placing soil or other substances such as trash; removal or destruction of trees, shrubs or other vegetation removal, except exotic or nuisance vegetation removal; excavation, dredging or removal of soil material; dyeing or fencing; any other activities detrimental to drainage; flood control, water conservation erosion control or fish and wildlife habitat conservation or preservation.

22.3 Enforcement. The South Florida Water Management District, the Association and each Unit Owner or property owner in the Initial Phases and Additional Phases shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance and operation of the Surface Water Management System against the responsible entity.

22.4 Easement. Developer hereby grants to the Association a non-exclusive easement for drainage and flow of surface water over and across any portion of the Surface Water Management System which is not included within the Condominium Property and hereby reserves in favor of Developer, its successors and/or assigns, a nonexclusive easement for drainage and flow of surface water over and across any portion of the Surface Water Management System which is included within the Condominium Property. Both the Initial Phases and the Additional Phases shall be burdened with these easements for drainage and flow of surface water in a manner consistent with the approved Surface Water Management System. These easements may not be terminated without the written consent of the Association and the Developer, or its successors or assigns. In the event that the Additional Phases are developed as a separate condominium, and therefore do not become part of the Condominium Property, those condominium unit owners shall have the obligation to pay their share of the maintenance costs described in Section 22.1 above. Each condominium unit's share of such maintenance costs shall be

determined by a fraction, the numerator of which is 1 and the denominator of which is the total number of residential units constructed in the real property legally described in Exhibits "A" and "A-1". The condominium association(s) that operate(s) and maintain(s) the separate condominium(s) shall be obligated to collect its owners' share of the maintenance costs as a common expense of that condominium(s), and remit same to the Association within ten (10) days of a written request.

23. MISCELLANEOUS:

23.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of the Condominium Documents, shall not affect the remaining portions.

23.2 Applicable Statutes. The validity, application and construction of this Declaration and its recorded exhibits shall be governed by the Laws of Florida, particularly the Florida Condominium Act, as it exists on the date hereof.

23.3 Conflicts. If there is a conflict between any provision of this Declaration and the Condominium Act in effect as of the date of recording this Declaration, the Condominium Act in effect as of said recording date shall control. If there is a conflict between this Declaration and the Association's Article of Incorporation or Bylaws, the Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

23.4 Intermediate. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable.

23.5 Exhibits. There is hereby incorporated within this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

23.6 Singular, Plural and Gender. Whenever the context so requires, the use of the plural shall include the singular and the plural, and the use of any gender shall be deemed to include all genders.

23.7 Headings. The heading used in the Condominium documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

23.8 Notices to Developer. All notices to the Developer shall be sent by certified mail, return receipt registered to: Tuscany Courts, LLC, 3561 Bonita Bay Boulevard, Bonita Springs, FL 34134.

23.9 Time-Share Prohibited. No time-share estates may be created in this Condominium.

EXCEPT FOR THOSE WARRANTIES REQUIRED BY FEDERAL LAW OR CHAPTER 718, FLORIDA STATUTES, THE DEVELOPER DOES NOT MAKE ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND THE DEVELOPER HEREBY DISCLAIMS ANY SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO

IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IN WITNESS WHEREOF, the Developer has caused the execution of this Declaration of Condominium this _____ day of _____, 200__.

Witnesses: **TUSCANY COURTS, LLC**, a Florida limited liability company

Signature

Print Name

By:
Jerry Petersen
Its: Managing Member

Signature

Print Name

Developer hereby activates the guaranty of assessments described in Section 10.11 of this Declaration by checking this box; or

Developer has elected **not** to activate the guaranty of assessments described in Section 10.11 of this Declaration and agrees to pay assessments on all unsold Units in the same manner as any other Unit Owner.

STATE OF FLORIDA }
COUNTY OF LEE }

I HEREBY CERTIFY that on this _____ day of _____, 200__, before me, an Officer duly authorized in the State and County aforesaid, to take acknowledgements, personally appeared before me Jerry Petersen, Managing Member of Tuscany Courts, LLC, a Florida limited liability company, on behalf of the company and acknowledged before me that he executed the same on behalf of the company. He is personally known to me.

Notary Public

Typed/Printed Name of Notary
Serial No.: _____
My Commission Expires
(SEAL)