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SECOND AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS, EASEMENTS AND COVENANTS
OF
VIZCAYA VILLAS

WHEREAS, CP III OF FORT MYERS, LTD, a Florida limited partnership (hereinafter referred to as "Developer" or "Declarant"), previously filed and recorded a Declaration of Restrictions, Easements, and Covenants of Vizcaya Villas dated 30th day of June, 1993, recorded July 6, 1993, in O.R. Book, 2402, at Pages 4049 through 4072, of the public records of Lee County, Florida; and

WHEREAS, VIZCAYA VILLAS HOMEOWNERS ASSOCIATION, the assignee of same, wishes to further amend and restate the above mentioned Declaration of Restrictions, Easements and Covenants of Vizcaya Villas; and

WHEREAS, this Declaration shall be effective upon recordation and Declarant declares that the real property, hereinafter described is and shall be held, transferred, sold, conveyed, leased, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

WHEREAS, the real property which is and shall be held, transferred, sold, conveyed, leased and occupied subject to this Declaration is located in Lee County, Florida and comprises all of the parcels, tracts, lots, within or upon the real property legally described as follows, (hereinafter called the "Property"):

SEE ATTACHED EXHIBIT "A" LEGAL DESCRIPTION
MADE A PART HEREOF BY THIS REFERENCE

WHEREAS, the purpose of this Declaration is to provide various use and maintenance requirements and restrictions in the best interest of the future owners of dwellings within the Property to protect the value, attractiveness and desirability of the Property and Villas to be constructed thereon, to insure that VIZCAYA VILLAS will always be maintained as an attractive, quality oriented residential environment and to protect the Villas owners and their lessees against improper and undesirable uses of surrounding property; and

WHEREAS, this Declaration will also establish an association which may own, operate and/or maintain various portions of the property and improvements constructed within the Property, will have the right to enforce the provisions of this Declaration, and will be given various other rights and responsibilities; the expenses of said Association to be shared by the owners of the Property, who will be members of the association; and

NOW, THEREFORE, Declarant hereby declares that all of the Property (as described in Exhibit "A", attached hereto) shall be sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the following restrictions, easements, covenants, conditions and agreements, which shall constitute covenants running with the land and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Property or any part thereof and upon their heirs, successors, representatives and assigns. Furthermore, each Villa Owner, by accepting title to a Villa, covenants and agrees to be bound by this Declaration, whether or not the deed expressly so states.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration and in the Articles of Incorporation and Bylaws of the Association (unless the context shall prohibit) shall have the following meaning:

Section 1. "Articles" means the Articles of Incorporation of the Association, as same may be amended from time to time.

Section 2. "Assessment" means the amount of money which may be assessed against an Owner for the payment of the Owner's share of common expenses, and/or any other funds which an Owner may be required to pay to the Association as provided by this Declaration and/or the Declaration, the Articles, or the Bylaws of the Association.

Section 3. "Association" shall mean and refer to VIZCAYA VILLAS HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not for profit. This is the Declaration of Restrictions, Easements and Covenants to which the Articles of Incorporation and Bylaws of the Association make reference.

Section 4. "Board" means the Board of Directors of the Association.

Section 5. "Bylaws" means the Bylaws of the Association as same may be amended from time to time.

Section 6. "Common Area" shall mean all real and/or personal property whether improved or unimproved or any easement or interest therein, now or hereafter owned by the Association or which is dedicated to the Association on any recorded plat, or which is declared to be Common Area by this Declaration for the non-exclusive common use and enjoyment of the members of the Vizcaya Villa Homeowner's Association, Inc., including but not limited to parks, landscape, canals and water retention systems, wetlands, landscape medians, security, safety, bicycle paths, sidewalks, roads, project lighting, clubhouse and other recreational property.

Section 7. "Common Expenses" means all expenses of any kind or nature whatsoever incurred by the Association, including, but not limited to the following:

7.1 Expenses incurred in connection with the ownership, maintenance, repair, improvement or operation of the Common Areas, or any other property to be maintained by the association as provided in this Declaration, including, but not limited to, utilities, taxes, assessments, insurance, operation, maintenance, repairs, improvements, and alternations.

7.2 Expenses of obtaining, repairing or replacing personal property in connection with any Common Area or the performance of the association's duties.

7.3 Expenses incurred in connection with the administration and management of the Association.

7.4 Expenses declared to be Common Expenses by the provisions of this Declaration, or by the Articles or Bylaws.

7.5 Any amounts payable by the Association to the Association or any other association or any governmental authority.

Section 8. "Common Facilities" means any property within the Colonial Subdivision which is owned and/or operated by the Association, which is intended for the common use of all Owners.

Section 9. "Common Surplus" means the excess of all receipts of the Association over the amount of the Common Expenses.

Section 10. "Declarant" means the person executing this Declaration, or any person who may be assigned the rights of Declarant pursuant to a written assignment executed by the then present Declarant recorded in the public records of the county in which the property is located. In addition, in the event any person obtains title to all the property then owned by Declarant as a result of the foreclosure of any mortgage or deed in lieu thereof, such person may elect to become the Declarant or to have any rights of Declarant by a written election recorded in the public records of the county in which the property is located and regardless of the exercise of such election such person may appoint as Declarant, or assign any rights of Declarant, to any third party who acquires title to all or any portion of the property by written appointment recorded in

the public records recorded in the county in which the property is located. In any event, any subsequent Declarant shall not be liable for any actions or defaults of, or any obligations incurred by, any prior Declarant, except as same may be expressly assumed by the subsequent Declarant.

Section 11. "Declaration" means this document as it may be amended from time to time.

Section 12. "Improvement" means any building, fence, wall, patio area, driveway, walkway, landscaping, antenna, sign, mailbox, pool, or other structure or improvement which is constructed, made, installed, placed or developed within or upon, or removed from any Villa or any change, alteration, addition or removal of any such structure or improvement other than normal maintenance and repair which does not materially alter or change the exterior appearance, condition and color of same.

Section 13. "Institutional Lender" means the holder of a mortgage encumbering a Villa, which holder in the ordinary course of business makes, purchases, guarantees, or insures mortgage loans, and which is not owned or controlled by the Owner of the Villa encumbered. An Institutional Lender may include, but is not limited to a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension or profit sharing plan, mortgage company, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, or any other similar type of lender generally recognized as an institutional type lender for definitional purposes only. An Institutional Lender shall also mean the holder of any mortgage executed by or in favor of Declarant, or which encumbers any portion of the Property which is owned by Declarant, whether or not such holder would otherwise be considered an Institutional Lender and notwithstanding anything contained herein to the contrary, the holder of any such mortgage shall be entitled to all rights and protections granted to first mortgagees hereunder whether or not such mortgage is a first mortgage.

Section 14. "Maintenance" shall mean the exercise of reasonable care to keep the property, including buildings, roads, easements of ingress and egress, drainage easements, water retention easements, utility easements, parks, clubhouses, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition.

Section 15. "Member" shall mean every person or entity holding membership in the Association.

Section 16. "Person" means an individual, corporation, partnership, trust, or any other legal entity.

Section 17. "Property" shall mean and refer to all such existing properties and additions thereto, as are subject to this Declaration and any supplemental Declaration or Declarations, under the provisions of Article II hereof.

Section 18. "Tract" shall mean and refer to any plot of land described as Vizcaya Villas with Lee County.

Section 19. "Villa" shall mean and refer to each of the separate and identified residential units delineated in the survey and subject site plan. The physical boundaries of each unit are delineated in the above mentioned survey and site plan and any supplements thereto.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERE TO, DELETIONS THEREFROM

Section 1. **Legal Description.** The real property which is and shall be held, transferred, sold, conveyed, and occupied, subject to this Declaration, is located in Lee County, Florida, and comprises as follows:

SEE ATTACHED EXHIBIT "A" LEGAL DESCRIPTION,
MADE A PART HEREOF BY THIS REFERENCE

SECTION III EASEMENTS

Each of the following easements are hereby created, which shall run with the land and, notwithstanding any of the other provisions of this Declaration, may not be substantially amended or revoked in such away as to unreasonably interfere with their proper and intended uses and purposes, and each shall survive the termination of this Declaration.

Section 1. Owner's Easements of Enjoyment. Every Villa Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title of portions of the property, subject to the following:

- a. The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.
- b. All provisions of this Declaration, and plat of all or any part or parts of the Property, and the Articles and Bylaws of the Association.
- c. Rules and regulations governing use and enjoyment of the Common Area adopted by the Association; and
- d. Restrictions contained on any and all plats of all or any part of the Common Area or filed separately with respect to all or any part or parts of the Property.

Section 2. Easements for Pedestrian and Vehicular Traffic. Easements for pedestrian traffic over, through and across sidewalks, paths, lanes and walks as the same may from time to time exist upon the Common Areas and be intended for such purpose; and for pedestrian and vehicular traffic and parking over, through, across and upon such portion of the Common Areas as may from time to time be paved and intended for such purposes, same being for the use and benefit of the Villa Owners and the residents of the property, their mortgagees, and their guests and invitees.

Section 3. Perpetual Nonexclusive Easement in Common Areas. The Common Areas shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive appurtenant easement in favor of all Villa Owners from time to time and their guests and invitees, for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended.

Section 4. Service and Utility Easements in favor of governmental and quasi-governmental authorities, utility companies, cable television companies, ambulance or emergency vehicle companies, and mail carrier companies, over and across all roads existing from time to time with the property, and over, under, on, and across the Common Areas, as may be reasonably required to permit the foregoing and their agents and employees, to provide their respective authorized services to and for the property. Also, easements as may be required for the installation, maintenance, repair and providing of utility services, equipment and fixtures in order to adequately serve the property including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, television antenna and cable television facilities, and electronic security. However, easements affecting any Villa which serve any other portion of the property shall only be under the Villa, and shall only be for utility services actually constructed, or reconstructed, and for the maintenance thereof, unless otherwise provided in writing by the Villa Owner of the Villa. A Villa Owner shall do nothing on his Villa which interferes with or impairs the utility services using these easements including, but not limited to the construction of any temporary or permanent structure on, over or through any easement areas. The Board or its designee shall have a right of access to each Villa to inspect, maintain, repair or replace the utility service facilities contained under the Villa and to remove any improvements interfering with or impairing the utility services or easement herein reserved; provided such right of access shall not unreasonably interfere with the Villa Owner's permitted use of the Villa.

Section 5. Encroachments. If any portion of the Common Areas encroaches upon any

Villa or other improvement encroaches upon any Villa or upon any portion of the Common Areas; or if any encroachment shall hereafter occur as a result of (i) construction or reconstruction of any improvements, including, but not limited to the installation of air conditioning units placed within any drainage maintenance easements by Declarant; (ii) settling or shifting of any improvements; (iii) any addition, alteration or repair to the Common Areas made by or with the consent of the Association; (iv) any repair or restoration of any improvements (or any portion thereof) or any Villa after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Villa or the Common Area; or (v) any non-purposeful or non-negligent act of a Villa Owner, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

Section 6. Easements for overhanging troughs or gutters, downspouts and the discharge therefrom of rainwater and the subsequent flow thereof over the Villas and the Common Areas may exist.

Section 7. Additional Easements. The Association, on their behalf and on behalf of all Villa Owners, each shall have the right to (i) grant and declare additional easements over, upon, under and/or across the Common Areas or a Villas in favor of Declarant or any person, entity, public or quasi-public authority or utility company, or (ii) modify, relocate, abandon or termination existing easements benefiting or affecting the Property. So long as the foregoing will not unreasonably and adversely interfere with the use of Villas for dwelling purposes, no consent of any Owner or any mortgagee of any Villa shall be required or, if same would unreasonably and adversely interfere with the use of any Villa for dwelling purposes, only the consent of the Villa Owners hereby irrevocably appoint Declarant and/or the Association as their attorney-in-fact for the foregoing purposes.

Section 8. No Partition. There shall be no judicial partition of the Common Areas, nor shall any Villa Owner or any other person acquiring any interest in the subdivision, or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partisan of any Villa owned in contenance.

ARTICLE IV ASSOCIATION

Section 1. Organization. Vizcaya Homeowners' Association, Inc., hereinafter called the "Association", is a Florida nonprofit corporation organized for the primary purpose of enforcing the covenants contained herein and shall have all of the powers indicated or incidental to those contained in its Articles and Bylaws. The initial Members, Directors and Officers of the association, the manner of their selection, their respective rights and duties, and other matters regarding the Association are set forth in the Articles and Bylaws. No amendment to the Articles and/or Bylaws shall be deemed an amendment to this Declaration and this Declaration shall not prohibit or restrict amendments to the Articles and/or Bylaws, except as specifically provided herein.

Section 2. Membership. Every person or entity who is a record fee simple owner of a Villa, shall be a member of the Association provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from ownership of any Villa which is subject to assessment.

Section 3. Classes and Voting. The Association shall have such classes of membership, which classes shall have such voting rights, as set forth in the articles and Bylaws of Association.

Section 4. Approval or Disapproval of Matters. Unless otherwise required by the CROSSBOW DECLARATION or otherwise stated in this DECLARATION, whenever the approval, consent, or decision of the Villa Owners is required or any matter pursuant to this Declaration, the Articles, or the Bylaws, such approval, consent, or decision shall be made by a majority of the votes of the Villa Owners present in person or by proxy at a duly called meeting of

the Association at which a quorum exists, in accordance with the Articles of the Bylaws, except for matters where a greater voting requirement is specified.

Section 5. Acts of the ASSOCIATION. Unless the approval or action of the Villa Owners and/or a certain specific percentage of the Board is specifically required by this Declaration, the Articles or Bylaws, or by applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board, without the consent of the Villa Owners, and the Board may so approve an act through the proper officers of the Association without a specific resolution when an approval or action of the Association is permitted to be given or taken, such action or approval may be conditioned in any manner the Association deems appropriate, or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal, except as herein specifically provided to the contrary.

Section 6. Management and Service Contracts. The Association shall have the right to contract for professional management or services on such terms and conditions as the Board deems desirable in its sole discretion, provided, however, that any such contract shall not exceed three (3) years and shall be terminable by either party without cause and without payment of a termination or penalty fee on ninety (90) days or less written notice.

ARTICLE V COMMON AREAS, DUTIES AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Conveyance of Common Areas to Association.

1.1 By Any Other Person. Any other person may also convey title to any property owned by such person, or any easement or interest therein, to the Association as a Common Area, but the Association shall not be required to accept any such conveyance, and no such conveyance shall be effective to impose any obligation for the maintenance, operation or improvement of any such property upon the Association, unless the Board expressly accepts the conveyance by executing the deed or other instrument of conveyance or by recording a written acceptance of such conveyance in the public records of the county in which the property is located.

Section 2. Use and Benefit. All Common Areas shall be held by the Association for the use and benefit of the Association and the Owners, the residents of the property, and their respective guests and invitees, the holders of any mortgage encumbering any Villa from time to time, and any other persons authorized to use the Common Areas or any portion thereof or the Association, for all proper and reasonable purposes and uses for which the same are reasonably intended, subject to the terms of this Declaration, subject to the terms of any easement, restriction, reservation or imitation of record affecting the Common Area or contained in the deed or instrument conveying the Common Area to the Association and subject to any rules and regulations adopted by the Association. An easement and right for such use is hereby created in favor of all Villa Owners, appurtenant to the title to their Villas.

Section 3. Grant and Modification of Easements. The Association shall have the right to grant, modify, or terminate easements over, under, upon, and/or across any property owned by the Association, and shall have the further right to modify, relocate or terminate existing easements in favor of the Association.

Section 4. Additions, Alternations, or Improvements. The Association shall have the right to make additions, alternations, or improvements to the Common Areas, and to purchase any personal property, as it deems necessary or desirable from time to time, provided, however that the approval of the Villa Owners shall be required if any recreational facility is removed or substantially and adversely affected, or for any addition, alteration, or improvement or any purchase of personal property, exceeding a sum equal to one (1) month's total Assessments for Common Expenses payable by all of the Members, or if the cost of the foregoing shall in any fiscal year exceed in the aggregate a sum equal to two (2) month's Assessments for Common Expenses payable by all of the Villa Owners. The foregoing approval shall in no event be required with

respect to expenses incurred in connection with the maintenance, repair or replacement of existing Common Areas, or any existing improvements or personal property associated therewith. The cost and expense of any such additions, alterations or improvements to the Common Areas, or the purchase of any personal property, shall be a Common Expense.

Section 5. Utilities. The Association shall pay for all utility services for the Common Areas, or for any other property to be maintained by the Association, as a Common Expense.

Section 6. Taxes. The Association shall pay all real and personal property taxes and assessments, if any, assessed against any property owned by the Association, as a Common Expense.

Section 7. Insurance. The Association shall purchase insurance as a Common Expense, as follows:

7.1 Hazard insurance protecting against loss or damaged by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard all-risk endorsement, covering 100% of the current replacement cost of all Common Areas and property owned by the Association, excluding land, foundations, excavations, landscaping, and other items normally excluded from insurance coverage. The Association shall not use hazard insurance proceeds for any purpose other than the repair, replacement or reconstruction of any damaged or destroyed property without the approval of at least two-thirds (2/3) of the votes of the Villa Owners.

7.2 Comprehensive General Liability Insurance protecting the Association from claims or bodily injury, death or property damage providing for coverage of at least \$500,000 for any single occurrence or such lesser amount as is approved by the Villa Owners.

7.3 Blanket Fidelity Bond for anyone who handles or is responsible for funds held or administered by the Association, covering the maximum funds that will be in the custody or control of the Association or any managing agent, which coverage shall be at least equal to the sum of three (3) months assessments on all Villas plus reserve funds.

7.4 Such other insurance as may be desired by the Association, such as flood insurance, errors and omissions insurance, workman's compensation insurance, or any other insurance.

7.5 All insurance purchased by the Association must include a provision requiring at least 30 days written notice to the Association before the insurance can be canceled or the coverage reduced for any reason.

7.6 Any deductible or exclusion under the policies shall be a Common Expense and shall not exceed \$2,000 or such other sum as is approved by the Board.

7.7 Copies of Insurance Certificates. Upon request, each Institutional Lender shall have the right to receive a copy or certificate of the insurance purchased by the Association, and shall have the right to require at least 30 days written notice to the Institutional Lender before any insurance can be canceled or the coverage reduced for any reason each Institutional Lender shall have the right upon notice to the Association to review and approve, which approval shall not be unreasonably withheld, the form, content, issuer, coverage and deductibles of all insurance purchased by the Association.

7.8 Waiver. If the Board determines that the insurance required to be purchased by the Association pursuant to this paragraph would be unduly expensive, or if such insurance is not obtainable, the Association may purchase insurance with less coverage than specified above, provided the Board gets the approval of the Villa Owners as to such action.

Section 8. Default. Any Owner or Institutional Lender may pay for any utilities, taxes or

assessments, or insurance premiums which are not paid by the Association when due, or may secure new insurance upon the lapse of an insurance policy, and shall be owed immediate reimbursement therefore from the Association, plus interest and any costs of collection, including attorneys fees.

Section 9. Damage or Destruction. In the event any improvement (other than landscaping) within any Common Area is damaged or destroyed due to fire, flood, wind, or other casualty or reason, the Association shall restore, repair, replace or rebuild (hereinafter collectively referred to as a "repair") the damaged improvement to the condition the improvement was in immediately prior to such damage or destruction, unless otherwise approved by two-thirds (2/3) of the votes of the Villa Owners. If any landscaping within any Common Area or any other property maintained by the Association is damaged or destroyed, the Association shall only be obligated to make such repairs to the landscaping as is determined by the Board in its discretion. Any excess cost of repairing any improvement over insurance proceeds payable on account of any damage or destruction shall be a Common Expense, and the Association shall have the right to make a special assessment for any such expense.

Section 10. Maintenance of Common Areas and Other Property. The Association shall maintain all Common Areas and property owned by the Association, and all improvements thereon, in good condition at all times. If pursuant to any easement the Association is to maintain any improvement within any property, then the Association shall maintain such improvements in good condition at all times. In addition, the Association shall have the right to assume the obligation to operate and/or maintain any property which is not owned by the Association if the Board, in its sole discretion, determines that the operation and/or maintenance of such property by the Association would be in the best interest of the residents of the Property. In such event, where applicable, the Association shall so notify any Villa Owner otherwise responsible for such operation or maintenance, and thereafter such property shall be operated and/or maintained by the Association and not by the Villa Owner until the Board determines no longer to assume the obligation to operate and/or maintain such property and so notifies the appropriate Villa Owner in writing without limitation. The Association shall have the right to assume the obligation to operate and/or maintain any walls or fences on or near the boundaries of the Property and any pavement, landscaping, sprinkler systems, sidewalks, paths, signs, entrance features, or other improvements, in or within 40 feet of any public or private road right-of-ways within or contiguous to the Property. To the extent the Association assumes the obligation to operate and/or maintain any property which is not owned by the Association, the Association shall have an easement and right to enter upon such property in connection with the operation in or maintenance of same, and no such entry shall be deemed a trespass. Such assumption by the Association of the obligation to operate and/or maintain any property which is not owned by the Association may be evidenced by a supplement to this Declaration, or by a written document recorded in the public records of the county in which the Property is located, and may be made in connection with an agreement with any Villa Owners, the Declarant, or any governmental authority otherwise responsible for such operation or maintenance, and pursuant to any such document the operation and/or maintenance of any property may be made a permanent obligation of the Association. The Association may also enter into agreements with any other Person, or any governmental authority, to share in the maintenance responsibility of any property if the Board, in its sole and absolute discretion, determines this would be in the best interest of the Villa Owner. Notwithstanding the foregoing, if any Villa Owner or any resident of any Villa, or their guests or invitees, damages any Common Area or any improvement thereon, or any other portion of the Property to be maintained by the Association, the Villa Owner of such Villa shall be liable to the Association for the costs of repair or restoration to the extent not covered by the Association's insurance, and to the extent such liability exists under the laws of the State of Florida.

Section 11. Mortgage and Sale of Common Areas. The Association shall not encumber, sell or transfer any Common Area owned by the Association without the approval of 2/3rds of the votes of all of the Villa Owners, provided, however, that the Association may dedicate any Common Area to any governmental authority with the approval of the Villa Owners.

Section 12. Perimeter Wall or Fence. Declarant and the Association shall have an easement around the entire boundary of the property, which shall extend 10 feet into the property

from the outer boundary of the property, for the installation and maintenance of a wall or fence. If any wall or fence is constructed within such easement, the Association shall maintain the wall or fence, and the landscaping located between the wall or fence and the perimeter of the Property, and an easement for such maintenance is hereby established. However, where any wall or fence is located upon a Villa, the Villa Owner shall maintain the side of the wall or fence facing the Villa Owner's Villa.

Section 13. Sidewalks and Street Lighting. The Association shall maintain any common sidewalks or walkways within the Property, but not any sidewalk or walkway exclusively serving only one Villa, and shall maintain and pay for any utility services used in connection with such common street lighting.

Section 14. Landscape Maintenance. The Association shall have the right to assume the obligation to maintain the lawn maintenance of the front yards of the Villas, and on the side yards of any Villas that are contiguous to a road, by written notice to the Villa Owners, and if the Association assumes such maintenance, it may discontinue such maintenance at any time by written notice to the Villa Owners. In the event the Association assumes the obligation to maintain the landscaping in the front yards, as aforesaid, such maintenance shall be limited to maintenance of the lawn, and the Association shall not be responsible for maintaining any trees, bushes, shrubbery, flowers or other landscape treatment. The assumption of the lawn maintenance responsibility (or the discontinuation of same) shall be effective upon the consent of not less than seventy-five percent (75%) of the all of the Villa Owners at a duly called meeting of the Association. Until such time as such obligation is assumed, each Villa Owner shall be responsible for the maintenance of the lawns within their Villas.

Section 15. Roads and Driveways. The Association shall maintain all of the roads within the property, and any driveways (or portion thereof) serving more than one(1) Villa, but shall not maintain any portion of a driveway which serves only one (1) Villa.

Section 16. Special Provisions Regarding Recreational Facilities. The Association may, in its sole and absolute discretion, construct various recreational facilities within the property, which are planned to consist of a swimming pool and deck, a cabana building, and various personal property associated therewith, the kind, value and nature of which shall be determined in Association's sole discretion, and Association reserves the right to increase or add to the foregoing recreational facilities, or to expand the recreational facilities, with the consent of the Villa Owners or the Association by majority vote.

ARTICLE V ASSESSMENTS

Section 1. Maintenance Expenses. Each Villa Owner, by acceptance of a deed to the Villa, whether or not it shall be expressly stated in such deed, unconditionally covenant and agree to pay all expenses for the maintenance of the easements and common areas of the property and for the enforcement of this Declaration. The expenses shall be prorated equally amongst all Villa Owners as to easements and common areas which apply to all Villa Owners and shall be prorated equally among the Villa Owners located on each separate Tract as to painting of the exterior of the building owned by those Villa Owners. The expenses prorated among all Villa Owners shall include but not be limited to the following: maintenance repairs, replacement, and improvement of the road and other easement areas, maintenance of the clubhouse and all other common areas; enforcement of this Declaration and the easements, covenants, restrictions, and agreements set forth herein.

Section 2. Prior to the beginning of each fiscal year of the Association, the Board shall adopt a budget for such fiscal year which shall estimate all of the Common Expenses to be incurred by the Association during the fiscal year. The Board shall then establish the Assessment for Common Expenses for each Villa, which shall be equal and shall be determined by dividing the total amount to be assessed for Common Expenses by the number of Villas for which Assessments for Common Expenses are to be made pursuant to the budget. The Association shall then notify each Villa Owner in writing of the amount, frequency and due dates of the Assessment

for Common Expenses. From time to time during the fiscal year, the Board may modify the budget, and pursuant to the revised budget or otherwise, the Board may, upon written notice to the Villa Owners, change the amount, frequency and/or due dates of the Assessments for Common Expenses. If the expenditure of funds for Common Expenses is required in addition to funds produced by regular Assessments for Common Expenses, the Board may make special assessments for Common Expenses which may include Assessments to provide funds to pay for an existing or proposed deficit of the Association, or for any additions, alterations, or improvements to any Common Area, or for any other purpose. Special Assessments for Common Expenses shall be levied in the same manner as hereinbefore provided for regular Assessments, and shall be payable in one lump sum or as otherwise determined by the board in its sole discretion and as stated in the notice of any Special Assessment for Common Expenses. In the event any assessments for Common Expenses are made payable in equal periodic payments, as provided in the notice from the Association, such periodic payments shall automatically continue to be due and payable in the same amount and frequency unless and until (i) the notice specifically provides that the periodic payments will terminate or change upon the occurrence of a specified event or date or the payment of the specified amount, or (ii) the Association notifies the Villa Owners in writing of a change in the amount and/or frequency of the periodic payments. In no event shall any Assessments for Common Expenses be due less than ten (10) days from the date of the notification of such Assessments.

Section 3. Default.

3.1 Monetary Defaults and Collection of Assessments.

3.1.1 Late Fees and Interest. If any Assessment is not paid within ten (10) days after the due date, or if any check for any Assessment is dishonored, the Association shall have the right to charge the applicable Villa Owner a late or bad check fee of ten (10%) percent of the amount of the Assessment, or twenty-five (\$25.00) Dollars, whichever is greater, plus interest at the then highest rate of interest allowable by law from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due ten (10) days after written demand by the Association.

3.1.2 Acceleration of Assessments. If any Villa Owner is in default in the payment of any Assessment owed to the Association for more than 30 days after written demand by the Association, the Association upon written notice to the defaulting Villa Owner shall have the right to accelerate and require such defaulting Villa owner to pay to the Association Assessments for Common Expenses for the next twelve (12) month period, based upon the then existing amount and frequency of Assessments for Common Expenses, plus interest at the highest rate permitted by law from the date of such notice until the accelerated Assessments for Common Expenses are paid. In the event of such acceleration, the defaulting Villa Owner shall continue to be liable for any increases in the regular Assessments for Common Expenses, for all special Assessments for Common Expenses, and/or for all other Assessments payable to the Association.

3.1.3 Lien for Assessments. The Association has a lien on each Villa for unpaid Assessments owed to the Association by the Villa Owner of such Villa, and for late fees and interest, and for reasonable attorneys' fees incurred by the Association incident to the collection of the Assessment or enforcement of the lien (any lien shall reflect that the attorneys' fees shall be \$1,500 through foreclosure), and all sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances in order to preserve and protect the Association's lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the Villa is located, stating the description of the Villa, the name of the record Villa Owner, and the amount due as of the recording of the claim of lien. A recorded claim of lien shall secure all sums set forth in the claim of lien together with all assessments or other monies owed to the association by the Villa Owner until the lien is satisfied. The lien is in effect until all sums secured by it have been fully paid or until the lien is barred by law. The claim of lien must be signed and acknowledged by an officer or agent of the Association. Upon payment, in full of all sums secured by the lien, the person making the payment is entitled to a satisfaction of the lien in recordable form.

3.1.4 Collection and Foreclosure. The Association may bring an action in its name to foreclose a lien for Assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien, and the applicable Villa Owner shall be liable to the Association for all costs and expenses incurred by the Association in connection with the collection of any unpaid Assessments, and the filing, enforcement, and/or foreclosure of the Association's lien, including reasonable attorneys' fees whether or not incurred in legal proceedings, and all sums aid by the Association for taxes and on account of any other mortgage, lien, or encumbrance in order to preserve and protect the Association's lien. The Board is authorized to settle and compromise the Association's lien if the Board deems a settlement or compromise to be in the best interest of the Association.

3.1.5 Rental and Receiver. If a Villa Owner remains in possession of his Villa and the claim of lien of the association against his Villa is foreclosed, the court, in its discretion, may require the Villa Owner to pay a reasonable rental for the Villa, and the Association is entitled to the appointment of a receiver to collect the rent.

3.1.6 Subordination of Lien. Except where such liability exists by law, where any person obtains title to a Villa pursuant to the foreclosure of a first mortgage of record, or where the holder of a first mortgage accepts a deed to a Villa in lieu of foreclosure of the first mortgage of record of such lender, such acquirer of title, its successors and assigns, shall not be liable for any Assessments or for other monies owed to the Association which are chargeable to the former Villa Owner of the Villa and which became due prior to acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the payment of such funds is secured by a claim of lien recorded prior to the recording of the foreclosed or underlying mortgage. The unpaid Assessments or other monies are Common Expenses collectible from all of the Villa Owners, including such acquirer and his successors and assigns. The new Villa Owner from and after the time of acquiring such title, shall be liable for payment of all future Assessments for Common Expenses and such other expenses as may be assessed to the Owner's Villa. Any person who acquires a Villa, except through foreclosure of a first mortgage of record or deed in lieu thereof, including, without limitation, persons acquiring title by sale, gift, devise, operation of law or by purchase at a judicial or tax sale, shall be liable for all unpaid Assessments and other monies due and owing by the former Villa Owner to the Association, and shall not be entitled to occupancy of the Villa or enjoyment of the Common Areas, or of the recreational facilities as same may exist from time to time, until such time as all unpaid Assessments and other monies have been paid in full.

3.1.7 Assignment of Claim and Lien Rights. The Association acting through its Board, shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessments and any other monies owed to the Association, to any third party.

3.1.8 Unpaid Assessments Certificate. Within 15 days after written request by any Villa Owner or any Institutional Lender holding or making a mortgage encumbering any Villa, the Association shall provide the Villa Owner or Institutional Lender a written certificate as to whether or not the Villa Owner of the Villa is a default with respect to the payment of Assessments or with respect to compliance with the terms and provisions of this Declaration, and any person or entity who relied on such certificate in purchasing or in making a mortgage loan encumbering any Villa shall be protected thereby.

3.1.9 Application of Payments. Any payments made to the Association by any Villa Owner shall first be applied towards any sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the Association in order to preserve and protect its lien, next towards reasonable attorneys' fees incurred by the Association incidental to the collection of assessments and other monies owed to the Association by the Villa Owner and/or for the enforcement of its lien; next towards interest on any Assessments or other monies due to the Association, as provided herein, and next towards any unpaid Assessments owed to the Association, in the inverse order that such Assessments were due.

3.2 Non-Monetary Defaults. In the event of a violation by any Villa Owner or any tenant of a Villa Owner, or any person residing with them, or their guests or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of this Declaration, the Articles, the Bylaws or the Rules and Regulations of the Association, the Association shall notify the Villa Owner and any tenant of the Villa Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Villa Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association, or if any similar violation is thereafter repeated, the Association may, at its option:

3.2.1 Impose a fine against the Villa Owner or tenant as provided in Paragraph 5.3 and/or

3.2.2 Commence an action to enforce the performance on the part of the Villa Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and or

3.2.3 Commence an action to recover damages; and/or

3.2.4 Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the Association, or performing any maintenance required to be performed by this Declaration. All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten (10%) percent of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable attorneys' fees whether or not incurred in legal proceedings, shall be assessed against the applicable Villa Owner, and shall be due upon written demand by the Association. The Association shall have a lien for any such Assessment and any interest, costs or expenses associated therewith, including attorneys' fees incurred in connection with such Assessment, and may take such action to collect such Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of the County in which the Property is located.

3.3 Fines. The amount of any fine shall be determined by the Board, and shall not exceed the greater of \$25.00 or one (1) month's Assessment for Common Expenses for the first offence, the greater of \$50.00 or two (2) months' Assessment for Common Expenses for a second similar offense, and the greater of \$100.00 or three (3) months' Assessment for Common Expenses for a third or subsequent similar offense. Notwithstanding the foregoing, if any violation of this Declaration or the Rules and Regulation is of a continuing nature, and if the Villa Owner fails to cure any continuing violation within 30 days after written notice of such violation, or if such violation is not acceptable of being cured within such 30 day period, if the Villa Owner fails to commence action reasonably necessary to cure the violation within such 30 day period or shall thereafter fail to diligently proceed to cure the violation as soon as is reasonably practical, a daily fine may be imposed until the violation is cured in an amount not to exceed the greater of \$10.00 or 1/4 of one (1) month's Assessment for Common Expenses. Prior to imposing any fine, the Villa Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Villa Owner or tenant of not less than 14 days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the Declaration, Bylaws or Rules and Regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Villa Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Villa Owner or tenant. If the Villa Owner or tenant fails to attend the hearing as set by the Board, the Villa Owner or tenant shall be deemed to have admitted the allegations contained in the notice to the Villa Owner or tenant. Any fine imposed by the Board shall be due and payable within ten (10) days after written

notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Board's decision at the hearing. Any lien levied against a Villa Owner shall be deemed an Assessment, and if not paid when due all of the provision of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided. In any event, the Association shall not have the right to impose any fine against Declarant.

3.4 Negligence. A Villa Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Villa, or the Common Areas.

3.5 Responsibility of a Villa Owner for Occupants, Tenants, Guests, and Invitees. To the extent otherwise provided by law, each Villa Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Villa, and for all guests and invitees of the Villa Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association, the Villa Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, of the Articles, or the Bylaws or any rules and regulations promulgated by the Association, by any resident of any Villa, or any guest or invitee of a Villa Owner or any resident of a Villa, shall also be deemed a violation by the Villa Owner, and shall subject the Villa Owner to the same liability as if such violation was that of the Villa Owner.

3.6 Right of Association to Evict Tenants, Occupants, Guests, and Invitees. With respect to any tenant or any person present in any Villa or any portion of the Property, other than a Villa Owner and the members of his immediate family permanently residing with him in the Villa, if such person shall materially violate any provision of this Declaration, the Articles, the Bylaws, or any rules and regulations of the Association, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Property, or shall willfully damage or destroy any Common Areas or personal property of the Association, then upon written notice by the Association such person shall be required to immediately leave the Property and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Villa Owner, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

3.7 No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles, or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

3.8 Rights Cumulative. All rights, remedies, and privileges granted to the Association pursuant to any terms, provisions, covenants or conditions of this Declaration, the Articles, or the Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

3.9 Enforcement By or Against other Persons. In addition to the foregoing, this Declaration may be enforced by Declarant (so long as Declarant is a Villa Owner), or the Association, by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any

litigation to enforce this Declaration, including attorneys' fees, shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of its Declaration. In addition to the foregoing, any Villa Owner shall have the right to bring an action to enforce this Declaration against any person violating or attempting to violate any provisions herein, to restrain such violation or to require compliance with the provisions contained herein, but no Villa Owner shall be entitled to recover damages or to enforce any lien created herein as a result of a violation or failure to comply with the provisions contained herein by any person, and the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees.

Section 4. Insurance. Each villa Owner shall maintain its own casualty, hazard and liability insurance on its own Villa with coverage and limits sufficient to repair or replace damage to the Villa caused by a loss, and shall provide proof of such insurance (and proof of payment of premium) upon request of the adjacent Villa Owner of the Association. If a Villa Owner fails to do so within three days after written request, the Association may obtain such insurance on behalf of the Villa Owner, and the Association may assess the Villa Owner for the expense of such insurance, from which a lien shall arise against the Villa, pursuant to this Article.

ARTICLE VI RESTRICTIONS

Section 1. Residential Use Only. All of the Villas may be used only for residential purposes and for no other purposes. No Villa shall be permanently occupied by more than two (2) persons for each bedroom in the Villa. In addition, temporary guests are permitted so long as they do not create an unreasonable source of noise or annoyance to the other residents of the Property. No manufacturing, trade, business, commerce industry, procession or other occupation whatsoever shall be conducted or carried on or upon any Villa, or upon any portion of the Property. The foregoing shall not prohibit any Villa Owner from leasing his Villa. Any unit may not be rented without prior written approval of the Board after \$50.00 application fee and not less than one year.

Section 2. Temporary/Portable Buildings. No tents, shacks, temporary buildings, or sheds shall be erected, constructed, located or allowed on any Villa; provided, however, that the Developer may do so during construction and sale of the Villas.

Section 3. Vehicles and Boats. Only automobiles, vans, small pick-up trucks, and other vehicles manufactured and used as private passenger vehicles, may be parked within the Property overnight without the prior, written consent of the Approving Party, unless kept within an enclosed garage. In particular, and without limitation, without the prior written consent of the Approving Party, no vehicle containing commercial lettering, signs or equipment, and no truck (other than small pick-up trucks as set forth above), recreational vehicle, camper, trailer, or vehicle other than a private passenger vehicle as specified above, and no boat, may be parked or stored outside of a Villa overnight. No overnight parking is permitted on any streets, lawns, or areas other than driveways and garages, without the consent of the Approving Party. Notwithstanding the foregoing, automobiles owned by governmental law enforcement agencies are expressly permitted. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to the Property. All vehicles parked within the Property must be in good condition and repair, and no vehicle which does not contain a current license plate or which cannot operate on its own power shall be parked within the property outside of an enclosed garage for more than 24 hours, and no major repair of any vehicle shall be made on the Property. No all-terrain vehicles may be operated within the Property. No motorcycle, motorbike, moped, or other such vehicle is permitted to be operated within the Property unless such vehicle is licensed for street use and is equipped with appropriate noise-muffling equipment so that its operation does not create an annoyance to the residents of the Property, and if the Approving Party determines the operation of any such vehicle creates an annoyance to the residents of the Property, then after written demand from the Approving Party, the vehicle shall not be operated within the Property.

Section 4. Antennae and Flagpoles. No outside signal receiving or sending dish, satellite, antenna, or devices may be erected or allowed on any Villa without the written consent of the Approving party. The foregoing shall not prohibit any antenna or signal receiving dish owned by the Approving Party which services the entire Property. No flag poles are permitted without the consent of the Approving Party.

Section 5. Animals. No animals, livestock and poultry of any kind may be raised, bred or kept on any Villa; provided however, that dogs, cats and other customarily-kept house pets may be kept as long as they are confined to the owner's Villa. The pet's owner shall be responsible for removing any waste left by the pet. As regards cats and dogs, only two (2) such pets are permitted in any Villa, except with the written consent of the Approving Party, which may be granted or withheld in the Approving Party's discretion. No pit bull terriers are permitted without the consent of the Approving Party. Any pet must be carried or kept on a leash when outside of a Villa or fenced-in area. No pet shall be permitted to go or stray on any other Villa without the permission of the Villa Owner of the Villa. Any pet must not be an unreasonable nuisance or annoyance to other residents of the Property. The Approving Party may require any pet to be immediately and permanently removed from the Property due to a violation of this paragraph.

Section 6. No Signs. No signs of any kind shall be displayed to the view of the public or of other Villa Owners, except by the Developer during construction and sale of the Villas, and except by a Villa Owner selling its own Villa in which case the Villa Owner's sign shall not be larger than nine (9) square feet.

Section 7. No Fences or Walls. No fences, walls or other enclosures shall be built upon any Villa without the written consent of the Approving Party. Fences and walls shall not be permitted in the front of any Villa. All fences and walls must be maintained in good condition at all times. Unless otherwise approved in writing by the Approving Party, all fences along any side yards or back yards shall be wood shadowbox, except all fences along any lake casement shall be picket-type fences.

Section 8. Garages. Each Villa may have an attached garage. Although garages may be permanently enclosed, such enclosure shall be done in a manner which permits at least one (1) garage door to open into an area that can be used for storage purposes. All garage doors shall remain closed when not in use.

Section 9. Leases. All leases of a Villa must be in writing and specifically be subject to this Declaration, the Articles and the Bylaws, and copies delivered to the Approving Party prior to occupancy by the tenant(s).

Section 10. Outside Storage of Personal Property. The personal property of any resident of the Property shall be kept inside the resident's Villa or a walled-in yard, except for patio furniture and accessories, and other personal property commonly kept outside, which must be kept in the rear of the Villa and must be neat appearing and in good condition.

Section 11. Garbage and Trash. Each Villa Owner shall regularly pick up all garbage, trash, refuse or rubbish on the Owner's Villa, and no Villa Owner or resident shall place or dump any garbage, trash, refuse, rubbish, or other materials on any other portions of the Property, including any Common Area, or any property contiguous to the Property. Garbage, trash, refuse, or rubbish that is required to be placed at the side of the Villa in order to be collected may be placed and kept at the side of the Villa after 5:00 p.m. On the day before the scheduled day of collection, and any trash facilities must be removed on the collection day. All containers, dumpsters or garbage facilities shall be stored behind the Villa or fenced-in area and screened from view and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted.

Section 12. Landscaping. The initial landscaping of any Villa, and any material modifications, additions, or substitutions thereof, must be approved by the Approving Party. The Villa Owner of each Villa shall be required to maintain the landscaping on his Villa, and on any contiguous property between his Villa and the pavement edge of any abutting road or the waterline of any abutting lake or canal, all in accordance with the landscaping plans approved by

the Approving Party and in accordance with the provisions of this Declaration and the requirements of any controlling governmental authority. All such landscaping shall be maintained by the Villa Owner in first class condition and appearance and, as reasonably required, mowing, watering, trimming, fertilizing, and weed, insect and disease control shall be performed by the Villa Owner. In the event the landscaping on any Villa does not contain an underground sprinkler system, and the landscaping on the Villa frequently dries out or becomes unsightly due to a lack of irrigation after the applicable owner has been notified of same, the Association may require the applicable Villa Owner to install an underground sprinkler system, on the Villa or may install such system at the expense of the Villa Owner. All landscaped areas shall be primarily grass, and shall not be paved, or covered with gravel or any artificial surface without the prior written consent of the Approving Party. All dead or diseased sod, plants, shrubs, trees, or flowers shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be promptly removed. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior of any Villa.

Section 13. Maintenance. Each Villa Owner shall maintain his Villa and all improvements and personal property upon his Villa in first class condition at all times, except any portions thereof to be maintained by the Association as provided in this Declaration. The exterior of all Villas, including but not limited to walls, doors, windows, patio areas, pools, spas, landscaping, screening, and awnings shall be maintained in first class condition and repair and in a neat and attractive manner. All sidewalks, driveways and parking areas within the Villa or serving the Villa shall be cleaned and kept free of debris; and cracks, damages and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary.

Section 14. Air Conditioner Units. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted.

Section 15. Clotheslines Outside Clothes Drying. No clotheslines or clothes-poles shall be erected, and no outside clothes-drying is permitted, except where such activity is advised or mandated by governmental authorities for energy conservation purposes, in which event the Approving Party shall have the right to approve the portions of any Villa used for outdoor clothes-drying purposes and the types of devices to be employed in this regard, which approval must be in writing.

Section 16. Nuisances. No nuisances shall be permitted within the Property, and no use or practice which is an unreasonable source of annoyance to the residents within the Property or which shall interfere with the peaceful possession and proper use of the Property by its residents shall be permitted. No unreasonably offensive or unlawful action shall be permitted, and all laws, zoning ordinances and regulations of all controlling governmental authorities shall be complied with at all times by the Villa Owners.

Section 17. Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one (1) week after a Villa Owner or tenant first moves into a Villa or when permanent window treatments are being cleaned or repaired.

Section 18. Surface Water Management. No Villa Owner or any other persons shall do anything to adversely affect the surface water management and drainage of the Property without the prior written approval of the Approving Party and any controlling governmental authority, including but not limited to the excavation or filling in of any Villa, provided the foregoing shall not be deemed to prohibit or restrict the initial construction of improvements upon the Property by Declarant or by the developer of any portion of the Property in accordance with permits issued by controlling governmental authorities. In particular, no Villa Owner other than Declarant shall install any landscaping or place any fill on their Villa which would adversely affect the drainage of any contiguous Villa. Further, no owner may build or plant upon any lake maintenance easement, including, but not limited to the construction of fences.

Section 19. Swimming Pools. No in-ground or above-ground swimming pools, spas, or

the like, shall be installed without the consent of the Approving Party, which consent shall be conditioned upon providing of evidence by the Villa Owner that said pool and/or spa has been approved by all governmental authorities having jurisdiction over same. All swimming pools and spas shall be constructed so that same do not adversely affect the drainage of any Villa.

Section 20. Mailboxes. No mailboxes are permitted without the consent of the Approving Party, except for mailboxes which are identical to mailboxes originally provided for the Villas by Declarant.

Section 21. Damage and Destruction. In the event any improvement is damaged or destroyed by casualty or for any other reason, the Villa Owner shall repair and restore the damaged improvement as soon as is reasonably practical to the same condition that the improvement was in prior to such damage or destruction, unless otherwise approved by the Approving Party.

Section 22. Architectural Control for Exterior Changes.

22.1 Purpose. The Approving Party shall have the right to exercise architectural control over all improvements, to assist in making the entire Property a community of high standards and aesthetic beauty. Such architectural control may include all architectural aspects of any improvement including but not limited to size, height, site planning, set-back exterior design, materials, colors, open space, landscaping, waterscaping, and aesthetic criteria. In addition to the approval of the approving party, the Association may have the right to approve such improvements for which it maintains jurisdiction pursuant to the Declaration.

22.2 Villa Owner to Obtain Approval. No Villa Owner shall make any improvement and no Villa Owner shall apply for any governmental approval or building or other permit for any improvement, unless the Villa Owner first obtains the written approval of the improvement from the Approving Party and the Association, when required.

22.3 Request for Approval. Any request for approval by the Approving Party of any improvement shall be in writing and shall be accompanied by plans and specifications or other details as the Approving Party may deem reasonably necessary in connection with its determination as to whether or not it will approve same. The plans and specifications submitted for approval shall show the nature, kind, shape, height, materials, color, and location of all proposed improvements. If the Approving Party deems the plans and specifications deficient, the Approving Party may require such further detail in the plans and specifications as the Approving Party deems necessary in connection with its approval of same, including, without limitation, floor plans, site plans, drainage plans, elevation drawing, and descriptions or samples of exterior materials and colors, and until receipt of the foregoing, the Approving Party may postpone review of any plans submitted for approval. The Approving Party shall have the right to charge a reasonable fee to any Person requesting architectural approval, including where applicable the fee of any architect or engineer hired by the approving Party to review any plans or specifications, provided that the Approving Party shall not be required to use the services of any architect or engineer in connection with its exercise of architectural approval. The approving Party shall not be obligated to review or approve any plans and specifications until such fee is paid. Approval of any request shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable improvement of any Property, but may be withheld due to aesthetic considerations.

22.4 Approval. The Approving Party shall notify the Villa Owner of its approval or disapproval, or that the Approving Party requires additions to the plans and specifications or other materials, by written notice within 30 days after request for such approval is made in writing to the Approving Party, and all documents, plans and specifications, and other materials required by the Approving Party in connection with such approval have been submitted. In the event the Approving Party fails to disapprove any request within such 30 day period, the request shall be deemed approved and upon request the Approving Party shall give written notice of such approval, provided the party requesting such approval pays any fee charged by the Approving Party in connection with the approval. In consenting to any proposed improvement, the

Approving Party may condition such consent upon changes being made and any such approval shall be deemed a disapproval unless and until the party requesting the approval agrees to the changes. If the Approving Party approves, or is deemed to have approved, any improvement, the Villa Owner requesting approval may proceed to make the improvement in strict conformance with the plans and specifications approved or deemed to have been approved, subject to any conditions of the Approving Party's approval, and shall not make any material changes without the approval of the Approving Party. If the Approving Party approves any improvement, same shall not require the Approving Party, or any subsequent Approving Party to approve any similar improvement in the future, and the Approving Party shall have the right in the future to withhold approval of similar improvements requested by any other Villa Owner.

22.5 Architectural Guidelines and Criteria. The Approving Party may adopt and modify from time to time, in its discretion, minimum guidelines, criteria and/or standards which will be used by it in connection with its exercise of architectural control, provided however, that same shall not apply to any previously existing or approved improvement. The foregoing may include, but are not limited to, minimum square footage, maximum height, minimum setback, and minimum landscaping requirements.

22.6 Inspections. Upon the completion of any improvement, the applicable Villa Owner shall give written notice of the completion to the Approving Party. Within 90 days thereafter, the Approving Party shall inspect the improvement and notify the Villa Owner in writing that the improvement is accepted, or that the improvement is deficient because it was not completed in conformance with the approved plans and specifications or in a manner otherwise acceptable to the Approving Party, specifying the particulars of such deficiencies. Within 30 days thereafter, the Villa Owner shall correct the deficiencies set forth in the notice, and upon completion of the work the Approving Party shall again be given a notice of the completion, and the provisions of this paragraph shall again become operative. If the Approving Party fails to notify the Villa Owner of any deficiencies within 90 days after receipt of a notice of completion the improvement shall be deemed to have been accepted by the Approving Party.

22.7 Remedy for Violations. In the event this section is violated in that any improvement is made without first obtaining the approval of the Approving Party, or is not made in strict conformance with any approval given or deemed given by the Approving Party, the Approving Party shall specifically have the right to injunctive relief to require the applicable Villa Owner to stop, remove and/or alter any improvement in a manner which complies with the requirements of the Approving Party, or the Approving Party may pursue any other remedy available to it. If Declarant is the Approving party, then in connection with the enforcement of this section, Declarant shall have all of the right of enforcement granted to the Association pursuant to this Declaration, including but not limited to the right to impose fines, and to assess and lien for costs and expenses incurred in enforcing this section, except that any fines shall be paid to the association. In connection with the enforcement of this section, the Approving Party shall have the right to enter onto any Property and make any inspection necessary to determine that the provisions of this paragraph have been complied with. The failure of the approving Party to object to any improvement prior to the completion of the improvement shall not constitute a waiver of the Approving Party's right to enforce the provisions of this section. Any action to enforce this section must be commenced within one (1) year after notice of the violation by the Approving Party, or within three (3) years after the date of the violation, whichever occurs first. The foregoing shall be in addition to any other remedy set forth herein for violations of this Declaration. Notwithstanding anything contained within this Declaration to the contrary, the Approving Party shall have the exclusive authority to enforce the provisions of this paragraph.

22.8 No Liability. Notwithstanding anything contained herein to the contrary, the Approving Party shall merely have the right, but not the duty, to exercise architectural control, and shall not be liable to any Villa Owner due to the exercise or non-exercise of such control, or the approval or disapproval of any improvement. Furthermore, the approval of any plans or specifications or any improvement shall not be deemed to be a determination or warranty that such plans or specifications or improvement are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the Approving Party, or are in fact architecturally

or aesthetically appropriate, or comply with any applicable governmental requirements, and the Approving Party shall not be liable for any defect or deficiency in such plans or specifications or improvement, or any injury resulting therefrom.

22.9 Compliance with Governmental Requirements. In addition to the foregoing requirements, any improvement made by any Villa Owner must be in compliance with the requirements of all controlling governmental authorities, and the Villa Owner shall be required to obtain an appropriate building permits from the applicable governmental authority when required by controlling governmental requirements. Any consent or approval by the Approving Party to any improvement may be made conditioned upon the Villa Owner obtaining a building permit for same, or providing the Approving Party written evidence from the controlling governmental authority that such permit will not be required, and in that event the Villa Owner shall not proceed with any improvement until such building permit or evidence that a building permit is not required is obtained and submitted to the Approving Party.

22.10 Certificate. Within 10 days after the request of any Villa Owner, the Approving Party shall issue without charge a written certification in recordable form as to whether or not the improvements located upon the owner's Villa comply with the provisions of this Declaration.

Section 23. Rules and Regulations. The Approving Party may adopt additional reasonable rules and regulations relating to the use and maintenance of the Property. Copies of such rules and regulations and amendments shall be furnished by the Approving Party to any Villa Owner upon request.

Section 24. No Resubdividing. No Villa or portion of a Villa may be resubdivided or replatted in any manner without the written consent of the Developer.

ARTICLE VII PARTY WALLS

Section 1. General. Each wall built as a part of the construction of a Villa and placed on the property boundary line between such Villas (or intended to have been placed thereon is shown by the plans and specifications therefore) shall constitute a party wall, and each Villa Owner shall own to the centerline of the wall, with across-easement of support as to the other portion of said wall. In the event that such party wall or portion thereof falls outside of the property boundary line between two Villas, there shall exist a perpetual easement for such wall for the benefit of the Villa Owner of the adjoining Villa, which easement shall run with the land.

Section 2. Sharing of Repair, Maintenance and Replacement. The costs and expenses of maintenance, repair, and replacement of a party wall (except surface decorations including but not limited to paint and wall coverings), shall be shared equally by the Villa Owner of the villa sharing such party wall, except as otherwise provided herein.

Section 3. Destruction or Damage by Fire Other Casualty, Negligence or Willful Misconduct. In the event of damage to or destruction of a party wall from any cause whatsoever, other than the negligence or willful misconduct of either of the Villa Owners of the Villa sharing such party wall (or of a person for whom either Villa Owner is responsible), the Villa Owners of the Villas sharing such party wall shall, at their joint expense, repair or rebuild said party wall substantially in accordance with the original plans and specifications for said wall and each such Villa Owner, its successors and assigns, shall have the right to full use as therein provided of said party wall so repaired and rebuilt. In the event of damage to or destruction of a party wall as a result of the negligence or willful misconduct of either of the Villa Owners of the Villas sharing such party wall (or of a person for whom either Villa Owner is responsible), such Villa Owner shall bear the entire cost of repair or reconstruction.

Section 4. Lien Rights. If a Villa Owner shall refuse to pay his or her share of his or her obligations hereunder, the adjoining Villa Owner may have such party wall maintained, repaired or reconstructed substantially in accordance with the original plans and specifications for the party

wall and shall be entitled to a lien against the Villa of the Villa Owner in default hereunder, with such lien being in the amount of such defaulting Villa Owner's share of the maintenance, repair or replacement costs and the costs of collecting same, including reasonable attorney's fees and court costs.

Section 5. Easement for Repairs. In the event maintenance, repair or reconstruction of a party wall shall be necessary, each Villa Owner hereby grants an easement over and upon his Villa to the extent necessary to carry out such maintenance, repair and reconstruction, and all entries on or upon such Villa in connection with such maintenance, repair or reconstruction, shall not be deemed a trespass.

Section 6. Weatherproofing. Notwithstanding any other provision of this Article, a Villa Owner who by its negligent or willful act causes the party wall to be exposed to the elements shall bare the whole cost of furnishing the necessary protection against such element.

Section 7. Use of Party Wall. Subject to the terms herein, each Villa Owner shall have the full sue of the party wall, subject to the limitation that such use shall not infringe on the rights of the adjoining Villa Owner or his or her enjoyment of the party wall or in any manner impair the value of said party walls. Every Villa Owner making use of a party wall, shall do so in such a manner as to preserve all rights of the adjoining Villa Owner in such party wall including all rights and easements for support, and shall save such adjoining Villa Owner harmless from all damage caused thereby, a Villa Unit Owner shall not cut openings in the party wall nor make any improvements, alterations, additions, or structural changes in the party wall without the written consent of the adjoining Villa Owner. Each party wall shall remain a party wall for the perpetual use, benefit and enjoyment of the adjoining Villa Owners, their heirs, successor and assigns.

Section 8. Right to Contribution Runs with Land. The right of any Villa Owner to contribution from the other Villa Owner under this Article shall be appurtenant to the land and shall pass to such Villa Owner's successors and assigns.

ARTICLE VIII DURATION

This Declaration shall run with the title of the Property and with every Parcel and Villa thereof, and shall inure to the benefit of and be enforceable by any of the following persons and entities for a term of fifty (50) years from the date of this declaration, after which time said restrictions shall automatically continue for successive periods of ten (10) years each until an instrument signed by the then Owners of two-thirds (2/3) of the Villas agreeing to terminate this Declaration has been recorded or until an instrument signed by the Association terminating the Declaration has been recorded.

ARTICLE IX AMENDMENTS

Section 1. This Declaration may be amended upon the approval of not less than 2/3rds of the Villa Owners, except that if any provision of this Declaration requires more than 2/3rds vote of the Villa Owners to approve any actions, such provisions may not be amended to require a lesser vote, and may not be deleted, without the same number of votes required to approve such action. In order to be effective, any amendment to this Declaration must first be recorded in the public records of the county in which the Property is located, and in the case of an amendment made by the Villa Owners, such amendment shall contain a certification by the President and Secretary of the Association that the amendment was duly adopted.

Section 2. No amendment shall discriminate against any Villa Owner or class or group of Villa Owners, unless the Villa Owners so affected join in the execution of the amendment. No amendment shall change the number of votes of any Villa Owner or increase any Villa Owners' proportionate share of the Common Expenses, unless the Villa Owners affected by such amendment join in the execution of the amendment.

Section 3. Notwithstanding anything contained herein to the contrary, any amendment to this Declaration which would adversely affect the surface water management system, including the water management portions of the Common Areas, must have the prior approval of the South Florida Water Management District and the South Broward Drainage District.

Section 4. Notwithstanding anything contained herein to the contrary, amendments to this Declaration or the Articles or the Bylaws, just be approved by not less than 2/3rds of the votes of the Villa Owners and by Institutional Lenders who hold mortgages encumbering at least half of the Villas that are subject to mortgages held by Institutional Lenders, if the amendments materially change any of the provisions of this Declaration, or the Articles or Bylaws, relating to the following: (i) voting rights, (ii) assessments, assessment liens, or the priority of assessment liens, (iii) reserves for maintenance, repair and replacement of Common Areas, (iv) responsibility for maintenance and repairs, (v) reallocation of interest in the Common Areas or rights to their use (vi) expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from this Declaration (vii) insurance or fidelity bonds, (viii) leasing of Villas, (ix) imposition of any restrictions on an owner's right to sell or transfer his Villas, (x) any provisions that expressly benefit mortgage holders, insurers or guarantors.

ARTICLE X SPECIAL PROVISIONS REGARDING INSTITUTIONAL LENDERS

Section 1. **Notice of Action.** Upon written request to the Association by an Institutional Lender holding, insuring or guaranteeing a first mortgage encumbering any Villa, identifying the name and address of the holder, insurer or guarantor and the Villa number or address, any such holder, insurer or guarantor will be entitled to timely written notice of:

1.1 Any condemnation or casualty loss which affects a material portion of the Property or the Villa;

1.2 Any 60-day default in the payment of Assessments or charges owed to the Association or in the performance of any obligation hereunder by the Villa Owner;

1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

1.4 Any proposed action which would require the consent of a specified percentage of Institutional Lenders.

Section 2. **Consent of Institutional Lenders.** Whenever the consent or approval of any, all or a specified percentage or portion of the holder (s) of any mortgage (s) encumbering any Villas is required by this Declaration, the Articles, the Bylaws, or any applicable statute or law, to any amendment of the Declaration, the Articles, or the Bylaws, or to any action of the Association, or to any other matter relating to the Property, the Association may request such consent or approval of such holder(s) by written request sent certified mail, return receipt requested or equivalent delivery evidencing such request was delivered to and received by such holder(s). Any holder receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested, in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association), which response must be received by the Association within 30 days after the holder receives such request, and if such response is not timely received by the Association, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by all of the directors of the Association, which affidavit, where necessary may be recorded in the public records of the county where the Property is located, and which affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained. The foregoing shall not apply where an Institutional Lender is otherwise required to specifically join in an amendment to this Declaration.

Section 3. **Payment of Taxes and Insurance.** Any Institutional Lender may pay any taxes or assessments owed to any governmental authority by the Association which are in default, or any overdue insurance premiums required to be purchased by the Association pursuant to this Declaration, or may secure new insurance upon the lapse of a policy, and shall be owed immediate reimbursement therefor from the Association plus interest at the highest rate permitted by law and any costs of collection, including attorneys' fees.

ARTICLE XI MISCELLANEOUS

Section 1. **Conflict with Articles or Bylaws.** In the event of any conflict between the Articles and the Bylaws and this Declaration, this Declaration, the Articles, and the Bylaws, in that order, shall control.

Section 2. **Authority of Association and Delegation.** Nothing contained in this Declaration shall be deemed to prohibit the Board from delegating to any one of its members, or to any officer, or to any committee or any other person, any power or right granted to the Board by this Declaration including, but not limited to, the right to exercise architectural control and to approve any deviation from any use restriction, and the board's expressly authorized to so delegate any power or right granted by this Declaration.

Section 3. **Severability.** Invalidation of any provision, in whole or in part, of this Declaration and the covenants, conditions, reservations and restrictions, or any section, subsection, sentence, clause, phrase, word or other provision of this Declaration shall in no way affect the other provisions, which shall remain in full force and effect.

Section 4. **Validity.** In the event any court shall hereafter determine that any provisions as originally drafted herein, violate the rule against perpetuities, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law.

Section 5. **Inapplicability of Condominium Act.** It is acknowledged that the Association is not intended to be a condominium association, and is not intended to and shall not be governed by the provisions of Florida Statutes, Chapter 718, instead the Association shall be bound by the Florida Homeowner Association Statute.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be signed and sealed on the day and year first above written.

Signed, Sealed and Delivered in
the Presence of:

Patricia A. Thomas
Meguel A. Jimenez

VIZCAYA VILLAS HOMEOWNERS
ASSOCIATION

James Clarke
By: James Clarke, President

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this day before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared, JAMES CLARKE, President of Vizcaya Villa Homeowners Association, who after being sworn and cautioned, upon oath given by me, executed the foregoing instrument and acknowledged before me that he executed the same for the purposes stated therein.

WITNESS my hand and official seal in the State and County last aforesaid this 21st day of January, 2004

Debra A. Emerson
NOTARY PUBLIC
My Commission Expires:
Personally known ☒ or Produced Identification _____
Type of Identification Produced: _____



Debra A. Emerson
My Commission DD247278
Expires September 04, 2007

LEGAL DESCRIPTION

Lot 5, COLONIAL PROPERTIES, PHASE 1, as recorded in Plat Book 51, Pages 68-70, of the Public Records of Lee County, Florida, also known as Tracts 101 through 129, VIZCAYA VILLAS.

EXHIBIT "A"

OR 2407 204230

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