
**DECLARATION OF COVENANTS, RESTRICTIONS AND
RECIPROCAL EASEMENTS**

This instrument prepared by,
and after recording return to:

RENNERT VOGEL MANDLER & RODRIGUEZ, P.A.
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Miami, Florida 33131-2130

**DECLARATION OF COVENANTS, RESTRICTIONS
AND RECIPROCAL EASEMENTS**

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DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENTS

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENTS (this "Declaration") is made and entered into as of this ___ day of _____, 201__ by **SOBEL VANDERBILT, LLC, a Florida limited liability company**, whose address is 2385 NW Executive Center Drive, Suite 370, Boca Raton, FL 33431, hereinafter referred to herein as "Declarant."

WHEREAS, Declarant is the owner of that certain parcel of real property described on **Exhibit "A"** to this Declaration located in Collier County, Florida, which Declarant intends to develop into an integrated residential community to be known as "**VANDERBILT RESERVE**"; and

WHEREAS, Declarant intends to develop the Properties to include Dwellings and other improvements; and

WHEREAS, Declarant is desirous of (i) providing for the operation, maintenance, repair and replacement of the Common Areas, as well as other portions of the Properties, (ii) establishing certain easements in, to, over, under, across and through portions of the Properties for the benefit of the Dwellings, the Owners and the Community Beneficiaries, and (iii) imposing certain restrictions in connection with the development, ownership and use of the Dwellings, the Common Areas, and other portions of the Properties, all as more particularly provided for herein.

NOW, THEREFORE, for valuable consideration, the Declarant does hereby declare that the Properties are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, assessments, charges and liens hereinafter set forth.

Article 1 DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Declaration, the following terms when used in this Declaration (including the exhibits hereto) shall have the respective meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

1.1.1 "Access Areas" means the roadways, ramps, sidewalks, walks, walkways, and other areas suitable for pedestrian or vehicular traffic existing from time to time on or over portions of the Common Areas.

1.1.2 "Access Control Facilities" means the facilities, systems, equipment and devices, if any, that may exist, from time to time, located within or in connection with the Access Areas which are intended to control access to the Properties.

1.1.3 "Act" means Chapter 720 of the Florida Statutes as enacted as of the date hereof, and as renumbered from time to time.

1.1.4 "Applicable Law" means all laws, rules, regulations, codes and ordinances of the United States, the State of Florida, and the County, applicable to the ownership, operation and use of the Properties, as renumbered from time to time.

1.1.5 "Articles" means the Articles of Incorporation of the Homeowners' Association, as amended from time to time. A copy of the initial Articles of Incorporation of the Homeowners' Association is attached as **Exhibit "B"** to this Declaration.

1.1.6 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time are assessed by the Association against some or all of the Dwellings for the purposes set forth herein, including any Special Assessments and Individual Assessments.

1.1.7 "Association" or "Homeowners' Association" means the "Vanderbilt Reserve Homeowners Association, Inc., a Florida not-for-profit corporation," or any successor thereto.

1.1.8 "Association Property" or "Homeowners' Association Property" means personal property and real property, if any, which may be acquired by the Association and which is not included in the Common Areas, including, without limitation, any portion of the Properties used for management offices, manager's quarters or the storage of maintenance equipment or supplies, if any.

1.1.9 "Board" or "Board of Directors" means the Board of Directors of the Homeowners' Association.

1.1.10 "Building" means each of the buildings located within the Properties which contain or will contain Dwellings or any portions of the Common Areas.

1.1.11 "By-Laws" means the By-Laws of the Homeowners' Association, as amended from time to time. A copy of the initial By-Laws of the Homeowners' Association is attached as **Exhibit "C"** to this Declaration.

1.1.12 "Common Areas" means all portions of the Properties designated as Common Areas of the Properties pursuant to Section 3.1 of this Declaration.

1.1.13 "Common Expenses" means those expenses, costs and disbursements described in Section 7.1 of this Declaration.

1.1.14 "Community" or "Properties" means the Land, together with all improvements now or hereafter thereon, and any and all additions or supplements thereto, now or hereafter made subject to this Declaration, except such as are withdrawn from the provisions hereof in accordance with the procedures set forth in this Declaration.

1.1.15 "Community Beneficiaries" means the Owners, the Members, the Declarant, the Declarant's Permittees, the Homeowners' Association, tenants, licensees, guests, invitees, members, agents, employees, contractors and Institutional Mortgagees, and, in the case of Owners which are corporations, partnerships, or trusts, the officers and directors, partners and beneficiaries (as the case may be) thereof, a fiduciary or beneficiary of an Owner which is a trust, or occupants named or described in a lease or sublease, but only if approved in accordance with this Declaration. In the case of Owners which are corporations, partnerships, or trusts, the Homeowners' Association shall have the right to set reasonable limits on the total number of persons who may occupy a Dwelling and/or use the Common Areas of the Properties to the maximum extent permitted under Applicable Law.

1.1.16 "County" means Collier County, Florida.

1.1.17 "County Regulation" means the Land Development Code, Collier County, Florida, as amended from time to time.

1.1.18 "Declarant" means to **SOBEL VANDERBILT, LLC**, a Florida limited liability company, and its respective successors and such assigns as to which the rights of Declarant hereunder are specifically assigned. Declarant may assign all or any portion of its rights and obligations hereunder, or all or any portion of such rights in connection with portions of the Properties in the manner provided in Section 14.8 of this Declaration.

1.1.19 "Declarant's Permittees" means the Declarant's officers, directors, shareholders, members, managers, partners, lenders, employees, agents, contractors, subcontractors, suppliers, lessees, licensees, guests and invitees (and the officers, directors, shareholders, members, managers and employees thereof).

1.1.20 "Declaration" and "this Declaration" means this instrument, as it may be amended from time to time, together with any Supplemental Declaration.

1.1.21 "Driveways" means the driveway areas adjacent to the Dwellings, which shall be Limited Common Areas of such Dwellings, as designated on the site plan for the Properties or otherwise pursuant to this Declaration.

1.1.22 "Dwelling" means a single-family or townhome residence within the Properties for which a temporary or final certificate of completion or occupancy, or its equivalent, has been issued by the County.

1.1.23 "Family" or words of similar import shall be deemed to include a spouse, child, parent, brother, sister, grandchild and other persons permanently cohabiting a Dwelling as, or together with, the Owner or permitted occupant thereof.

1.1.24 "FNMA/FHLMC/FHA/GNMA" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Government National Mortgage Association, respectively.

1.1.25 "General Assessment" means the share of funds for the payment of Common Expenses, which from time to time are assessed to a Dwelling pursuant to Section 7.8 of this Declaration.

1.1.26 "Individual Assessment" means an assessment levied by the Board or the Association against a Dwelling or Dwellings for the purposes described in Section 7.11 of this Declaration.

1.1.27 "Institutional Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, FNMA, FHLMC or any other lender generally recognized as an institutional lender, or any other person regularly engaged in the business of making mortgage and/or mezzanine loans, or the Declarant, and their respective successors and assigns, holding a first mortgage on a Dwelling or all or any portion of the Properties.

1.1.28 "Land" means the lands described in attached **Exhibit "A"** and all additions or supplements thereto, now or hereafter made subject to this Declaration, except such as are withdrawn from the provisions hereof in accordance with the procedures set forth in this Declaration.

1.1.29 "Life Safety Systems" means and refers to any and all emergency lighting, audio and visual signals, safety systems, sprinklers and smoke detection systems, which are now or hereafter installed in any improvements constructed upon the Properties, whether or not within a Dwelling. All such Life Safety Systems, if any, together with all conduits, wiring, electrical connections and systems related thereto, which are located outside of the Dwellings, shall be deemed part of the Common Areas.

1.1.30 "Limited Common Areas" means such portions of the Common Areas which are intended, or are now or hereinafter designated by the Homeowners' Association, for the exclusive use (subject to the easements and rights, if any, of the County, the Homeowners' Association, and the public) of certain Owners, to the exclusion of other Owners. Unless otherwise provided specifically to the contrary, reference to the Common Areas shall include the Limited Common Areas.

1.1.31 "Limited Common Expenses" means and refers to the costs and expenses of administering and/or maintaining any Limited Common Areas.

1.1.32 "Member" or "Members" means those persons who are members of the Homeowners' Association, as provided in this Declaration, the Articles and the By-Laws.

1.1.33 "Owner" or "Owners" means the person or persons, or legal entity or entities, including the Declarant, holding fee simple interests of record to a Dwelling, including sellers under executory contracts of sale, but excluding those having such interests merely as security for the performance of an obligation.

1.1.34 "Percentage Shares" means the share of Common Expenses allocated to the Dwellings, as set forth in Section 7.3 of this Declaration.

1.1.35 "Public Records" means the public records of the County.

1.1.36 "Rules and Regulations" means such rules and regulations, if any, as established, and as amended from time to time, by the Homeowners' Association pursuant to Article 5 of this Declaration.

1.1.37 "Special Assessment" means an Assessment levied by the Board against a Dwelling for the purposes described in Section 7.9 of this Declaration.

1.1.38 "Supplemental Declaration" means an instrument executed by the Declarant and recorded in the Public Records for the purpose of adding to the Properties, or withdrawing any portion(s) thereof, from the effect of this Declaration, or designating a portion of the Properties as Common Areas, Limited Common Areas or Homeowners' Association Property hereunder, or for any other purposes provided in this Declaration.

1.1.39 "Voting Member" or "Voting Members" means those Members who have voting rights, as provided in this Declaration, the Articles or By-Laws.

The foregoing definitions shall be applicable to this Declaration and to any amendments to this Declaration or Supplemental Declaration, unless otherwise expressly provided herein or therein to the contrary.

Article 2
THE HOMEOWNERS' ASSOCIATION

2.1 Formation. Prior to the recording of this Declaration, Declarant has caused the Homeowners' Association to be formed, by the filing of the Articles in the office of the Secretary of State of Florida. The purpose and powers of the Homeowners' Association shall be all of the purposes and powers set forth in this Declaration and in the Articles and By-Laws. The Homeowners' Association shall be responsible for the execution, performance, administration and enforcement of all the terms and conditions of this Declaration.

2.2 Not a Condominium Association. The Homeowners' Association is not intended to be a condominium association regulated under Chapter 718, Florida Statutes. Anything in this Declaration to the contrary notwithstanding, the existence or exercise of any easement, right, power, authority, privilege or duty, which would cause the Homeowners' Association to be subject to Chapter 718, Florida Statutes, or any related administrative rules or regulations, shall be automatically null, void and of no effect to the extent, but only to the extent, that such existence or exercise is finally determined by a court or administrative hearing officer of competent jurisdiction (after all appellate rights have been exercised or waived) to subject the Homeowners' Association to said provisions. It is the intent of this provision that the Homeowners' Association shall not be deemed to be a condominium association, that the Common Areas shall not be deemed to be common elements of a condominium, and that nothing in this Declaration shall be deemed to make the Homeowners' Association a condominium association within the meaning of said Chapter 718, Florida Statutes.

2.3 Membership. The Declarant and the Owners of the Dwellings shall automatically be Members of the Homeowners' Association. The membership of an Owner is appurtenant to its Dwelling and will be transferred automatically by conveyance of title to its Dwelling and by filing of record therefor a deed in the Public Records evidencing such transfer of ownership. An Owner of more than one Dwelling is entitled to one membership for each Dwelling owned (subject to Section 2.6 below). No one other than the Declarant and the Owners may be a Member of the Homeowners' Association, and membership in the Homeowners' Association may not be transferred except by the transfer of title to a Dwelling; provided, however, that the foregoing does not prohibit the assignment of membership and voting rights by any Owner who is a contract seller to such Owner's vendee in possession or by an Owner to an Institutional Mortgagee. In the absence of such an assignment from the Owner thereof, no person or entity holding an interest of any type or nature whatsoever in a Dwelling only as the security for performance of an obligation shall be a Member of the Homeowners' Association.

2.4 Voting. The Homeowners' Association shall have such classes of Members, who shall cast such votes, as are provided in Section 3.02 of the Articles of the Homeowners' Association. Upon termination of the Class B Membership, the Board of Directors of the Homeowners' Association shall be appointed by the Declarant as provided in Section 5.03 of the Articles of the Homeowners' Association.

2.5 Litigation. Notwithstanding anything in this Declaration to the contrary, no judicial or administrative proceeding shall be commenced or prosecuted by the Homeowners' Association unless approved by a vote of seventy-five percent (75%) of the total voting interests of the Voting Members other than the Declarant. This section shall not apply, however, to (i) actions brought by the Homeowners' Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) proceedings involving challenges to ad valorem taxation, or (iii) counterclaims brought by the Homeowners' Association in proceedings instituted against

it. This section shall not be amended unless such amendment is made or approved by the Declarant.

2.6 Co-Ownership. Notwithstanding anything herein to the contrary, if more than one person owns an interest in a Dwelling, there shall only be one Voting Member for any such Dwelling, and said Voting Member shall be entitled to cast the vote(s) respectively allocated such Dwelling herein. Such vote may be exercised as the co-Owners determine among themselves, but no split vote is permitted among co-Owners. Prior to any meeting at which a vote is to be taken, such co-Owners must file with the Secretary of the Homeowners' Association the name of the Voting Member to be entitled to vote at such meeting, which shall be applicable to all votes until rescinded.

2.7 Class B Termination. The Class B membership will terminate and convert automatically to a Class A membership (to the extent the Declarant then owns any Dwelling), upon the happening of any of the following, whichever occurs first:

2.7.1 The Declarant records a disclaimer of its Class B membership in the Public Records; or

2.7.2 The occurrence of any of the events set forth in Section 730.307(1)(a), (c), (d), (e) and (f) of the Act.

Upon termination of the Class B membership, all provisions of this Declaration, the Articles, or By-Laws referring to Class B membership will be of no further force or effect.

2.8 Administration of the Homeowners' Association. The affairs of the Homeowners' Association shall be administered by the Board of Directors in accordance with this Declaration and the Articles, the By-Laws and the Rules and Regulations. The Articles, By-Laws and Rules and Regulations may be amended, from time to time, in the manner set forth therein.

2.9 Scope of Power. The Homeowners' Association, acting through the Board, shall also have the power and duty to:

2.9.1 Maintain, repair, replace the landscape and otherwise manage the Common Areas, including but not limited to all improvements thereon, as the Homeowners' Association considers necessary or appropriate in accordance with the provisions of this Declaration; provided, however, that in the case of Limited Common Areas, such work may, at the option of the Association, be done at the expense of (and all other expenses of such Limited Common Areas may be specifically charged to) only those Owners who are holders of exclusive use rights in such Limited Common Areas.

2.9.2 Maintain, repair and replace the Access Areas, including any cleaning, and periodic resealing and resurfacing.

2.9.3 Maintain (or cause to be maintained), repair and replace the portions of the Dwellings required to be maintained by the Homeowners' Association pursuant to Section 6.1.5 of this Declaration.

2.9.4 Obtain, and pay, as a Common Expense, all commonly metered water, sanitary sewage and electric services, and provide for all refuse collection and cable or master television service (if any), as necessary.

2.9.5 Grant easements, rights of way or strips of land, where necessary, for utilities, telephone, satellite or cable television, water and sewer facilities and other services over the Common Areas to serve the Common Areas and other portions of the Properties.

2.9.6 Maintain such policy or policies of liability, casualty, windstorm, and other insurance with respect to the Common Areas, and the personal property located thereon or used in connection therewith, if any, owned by the Homeowners' Association or the Declarant as provided herein, as well as directors and officers insurance, in furthering the purposes and in protecting the interests of the Homeowners' Association and its Members as otherwise directed by this Declaration or the By-Laws.

2.9.7 Employ or contract with a management company (which may be an affiliate of the Declarant) to perform all or any part of the duties and responsibilities of the Homeowners' Association, and delegate, at the option of the Board, its powers to committees, officers and employees.

2.9.8 Install and maintain, repair and replace the Access Control Facilities, if any, and any such other safety devices, detectors and communications facilities, and employ or contract for employment of such access control services, guards and watchmen for the Common Areas as the Homeowners' Association considers necessary or appropriate, though it does not guarantee and shall not be liable for damages suffered by anyone as a result of the inadequacy of any such services.

2.9.9 Perform any monitoring and maintenance required under any approval or permit issued by, or agreement with, any governmental agency, including, without limitation, in connection with the Common Areas.

2.9.10 Take such other actions which the Board shall deem advisable with respect to the Properties as may be permitted hereunder or under Applicable Law.

Article 3 COMMON AREAS AND LIMITED COMMON AREAS

3.1 Common Areas. Except as set forth in Section 3.2, the Common Areas are intended for the use and benefit of all Community Beneficiaries. The Common Areas shall include only such property which is designated as Common Areas in this Declaration or in any future recorded Supplemental Declaration or that is deeded to the Homeowners' Association. The Common Areas shall consist of those facilities and portions of the Properties which the Homeowners' Association may from time to time make available to all Owners. Declarant will endeavor to specifically identify (by recorded legal description, signage, physical boundaries, site plans or other means) the Common Areas of the Properties, but such identification shall not be required in order for a portion of the Properties to be Common Areas hereunder. In the event that the Homeowners' Association accepts an easement, dedication or similar grant over, under or through any portion of the Properties, or any property adjacent thereto or in the vicinity thereof, and/or the Homeowners' Association has assumed off-site maintenance obligations, then the area or areas subject to such easement or other grant of rights or obligations shall be deemed Common Areas for the purposes of, but only for the purposes of, the Homeowners' Association performing whatever duties or obligations are stated in, or implied by law with respect to, such easement or other grant (and for the costs thereof to be paid by the Owners through Assessments). In addition to the foregoing, the Declarant, for so long as it owns any portion of the Properties, shall be entitled to assign or otherwise designate portions of the Common Areas as Limited Common Areas of one or more of the Dwellings.

3.2 Limited Common Areas. The Declarant shall have the right to, from time to time and in its sole and absolute discretion, assign or otherwise designate portions of the Common Areas as Limited Common Areas, the use of which shall be restricted to certain Owners or other Community Beneficiaries to the exclusion of others. Other than as expressly set forth in this Declaration to the contrary, the Association shall be responsible for the maintenance, repair and replacement of all Limited Common Areas, with the costs of same being collected through the assessments against all Dwellings. The applicable Owner shall, however, be responsible for the general cleaning and upkeep of the appearance of such area(s), and for the repair and replacement for any furniture, furnishings or floor coverings placed on any such areas assigned as a Limited Common Area. The Owner(s) of any Dwelling using a Limited Common Area or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and his or her heirs, personal representatives, successors and assigns, as appropriate, to hold the Homeowners' Association, the Declarant and all other Owners harmless from and to indemnify them for any liability or damage to the Properties and expenses arising therefrom. Notwithstanding the designation of any portion of the Common Areas as Limited Common Areas, or the assignment of Limited Common Areas as permitted hereunder, same shall not allow the Owner, the Homeowners' Association or any other assignee of the Limited Common Areas to preclude passage through such areas as may be needed from time to time for emergency ingress and egress, and for the maintenance, repair, replacement, alteration and/or operation of the Common Areas which are most conveniently served (in the sole determination of the Board) by accessing such areas (and an easement is hereby reserved for such purposes) and/or as may be required by Applicable Law.

3.3 Title to the Common Areas. The Declarant may, from time to time, in its sole and absolute discretion, convey all or any portions of its right, title and interest in the Properties, including any Dwelling which is owned by the Declarant or any of Declarant's affiliates, to the Homeowners' Association (but in no event shall it be obligated to do so, other than as may be required hereunder or under Applicable Law). Such conveyance shall be by quit-claim deed, which shall become effective upon recordation in the Public Records, or by quit claim bill of sale, as appropriate. The Homeowners' Association shall pay all costs of such conveyance. The Common Areas shall, upon the later of completion of the improvements thereon or the date when the last Dwelling has been conveyed to a purchaser (or at any time sooner and from time to time sooner at the sole election of Declarant and in whole or in part), be conveyed to the Homeowners' Association, which shall be deemed to have automatically accepted such conveyance, by quit-claim deed, without any representations or warranties whatsoever.

3.4 Parking. Parking within the Properties is limited solely to the Driveways adjacent to the Dwellings and the parking spaces in the Common Areas reserved for visitors. Subject to the restrictions set forth in this Declaration, the Homeowners' Association, through its officers, directors, committees and agents, is hereby empowered to establish rules and regulations for parking and to make provision for the involuntary removal of any violating vehicle. Notwithstanding anything to the contrary set forth herein, the Homeowners' Association shall have the power and authority to relocate any parking rights to the extent necessary to comply with Applicable Law regarding handicap facilities.

EACH OWNER ACKNOWLEDGES AND AGREES THAT CERTAIN PORTIONS OF THE PARKING AREAS AND OTHER PORTIONS OF THE PROPERTIES, INCLUDING, BUT NOT LIMITED TO, GARAGES IN THE DWELLINGS, MAY BE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE RATES, BOTH FOR THE HOMEOWNERS' ASSOCIATION IN

INSURING THE PARKING AREAS AND FOR OWNERS, MAY BE HIGHER THAN IF THE PARKING AREAS WERE ABOVE THE FEDERAL FLOOD PLAIN. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, OR USING A DWELLING, EACH OWNER, FOR ITSELF AND ITS TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

3.5 Tenants of Owners. All Owners shall be deemed to have fully delegated their right of enjoyment of the Common Areas and facilities to their tenant, subject to reasonable regulation and approval by the Board (provided that same is not discriminatory against one or more types of users).

3.6 Acquisition and Sale of Property. The Homeowners' Association shall have the power and authority to acquire or divest itself of such interests in real and personal property as it may, in its sole discretion, deem beneficial to its Members as provided in Article 12 of this Declaration. Such interest, if any, may include fee simple or other absolute ownership interests, leaseholds or such other possessory use interests as the Homeowners' Association may, in its sole discretion, determine to be beneficial to its Members.

Article 4 EASEMENTS

4.1 Easement Grants. Declarant hereby establishes, creates, and grants the easements in, to, over, under, across and through those portions of the Properties, including, without limitation, the Dwellings as provided below. The easements described below are subject to the requirements of the County Regulations. The easements described below shall be perpetual and non-exclusive and shall be appurtenant to any Dwelling benefited thereby, but shall not be deemed to grant or convey any ownership interest in the Common Areas, or other property subject thereto. All rights to use the easements granted herein shall be subject to the provisions of this Declaration and the Rules and Regulations. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

4.1.1 Easements for Access Areas. Easements in favor of all Owners and other Community Beneficiaries for ingress and egress, to provide pedestrian and vehicular access to and from the adjacent dedicated public rights-of-way and all portions of the Common Areas, and including easements in favor of all Owners, and their tenants, and the employees and invitees thereof, through the Common Areas to the extent reasonably necessary for access and for other purposes.

4.1.2 Easements for Parking. Such easements as may be required for parking in any Driveway assigned to a Dwelling pursuant to Article 3 of this Declaration. The Owner of a Dwelling may park motor vehicles in its Dwelling, subject to the terms set forth in this Declaration and such Rules and Regulations as may be established by the Homeowners' Association from time to time.

4.1.3 Easements for Encroachments. If any portion of the Properties (including, without limitation, any Dwelling or other improvements constructed thereon) encroaches upon any other portion of the Properties (including, without limitation, any Dwelling, or other improvements constructed thereon); or if any encroachment shall hereafter occur as the result of construction of any Dwelling or other improvement, settling or shifting of any Dwelling or other improvement; or any alteration or repair to any portion of the Properties (or improvements thereon) or after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or

any portion of any improvement or portion of the Properties, a valid easement is granted and shall exist for such encroachment and for the maintenance of the same so long as the structure causing said encroachment shall exist. Such encroachments will likely constitute a violation of County Regulations. The County does not expressly or by implication authorize encroachments. This section does not limit the County's ability to pursue all available remedies to prevent, remove, or extinguish encroachments violating county regulations. The County will not permit or allow encroachments into any easement dedicated to, or owned by, the public.

4.1.4 Easements for Support. Whenever any structure included in the Properties (including, without limitation, any Dwelling or other improvements constructed thereon) adjoins any structure included in any other portion of the Properties (including, without limitation, any Dwelling or other improvements constructed thereon), each said structure shall have and be subject to an easement of support and necessity in favor of the other structure provided such easements for support comply with the provisions of the County Regulations.

4.1.5 Public Easements. Fire, police, health and sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Properties, but only to the extent required for the performance of their respective duties. Additionally, easements are hereby reserved in favor of all Owners (and their guests, tenants and invitees) for ingress and egress over, through and across all Common Areas and/or for emergency ingress and egress purposes.

4.1.6 Easements for Utility Facilities. Each portion of the Properties, including each Dwelling, shall have an easement in common with all other portions thereof to use, maintain, repair, alter and replace all pipes, wires, ducts, vents, cables, conduits, utility lines, telecommunication and cable equipment and wiring, and similar or related facilities located in the Dwellings and other portions of the Properties.

4.1.7 Easements for Maintenance, Operation, Repair and Rebuilding. Easements in favor of Declarant, the Owners of the Dwellings and the Homeowners' Association, over, under, through and across such portions of the Properties as may be necessary or desirable to perform their obligations to maintain, modify, repair, restore, refurbish, operate, replace or rebuild (including but not limited to painting and other decorating), those portions of the Properties which are to be administered, operated, or maintained by such party, pursuant to this Declaration.

4.1.8 Easements for Signage. Easements in favor of the Declarant and the Homeowners' Association for directional, advertising, promotional or other signage, and architectural features, and other structures overhanging or on the Buildings or other portions of the Properties, as initially constructed by Declarant or as approved by the Homeowners' Association, including the right to move, repair, replace, alter, add to or expand the same provided such easements for signage comply with the provisions of the County Regulations.

4.1.9 Construction, Sales and Leasing. The Declarant (and its agents, employees, contractors, subcontractors and suppliers) shall have an easement of ingress and egress over and across the Properties for construction purposes and to erect, maintain, repair and replace, from time to time, one or more signs on the Properties for the purposes of marketing or advertising the sale or lease of Dwellings or other portions of the Properties.

4.1.10 Additional Easements in favor of Declarant. The Declarant and its affiliates, and their respective employees and agents, shall have the right from time to time to enter upon the Common Areas and any other portions of the Properties (including, without limitation, the Dwellings) for the purpose of the installation, construction, reconstruction, repair, replacement,

operation, expansion and/or alteration of any improvements or facilities elsewhere on the Properties that Declarant and its affiliates or designees elect to effect, and to use, without charge, for sales, displays and signs or for any other purpose during the period of construction, sale and leasing of Dwellings. Without limiting the generality of the foregoing, Declarant and its affiliates shall have the specific right to maintain upon any portion of the Properties sales, administrative, construction or other offices and exclusive and non-exclusive easements of access and use are expressly reserved unto Declarant and its affiliates, and their successors, assigns, employees and contractors, for these purposes. Any obligation (which shall not be deemed to be created hereby) to complete, repair and maintain portions of the Properties shall, at all times, be subject and subordinate to these rights and easements and to the above-referenced activities. Accordingly, Declarant shall not be liable for delays in such completion to the extent resulting from the need to complete any of the above-referenced activities prior to such completion.

4.2 No Easement Grantee. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant or purported grant of easement shall nevertheless be considered as having been granted directly to the Homeowners' Association, as agent for such intended grantees, for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners designate the Homeowners' Association as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

4.3 Extent of Easements. The rights and easements of enjoyment of the Owners and other Community Beneficiaries created hereby shall be subject to the terms and provisions of this Declaration including without limitation the following:

4.3.1 The right and duty of the Homeowners' Association to levy Assessments against each Dwelling for the purposes of maintaining the Common Areas in compliance with the provisions of this Declaration.

4.3.2 The right of the Homeowners' Association to adopt and to enforce, at any time and from time to time, the Rules and Regulations governing the use of the Common Areas, including the right to fine Owners as hereinafter provided. Any rule and/or regulation so adopted by the Homeowners' Association shall apply until rescinded or modified as if originally set forth at length in this Declaration.

4.3.3 The right of the Homeowners' Association to suspend the enjoyment rights of any Community Beneficiary including, without limitation, the right to use the Common Areas, as provided in Section 11.1 of this Declaration.

4.3.4 The right of Declarant to permit such persons as it may from time to time designate to use the Common Areas.

4.3.5 The rights of the Owners as elsewhere provided in this Declaration.

4.3.6 The right of the Declarant, and its successors and assigns, and the Homeowners' Association to sell, transfer, convey or dedicate all or any part of the Properties, or to impose or grant covenants, restrictions and easements (blanket or specific) in favor of any

public agency, authority or utility for such purposes and subject to such conditions as it may determine, in its sole discretion.

4.3.7 The Declarant's reservations of all other rights of ownership in and to the Properties which are not inconsistent with the foregoing easements including, without limitation, the right to grant further easements on, over, under and/or across the Properties; the right to improve the Properties (or any portions thereof); the right to subject portion of the Properties to condominium ownership or governance by a sub-association; the right to raze, alter or modify any improvements now or hereafter constructed within the Properties (or any portions thereof) subject to Applicable Law; the right of the Declarant, during the period in which it is a Class B Member, to unilaterally designate and re-designate from time to time the portions of the Properties to be used by Community Beneficiaries, and the right of the Declarant to add or withdraw portions of the Common Areas, to create, designate and assign Limited Common Areas, to reserve or assign all or any portion of its rights under this Declaration and to reserve and transfer development rights, as provided in Article 12 of this Declaration.

Article 5 RULES AND REGULATIONS

5.1 Rules and Regulations Governing Use of the Properties. Subject to the rights reserved by the Declarant in this Declaration, the Homeowners' Association shall have the absolute right to regulate the use of the Properties, and may from time to time modify, amend and supplement the Rules and Regulations. A current copy of the Rules and Regulations established hereunder, if any, and any modifications, amendments or supplements thereto, shall be made available at the request of any Owner or other Community Beneficiary or Institutional Mortgagee.

5.2 Enforcement of Rules and Regulations. The Homeowners' Association shall have the authority to enforce the Rules and Regulations and the other restrictions imposed by this Declaration, as further set forth in Article 11 of this Declaration. The Homeowners' Association shall also have the right to suspend, for a reasonable period of time, the rights of an Owner, or any of its guests, tenants or invitees, or both, to use all or any portions of the Common Areas and to levy reasonable fines and suspensions, against any Owner or any of its guests, tenants or invitees, for violations of the Rules and Regulations. Each Owner shall be responsible for all costs of such enforcement including, without limitation, reasonable attorneys' fees and costs incurred in any actions to redress an alleged failure or refusal to comply, by such Owner, or any of its guests, tenants or invitees, with the restrictions imposed under or pursuant to this Declaration. This section shall not deprive the Homeowners' Association or any person of any other right or remedy available under this Declaration or under Applicable Law.

5.3 Assessments. Fine(s) imposed against an Owner or any of its guests, tenants or invitees shall be treated as an Individual Assessment against the Dwelling, subject to the provisions for the collection of Assessments, and the lien securing same, as set forth in Article 7 of this Declaration.

Article 6 MAINTENANCE

6.1 Homeowners' Association's Responsibilities. Except for any portions of the Properties to be maintained, repaired and replaced by the Owners pursuant to Section 6.2, the Homeowners' Association shall be responsible for, and shall at all times manage, operate, maintain, repair and replace in good condition and shall replace as often as necessary all

Common Areas within the Properties, and any and all Association Property, whether or not conveyed to the Homeowners' Association, and to maintain, repair and replace certain portions of the Dwellings and the Limited Common Areas appurtenant thereto, as hereinafter provided, as well as any areas where the Association has shared surface water management operation and maintenance responsibilities with the Falls of Portofino Homeowner's Association, as more specifically described in Section 6.1.13. The Homeowners' Association shall also be responsible for, and shall at all times operate and maintain the surface water management system in accordance with the permit issued by the District (if any), shall carry out, maintain, and monitor any required wetland mitigation tasks (if any), and shall maintain copies of all permitting actions with regard to the District. All expenses for maintenance performed pursuant to this section shall be paid for by the Homeowners' Association through Assessments. These responsibilities include, but are not limited to, the following:

6.1.1 Access Areas. Maintenance of all Access Areas, including, without limitation, all entrance areas, gates and roadways.

6.1.2 Access Control Facilities. Maintenance of all Access Control Facilities which the Homeowners' Association may from time to time consider necessary or appropriate. Notwithstanding the foregoing, the Homeowners' Association does not guarantee and shall not be liable for damages suffered by anyone as a result of the inadequacy of any such services or devices. Access control personnel engaged by the Homeowners' Association shall have the right to stop and question persons on the Properties and to require satisfactory evidence of any such person's right to be where he or she is stopped. Any person who fails to establish that right may be required to leave (even if he or she actually is entitled to be where he is stopped but fails to satisfactorily prove that he is). The Homeowners' Association may, at any time and from time to time, alter the design, layout, location and other characteristics of the Access Areas and the Access Control Facilities, existing from time to time on or in connection with the Properties for use by access control personnel.

6.1.3 Common Areas. Maintenance of all outside areas, including, without limitation, all landscaping, open areas, sprinklers and irrigation, drainage structures, meters, fire pump and safety equipment, mailboxes, generators and other electrical and mechanical equipment now or hereafter located within the Common Areas and other structures (except public utilities, to the extent same have not been made Common Areas and except those Limited Common Areas to be maintained by Owners, if any) situated on the Common Areas (without imposing any obligation on the Declarant or the Homeowners' Association to provide such services).

6.1.4 Limited Common Areas. Maintenance of all outdoors Limited Common Areas, including, without limitation, any Limited Common Area yards adjacent to the Dwellings. Notwithstanding the foregoing, the costs associated with maintaining any such Limited Common Areas may (at the discretion of the Association) be assessed to one or more Owner(s), as provided in this Declaration.

6.1.5 Exterior Surfaces and Roofs of Dwellings. Maintenance and repairs of the exterior surfaces and roofs of the Dwellings including, but not limited to, repainting the exterior doors located therein. Such maintenance shall be conducted utilizing such materials and such colors and quality as that originally utilized by the Declarant or later specified by the Homeowners' Association, as appropriate. The cost of such maintenance and repairs shall be assessed in the manner provided in Section 7.9; provided, however, any extraordinary maintenance and repairs

as determined by the Homeowners' Association, in its sole and absolute discretion, shall be assessed in the manner provided in Section 7.12 in this Declaration.

6.1.6 Driveways. Maintenance of all Driveways, including, without limitation, paving, pavers and other surfaces and driveways, as well as other facilities necessary for the parking of motor vehicles in the Driveways. The cost of such maintenance and repairs shall be assessed in the manner provided in Section 7.8 of this Declaration; provided, however, any extraordinary maintenance and repairs, as determined by the Homeowners' Association, in its reasonable discretion, shall be assessed in the manner provided in Section 7.11 of this Declaration.

6.1.7 Additional Easements. Maintenance and operation of all utility easements including tracts or facilities, and conservation or preservation easements/areas.

6.1.8 Governmental Compliance. Perform any monitoring and maintenance required under any approval or permit issued by, or agreement with, any governmental agency.

6.1.9 Taxes. Payment of all ad valorem real and personal property taxes, if any, assessed to the Properties, other than those taxes which are separately assessed to a Dwelling.

6.1.10 Utilities and Other Expenses. Payment of all expenses for the removal of trash from the Properties, and any and all water, sewer, electrical and other utility charges incurred by any Dwellings or other portions of the Properties which are tied to central utility meters.

6.1.11 Life Safety Systems. No Owner shall make any additions, alterations or improvements to the Life Safety Systems, and/or to any other portion of the Properties which may impair the Life Safety Systems or access to the Life Safety Systems, without first receiving the prior written approval of the Homeowners' Association. In that regard, no lock, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Emergency signage shall not be altered or removed by any Owner whatsoever. No barrier including, but not limited to, personal property, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

6.1.12 Surface Water Management System. To comply with the obligation to: (i) operate, maintain, repair and replace the surface water management system in accordance with the District Permit issued by the District, if any, (ii) carry out, maintain, and monitor any required wetland mitigation tasks, if any, and (iii) maintain copies of all permitting actions with regard to the District.

6.1.13 Drainage Facilities. Pursuant to the Drainage Easement, entered into by and between Prime Homes at Portofino Falls, LTD and Sobel Vanderbilt, LLC (Attached as Exhibit D), the Association has and shall exercise the obligation, together with the Falls of Portofino Homeowners Association, to construct, operate, and maintain those drainage facilities specified in Exhibit A and B to the above-referenced Drainage Easement.

6.1.14 Declarant Obligations. Without limiting the generality of the foregoing, the Homeowners' Association shall assume all of Declarant's and its affiliates' responsibilities to the County, and its governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas (including, without limitation, any and all obligations imposed by any permits or approvals issued by the County and/or State of Florida or other applicable governmental agency, as same may be amended, modified or interpreted from time to

time) and the Homeowners' Association shall indemnify and hold Declarant and its affiliates harmless with respect thereto in the event of the Homeowners' Association's failure to fulfill those responsibilities.

6.2 Owner Responsibilities. Each Owner of a Dwelling shall maintain or shall cause to be maintained all portions of its Dwelling in a neat, orderly and attractive manner and shall pay all ad valorem real and personal property taxes, if any, governmental assessments, trash removal expenses, as well as water, sewer, electrical and other utility charges which are either submetered or are not tied to central utility meters but which are attributable solely to such Dwelling. Notwithstanding the foregoing, the Homeowners' Association shall be responsible for the maintenance of the exterior surfaces and roof of the Dwellings in accordance with Section 6.1.5 of this Declaration.

6.3 Contractors. The Homeowners' Association shall have the right to contract with other parties, including affiliates, management companies and other service providers, for providing services to perform any or all of its responsibilities set forth in this Article. All costs and expenses incurred by the Homeowners' Association pursuant to any such contracts shall constitute Common Expenses.

6.4 Responsibility for Wrongful Acts. Notwithstanding anything contained in this Declaration, the expense of any maintenance, repair or construction of any portion of the Properties, necessitated by the negligent or willful acts of any Owner or other Community Beneficiary, or their family or guests shall be borne solely by such Owner or other Community Beneficiary and their Dwelling shall be subject to an Individual Assessment for such expense.

6.5 Failure to Maintain. If an Owner of a Dwelling or any other party shall fail to maintain any portion of the Properties in the manner required hereunder, the Homeowners' Association may send written notice to such defaulting party and, if such obligations are not performed by the defaulting party within thirty (30) days from the receipt of such notice, or such additional time as may be reasonably required to cure such failure then, in addition to such other remedies as may be available under this Declaration, the Homeowners' Association shall have the right (without limiting any other rights that may be available) to enter upon the portion of the Properties in question and perform such duties; provided, however, that such entry shall be during reasonable hours and only after five (5) days' prior written notice. The party having failed to perform its maintenance duties shall be liable to the Homeowners' Association for the costs of performing such remedial work and shall pay a surcharge of not more than twenty-five percent (25%) of the cost of the applicable remedial work, all such sums to be payable upon demand and to be secured by the lien provided for in Section 7.13.1 of this Declaration. No bids need be obtained for any of the work performed pursuant to this Article and the person(s) or company performing such work may be selected by the Homeowners' Association in its sole discretion. There is hereby created an easement in favor of the Homeowners' Association, and its applicable designees over each applicable portion of the Properties for the purpose of entering onto thereon in the performance of the work herein described, provided that the notice requirements of this section are complied with.

Article 7 ASSESSMENTS

7.1 Common Expenses. By acquiring title to a Dwelling, each Owner agrees to pay its share of the Common Expenses as hereinafter set forth. Other than as expressly provided to the contrary herein, all expenses of every kind and nature which the Homeowners' Association incurs or shall incur in connection with its maintenance and other obligations under Section 6.1 shall

constitute Common Expenses. The Common Expenses shall also include: (i) reserves, if any, required by the Homeowners' Association for future expenditures to be incurred in the maintenance, repair and replacement of various improvements to the Properties; provided, however, that the Declarant shall have the right to waive such reserves at any time during which it is a Class B Member of the Homeowners' Association; (ii) any and all costs of maintaining, managing, insuring, repairing and replacing Common Areas, including, without limitation, the Access Areas, Driveways and/or other facilities; (iii) any and all expenses relating to the operation, maintenance and management of the Properties, including, without limitation, any portions of the Dwellings to be maintained by the Homeowners' Association (including salaries and employment related costs of all employees and personnel employed by the Homeowners' Association); (iv) property taxes and assessments on the Common Areas; (v) insurance on the Common Areas; (vi) legal and accounting fees; (vii) management fees; normal repairs and replacements; (viii) charges for utilities used upon the Common Areas; (ix) expenses and liabilities incurred by the Homeowners' Association in the enforcement of its rights and duties under this Declaration; (x) all costs relating to the District Permit, including, without limitation, any expenses incurred or associated with the repair or maintenance of the surface water management system required thereunder; and (xi) any and all other expenses deemed by the Homeowners' Association to be necessary and proper for its management, maintenance, repair, operation and governance of the Properties. Common Expenses shall not include costs relating to initial design and construction of improvements to the Properties.

7.2 Percentage Shares of Assessments.

7.2.1 Percentage Shares of Assessments. The Percentage Share of a Dwelling of all Assessments shall, at any time and from time to time, be equal to the percentage obtained by dividing one (1) by the total number of Dwellings within the Properties at such time for which a Certificate of Occupancy, Certificate of Completion or their equivalent has been issued by the County at the time of such General Assessments. For example, the Percentage Share of Assessments of a Dwelling during a period in which there are one hundred (100) Dwellings within the Properties for which a Certificate of Completion or its equivalent has been issued by the County at the time of such Assessment shall be one percent (1.0%).

7.2.2 Adjustments to Percentage Shares. To the extent permitted under Applicable Law, the Homeowners' Association shall have the power and authority, from time to time, to modify the Percentage Shares of Assessments set forth in Section 7.4.1 based upon the state and extent of development of certain Common Areas and other portions of the Properties, the levels of services being provided to the Dwellings and other relevant factors. In the event of a dispute as to the Percentage Shares of Assessments, the determination of the Declarant shall be dispositive.

7.3 Incomplete Dwellings. Notwithstanding anything to the contrary in this Declaration, or in the Articles or the By-Laws, Assessments shall only be imposed against those Dwellings for which a Certificate of Occupancy, Certificate of Completion or their equivalent has been issued by the County at the time of such Assessments and Assessments of the Homeowners' Association shall not be imposed against any other portions of the Properties.

7.4 Declarant's Obligations for Assessments. Notwithstanding anything in this Declaration to the contrary, during the period in which the Declarant is a Class B Member, the Declarant shall not be liable for the payment of any Assessments imposed upon any Dwellings which are owned by the Declarant, or its affiliates, for any period during which the Declarant elects, at its sole option, to be responsible for the payment of any Common Expenses incurred that exceed the

Assessments receivable from other Owners and other income of the Homeowners' Association for any such time period(s). The Declarant may, at any time and from time to time, be relieved of all obligations to fund deficits as aforesaid by electing, for any assessment or installment period or periods, that Declarant, or its affiliates, will pay Assessments imposed on Dwellings, if any, owned by each of them on the same basis as any other Owner. The Declarant's responsibility, if any, for payment of the Homeowners' Association's operating deficit shall automatically terminate (if not sooner terminated) on the date that the Declarant's Class B membership is terminated. As of the first day of the first calendar month immediately following the termination of the Declarant's responsibility, if any, for the payment of the Homeowners' Association's operating deficit(s), if any, the Declarant shall, commencing with that date, be responsible for the payment of Assessments payable for any Dwelling(s) owned by it as are normally required to be made by any other Owner under the terms of this Declaration from and after that date. Declarant may from time to time change the option under which Declarant is making payments to the Homeowners' Association by written notice to such effect to the Homeowners' Association. When all Dwellings within the Properties are conveyed by the Declarant, neither the Declarant, nor its affiliates, shall have further liability of any kind to the Homeowners' Association for the payment of assessments, deficits or contributions.

7.5 Lien rights. The Homeowners' Association shall have the power and authority to make and collect Assessments, and the lien rights against the Dwellings, as hereinafter set forth and subject to the applicable provisions of the Act.

7.6 Liability for Assessments and Charges.

7.6.1 An Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments and other charges coming due with respect to its Dwelling while it is the Owner. The Declarant shall be liable for all unpaid Assessments and charges against each Dwelling, which it owns, up to the time of its conveyance, without prejudice to any right the Declarant may have to recover from the Owner any amounts paid by the Declarant. No Owner may waive or otherwise escape liability for Assessments by non-use (whether voluntary or involuntary) of the Common Areas or abandonment of the right to use the Common Areas. Neither the Declarant's lender nor the lenders, if any, of the Dwellings, shall be liable for any Assessments unless and until any such lender acquires title to the applicable Dwelling, at which time any such lender shall be liable for all Assessments accruing to such Dwelling after the date it acquires title.

7.6.2 To the fullest extent permitted under Applicable Law, all Assessments shall be a superior lien to all other liens, save and except tax liens and first mortgage liens in favor of Institutional Mortgagees.

7.7 General Assessments.

7.7.1 General Assessments shall be determined annually for the purpose of payment of Common Expenses.

7.7.2 The Homeowners' Association shall annually estimate the Common Expenses for the upcoming year and shall assess the Owners, based upon their Percentage Shares, sufficient monies to meet this estimate. Should the Homeowners' Association at any time determine that the Assessments are not sufficient to pay the Common Expenses, or in the event of emergency, the Homeowners' Association shall have the authority to levy and collect Special Assessments for such purpose. All notices of Assessments from the Homeowners' Association to the Owners shall designate when they are due and payable. All General Assessments shall be charged based upon the Percentage Shares of the Dwelling set forth in Section 7.2.1 of this

Declaration. Notwithstanding anything contained to the contrary in this Declaration, any Dwellings owned by the Declarant or any of its affiliates shall not be subject to Assessments for capital improvements without the Declarant's prior written consent.

7.7.3 General Assessments shall be collectible in advance for each applicable period commencing on the first day of the first month after a Dwelling has been granted a Certificate of Completion. A General Assessment shall be considered delinquent if not paid within ten (10) days after the due date specified by the Homeowners' Association.

7.8 Special Assessments.

7.8.1 The Homeowners' Association may levy a Special Assessment against all Owners for any of the following purposes: the acquisition of personal property; defraying the cost of construction of capital improvements, capital repairs, or other capital expenditures to the Properties, including, without limitation, any portions of the Dwellings to be maintained by the Homeowners' Association, except for those capital improvements which are initially constructed by the Declarant and except for Individual Assessments under Section 7.11 of this Declaration; any portions of those Dwellings to be maintained and repaired by the Homeowners' Association under this Declaration; and the costs and other expenses of design, construction, reconstruction, unexpected substantial repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto. Notwithstanding anything contained to the contrary in this Declaration, any Dwellings owned by the Declarant or its affiliates shall not be subject to Special Assessments for capital improvements without the Declarant's prior written consent.

7.8.2 All notices of Special Assessments from the Homeowners' Association to the Owners shall designate when the Special Assessment is due and payable. All Special Assessments shall be charged based upon the Percentage Shares set forth in Section 7.2.1 of this Declaration. Special Assessments shall be collectible in such manner as the Homeowners' Association shall determine. A Special Assessment shall be considered delinquent if not paid within ten (10) days after the due date specified by the Homeowners' Association.

7.9 Emergency Special Assessments. The Homeowners' Association may levy an Emergency Special Assessment when, in its sole determination, there is potential danger or damage to persons or property. The Homeowners' Association shall not be required to obtain the approval of the membership of the Homeowners' Association in connection with an Emergency Special Assessment. Such Emergency Special Assessments may be utilized to pay for preventative, protective or remedial design, construction, reconstruction, improvements, repairs or replacements. Events justifying Emergency Special Assessments include, but are not limited to, hurricanes, floods and fires. Notwithstanding anything contained to the contrary in this Declaration, any Dwellings owned by the Declarant or its affiliates shall not be subject to Emergency Special Assessments for capital improvements without the Declarant's prior written consent.

7.9.1 Emergency Special Assessments shall be payable in such a manner as the Homeowners' Association shall determine and all notices of Emergency Special Assessments from the Homeowners' Association to the Owners shall designate when the Assessment is due and payable. All Emergency Special Assessments shall be charged based upon the Percentage Shares of the Dwellings as set forth in Section 7.2.1 of this Declaration. An Emergency Special Assessment shall be considered delinquent if not paid within ten (10) days after the due date specified by the Homeowners' Association.

7.10 Individual Assessments. The Homeowners' Association may levy an Individual Assessment against a particular Dwelling for the cost of:

7.10.1 Any maintenance, repairs, replacements, or for fines imposed by the Homeowners' Association pursuant to Section 11.1 of this Declaration. When, in the Homeowners' Association's sole judgment, an Owner's failure or refusal to perform has impaired the use or value of any portion of the Properties, or poses a safety hazard, the Homeowners' Association has a right of entry into all portions of the Properties, including, without limitation, any individual Dwellings therein, to perform repairs, replacements, or to cure any violation of this Declaration or the Rules and Regulations, including the right to abate or eliminate any nuisance; or

7.10.2 Any maintenance of those portions of the Dwellings which are to be maintained by the Association for which the Association determines in its sole judgment, require extraordinary expenses for one or more, but not all, Dwellings; or

7.10.3 Any insurance premiums owed by a Dwelling pursuant to Article 9 of this Declaration.

The Homeowners' Association may levy an Individual Assessment against a particular Dwelling for the cost of any Individual Assessment shall include an administrative fee charged by the Homeowners' Association in an amount to be determined from time to time by the Board in its sole discretion.

7.11 Effect of Non-payment of Assessments.

7.11.1 Any Assessment that is unpaid for more than ten (10) days after the date it is due shall bear interest, from the date when due, until the date it is paid, at a rate equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate allowable under Applicable Law. In addition, the Owner of any Dwelling, with respect to which an Assessment is overdue by more than ten (10) days, will be required by the Homeowners' Association to pay a late charge equal to the greater of One Hundred and No/100 U.S. Dollars (\$100.00) or five percent (5%) of the amount of the delinquent Assessment, to compensate the Homeowners' Association for the added administrative expense resulting from the delinquency. Any and all such amounts shall become a continuing lien on the Dwelling against which the Assessment is made upon recording of a claim of lien in the Public Records, and shall also be the continuing personal obligation of the Owner of such Dwelling at the time of the Assessment.

7.11.2 If the Assessment is not paid within thirty (30) days after the due date, the Homeowners' Association may, at any time thereafter, accelerate the entire amount due for the period for which the Assessment was made, and declare the same immediately due and payable. The Homeowners' Association may also record a claim of lien in the Public Records setting forth the amount of the unpaid Assessment and the rate of interest due thereon. The Homeowners' Association may at any time thereafter bring an action to foreclose the lien against the Dwelling and/or a suit on the personal obligation against the Owner or Owners, and there shall be added to the amount of such Assessment the cost of such action (including reasonable attorneys' fees and costs through all appellate levels) and, in the event a judgment is obtained, such judgment shall include interest on the Assessment and late charges as provided above and reasonable attorneys' fees through all appellate levels, together with the costs of the action.

7.11.3 In the event that a check given to the Homeowners' Association for payment of an Assessment, or for payment of any sums due hereunder shall be dishonored for

any reason whatsoever, the Homeowners' Association shall have the right, in its sole discretion, to charge an administrative fee which shall, in no event, exceed One Hundred and No/100 U.S. Dollars (\$100.00). This fee shall be deemed to be a part of the Assessment, shall be secured by the lien of the Assessment against the affected Dwelling, and may be enforced in the same manner as any other Assessment.

7.12 Lien of Mortgages. Except as hereafter provided, any mortgagee or its successors or assignees who acquire title to a Dwelling by foreclosure or by deed in lieu of foreclosure is liable for the unpaid Assessments that became due prior to the mortgagee's acquisition of title. Notwithstanding the foregoing, in no event shall an Institutional Mortgagee, which is the holder of a first mortgage on a Dwelling, be liable for more than the Dwelling's unpaid Assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title to the Dwelling by the Institutional Mortgagee, and for which payment in full has not been received by the Homeowners' Association, or one percent (1%) of the original mortgage debt, whichever amount is less. The limitations contained in this section shall not apply unless the Institutional Mortgagee joins the Homeowners' Association as a defendant in the foreclosure action. Joinder of the Homeowners' Association is not required if, on the date the complaint is filed, the Homeowners' Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee. The person acquiring title shall pay the amount owed to the Homeowners' Association within thirty (30) days after the transfer of title. Failure to pay the amount owed to the Homeowners' Association when due shall entitle the Homeowners' Association to record a claim of lien against the Dwelling and proceed in the same manner as provided in this section for unpaid Assessments. The foregoing limitation of liability shall apply to any purchaser at a foreclosure sale of a first mortgage held by an Institutional Mortgagee, regardless of whether the purchaser is the holder of the foreclosed mortgage. A mortgagee acquiring title to a Dwelling as a result of foreclosure or deed in lieu thereof may not during the period of its ownership of such Dwelling, whether or not such Dwelling is unoccupied, be excused from the payment of any of the Assessments coming due during the period of such ownership. No sale or transfer shall relieve any Dwelling from liability for any Assessment thereafter becoming due, or from the lien of any such subsequent Assessment.

7.13 Certificate of Assessments. The Homeowners' Association shall prepare a roster of the Dwellings and the Assessments applicable thereto, which shall be kept in the office of the Homeowners' Association and shall be open to inspection by any Owner. The Homeowners' Association shall, upon demand, furnish an Owner a certificate in writing signed by an officer of the Homeowners' Association, setting forth whether the Owner's Assessments have been paid and/or the amount which is due as of any date; provided, however, that the Homeowners' Association shall charge One Hundred and No/100 U.S. Dollars (\$100.00) for each certificate requested by an Owner in excess of two (2) during any calendar year. As to parties without knowledge of error, who rely thereon, such certificates shall be presumptive evidence of payment or partial payment of any Assessments therein stated.

7.14 Estoppel Certificate. At the request of an Owner, or the Declarant, the Homeowners' Association shall prepare an Estoppel Certificate which shall set forth any Assessments and charges due upon any Dwelling at the time of conveyance and certify as to whether or not there are violations of this Declaration or the Rules and Regulations with respect to the Dwelling as of the date of preparation of such Certificate.

7.15 Declarant Credits. To the fullest extent permitted under Applicable Law, Declarant may take credits against any unpaid Assessments for monies Declarant previously advanced on

behalf of the Homeowners' Association. These items shall specifically include, but not be limited to, insurance premiums and Common Area utility charges and deposits, permit and license fees, charges for service contracts, salaries of Homeowners' Association employees and other similar expenses.

Article 8
INDEMNIFICATION OF OFFICERS AND
DIRECTORS/INDEMNIFICATION OF DECLARANT

8.1 Indemnity. Each Owner, except Declarant and its affiliates, hereby indemnifies and saves harmless all other Owners, from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from the Dwelling that is owned by it, or with respect to which it has easement rights, except to the extent caused by the act or negligence of another Owner and in such event only as to such other Owner whose act or negligence is excepted.

8.1.1 Indemnification of Officers and Board of Directors. Every officer and member of the Board of Directors of the Homeowners' Association shall be indemnified by the Homeowners' Association and the other Community Beneficiaries against all expenses and liability, including attorneys' fees through all appeals, reasonably incurred by or imposed upon such person in connection with any proceeding to which such person may be a party or in which such person may become involved by reason of their being or having been an officer or member of the Board of Directors, whether or not such person is an officer or member of the Board of Directors at the time such expenses are incurred, except in such cases wherein the officer or member of the Board of Directors is adjudged guilty of willful misfeasance or malfeasance in the performance of such person's duties, provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the officer or member of the Board of Directors seeking such reimbursement or indemnification herein shall apply only if the Homeowners' Association approves such settlement and reimbursement as being in the best interest of the Homeowners' Association. The foregoing right of indemnification shall be in addition to, and not exclusive of, all other rights to which such officer or member of the Board of Directors may be entitled under the Articles or By-Laws of the Homeowners' Association.

8.1.2 Indemnification of Declarant. Each Owner, by acceptance of a deed to one or more Dwelling, and each other Community Beneficiary, by the use of any easements relating to the Properties, shall indemnify and hold the Declarant and its affiliates, the Homeowners' Association and the Board of Directors harmless from and against any and all claims, demands, fines, suits, actions, decrees and judgments (and any and all costs and expenses including attorneys' fees through all appeals relating thereto) resulting from or in connection with loss of life, bodily or personal injury or property damage arising (directly or indirectly) out of or on account of any occurrence in, at or about the Properties, or occasioned (in whole or part) by use of the Properties or any improvement thereon, while it owns, occupies or manages any portion of the Properties, except to the extent the loss of life, injury or damage results from the gross negligence or willful misconduct of any such indemnified party. Any amounts owed the Declarant or the other indemnified parties by Owners pursuant to this section shall be levied against them as Individuals Assessments.

Article 9
INSURANCE AND CONDEMNATION

9.1 Insurance. The Homeowners' Association shall maintain insurance (from a company rated with a current A.M. Best Company, Inc. rating of B+ or better), throughout the term of this Declaration, in an amounts and for the coverages set forth in Section 9.3 of this Declaration.

9.2 Authority to Purchase; Named Insured. Notwithstanding anything to the contrary in this Declaration and to the fullest extent permitted under Applicable Law, all insurance policies upon the Properties shall be purchased by or at the direction of the Homeowners' Association and shall be placed in a single agency or company, if possible. Additionally, the Homeowners' Association may elect (but shall not be obligated) to insure any structure or other improvement which does not lie entirely within the Properties and the cost of any such insurance shall be a Common Expense. The named insureds under any such policies purchased by the Homeowners' Association shall be the Homeowners' Association (and its officers, directors, agents and employees), without naming them, and its mortgagee, and such other parties, if any, which the Homeowners' Association may determine, from time to time, should be added thereon. Provisions shall be made for the issuance of mortgagee endorsements, certificates and memoranda of insurance to any mortgagees.

9.3 Coverage.

9.3.1 Casualty Insurance. All buildings and insurable improvements located within the Common Areas shall be insured for fire and extended coverage perils, excluding foundation and excavation costs, and all personal property owned by the Homeowners' Association shall be insured for its full insurable value, with such deductibles as may be determined by the Board, in its sole and absolute discretion, all as determined annually by the Board. When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk; and (ii) avoid liability for a loss that is caused by an act of the Homeowners' Association, or an Owner, or an officer thereof, or by one or more Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Owners that are not under the control of the Homeowners' Association, and that the policy shall be primary, even if an Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Homeowners' Association, if desired by the Homeowners' Association, or if required by Federal National Mortgage Association or Federal Home Loan Mortgage Corporation shall have the following endorsement (to the extent applicable and available at a commercially reasonable cost): (i) agreed amount and inflation guard; and (ii) steam boiler coverage (providing at least \$50,000 coverage for each incident at each location), if applicable.

9.3.2 Public Liability Insurance. The Homeowners' Association shall obtain public liability insurance covering the Common Areas of the Properties and insuring the Homeowners' Association, and the Owners and such other parties, if any, as the Homeowners' Association may, from time to time, determine should be added thereon, as their interests appear, in such amounts and providing such coverage as the Homeowners' Association may determine, from time to time, provided that the minimum amount of coverage is not less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate. The liability insurance shall include, but not be limited to, hired and non-owned automobile coverage.

9.3.3 Worker's Compensation Insurance. The Homeowners' Association shall obtain Worker's Compensation Insurance in order to meet the requirements of law, as necessary.

9.3.4 Flood Insurance. The Homeowners' Association shall obtain flood insurance to meet the requirements of federal, state or local law, or any regulation enacted pursuant to federal, state or local law, as necessary, for the Common Areas, the Homeowners' Association Property, if any, and for any of the Dwellings (or any portion thereof) for which such insurance is being obtained by the Homeowners' Association pursuant to Article 9 of this Declaration.

9.3.5 Fidelity Insurance. The Homeowners' Association shall obtain fidelity insurance covering all persons who control or disburse funds on behalf of the Homeowners' Association, such insurance to be in an amount not less than three (3) times the total monthly Assessments plus the amount estimated to be held in reserve accounts at the end of the then current calendar year. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and such other insurance as it deems advisable, insuring the Board or any management company engaged by the Homeowners' Association against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof.

9.3.6 Other Insurance. The Homeowners' Association shall obtain such other insurance as the Homeowners' Association shall determine from time to time to be desirable including acts and omissions coverage for members of the Board of Directors and officers of the Homeowners' Association, and windstorm and other coverage for the Buildings and Association Property, including portions for which the Homeowners' Association is responsible for maintaining.

9.3.7 "Blanket" Insurance. The requirements of this Article may be met by way of the Homeowners' Association being an insured party under any coverage carried by the Declarant or under coverage obtained by the Homeowners' Association as long as such coverage is in accordance with the amounts and other standards in this Article.

9.3.8 Subrogation Waiver. If available, the Homeowners' Association shall obtain policies which provide that the insurer waives its right to subrogation as to any claim against other Community Beneficiaries and their respective employees, agents and guests.

9.4 Premiums. Premiums upon insurance policies purchased by the Homeowners' Association shall be paid by the Homeowners' Association. The cost of insurance premiums and other incidental expenses incurred by the Homeowners' Association in administering and carrying out any of the provisions of this Article shall be assessed against and collected from Owners as part of the General Assessments. Notwithstanding the foregoing, the premiums for any insurance for any Dwelling (or any portion thereof) for which such insurance is being obtained by the Homeowners' Association pursuant to this Article 9 shall be assessed to any such Dwelling as an Individual Assessment pursuant to Section 7.10 of this Declaration.

9.5 Shares of Proceeds. Except as otherwise provided in this Declaration, all insurance policies purchased by the Homeowners' Association shall be for the benefit of the Homeowners' Association, and the Owners, and their mortgagees, as their interests may appear, and shall provide that all proceeds covering losses shall be paid to the Homeowners' Association or at its option, to an insurance trustee. In the event a mortgagee endorsement has been issued regarding any improvement on the Properties, the share of the Owner, if any, shall be held in trust for each mortgagee and the Owner, as its interest may appear; provided, however, that no

mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged improvement shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except distribution of such proceeds made to the Owner and the mortgagee pursuant to the provisions of this Declaration.

9.6 Distribution of Proceeds. Proceeds of insurance policies received by the Homeowners' Association, shall be held by the Homeowners' Association, or at its option, by any such insurance trustee, if such proceeds exceed Twenty-Five Thousand and No/100 U.S. Dollars (\$25,000.00), and distributed to or for the benefit of the Owners and other Community Beneficiaries in the following manner:

9.6.1 Reconstruction or Repair. If the damage for which proceeds are paid is to be repaired or reconstructed, such proceeds shall be paid to defray the cost of such repairs and reconstruction in accordance with the provisions of this Article. Any proceeds which remain after defraying such costs shall be distributed to the Owners based upon their Percentage Shares.

9.6.2 Failure to Reconstruct or Repair. If it is determined in the manner provided in Section 9.8 that the damage for which proceeds are paid shall not be reconstructed or repaired, such proceeds, subject to the following, shall be distributed to the Owners based upon their Percentage Shares. There shall be no distribution of such proceeds until all debris, remains and residue have been cleared and removed, and the damaged area has been properly landscaped. In the event of loss or damage to personal and/or real property belonging to the Owners, and should the Homeowners' Association determine not to replace such personal and/or real property as may be lost or damaged, the proceeds shall be distributed to the Owners based upon their Percentage Shares.

9.7 Homeowners' Association's Power to Compromise Claims. The Board of the Homeowners' Association is hereby irrevocably appointed as agent for each Owner, and other Community Beneficiary, and for each holder of a mortgage or other lien, for the purpose of compromising and settling all claims arising under insurance policies purchased by the Homeowners' Association, and to execute and deliver releases therefore upon payment of claims.

9.8 Determination to Reconstruct or Repair. If any part of the Properties shall be damaged by casualty, the damaged property shall be reconstructed or repaired unless it is determined by at least seventy-five percent (75%) of the Owners and by the Homeowners' Association, that it shall not be reconstructed or repaired.

9.9 Plans and Specifications. Subject to requirements imposed by applicable governmental rules and regulations, any reconstruction or repair of all or any portion of the Properties must be substantially in accordance with the plans and specifications for the original buildings; or, if not, then according to the plans and specifications approved by the Homeowners' Association.

9.10 Estimates of Costs. Unless a determination is promptly made after the occurrence of a casualty, in accordance with Section 9.8 of this Declaration, not to rebuild, replace or repair damage to the Properties, then the Homeowners' Association has the responsibility of reconstruction, repair or replacement, and the Homeowners' Association shall obtain reliable and detailed estimates of the cost to rebuild, repair or replace such portions of the Properties. Such costs may include professional fees and premiums for such bonds as the Homeowners' Association requires.

9.11 Emergency Special Assessments for Restoration or Reconstruction. If the proceeds of the insurance are not sufficient to pay the estimated cost of reconstruction, repair or replacement by the Homeowners' Association, or if at any time during reconstruction, repair or replacement, or upon completion of reconstruction, repair or replacement, the funds for the payment of the costs of reconstruction and repair are insufficient, Emergency Special Assessments shall be levied by the Homeowners' Association and assessed to the Owners of the affected portions of the Properties in sufficient amounts, and based on equitable allocation among such affected portions, to provide funds for the payment of all such costs, as well as any deductible required by the applicable insurance policy(ies). In determining the equitable allocation among the affected portions of the Properties, the Homeowners' Association shall have the right to, from time to time, adjust the equitable allocation among the affected portions of the Properties based upon the levels of damage to each Dwelling or other portion of the Properties, and the rights of the use of certain Limited Common Areas, and other relevant factors, as may be reasonably determined by the Homeowners' Association.

9.12 Construction Funds. The funds for the payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Homeowners' Association, or by an insurance trustee, as applicable, and funds collected by the Homeowners' Association from Emergency Special Assessments against Owners, shall be distributed in payment of such costs in accordance with this Article.

The proceeds of insurance collected on account of a casualty, and the sums deposited with the Homeowners' Association from collections of Emergency Special Assessments on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of repair and construction in the following manner and order:

9.12.1 Homeowners' Association - Lesser Damage. If the amount of the estimated cost of reconstruction, repair and replacement that is the responsibility of the Homeowners' Association is less than Twenty-Five Thousand and No/100 U.S. Dollars (\$25,000.00), the construction fund shall be disbursed in payment of such costs upon the order of the Homeowners' Association.

9.12.2 Homeowners' Association-Major Damage. If the amount of the estimated cost of reconstruction, repair and replacement that is the responsibility of the Homeowners' Association is Twenty-Five Thousand and No/100 U.S. Dollars (\$25,000.00) or more, then the construction funds held by the Homeowners' Association shall be disbursed in payment of such costs in the manner required by the Homeowners' Association, and upon approval by an architect or engineer qualified to practice in the State of Florida and employed by the Homeowners' Association to supervise the work.

9.13 Surplus. It shall be presumed that the first monies disbursed in payment of the costs of reconstruction, repair and replacement shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction, repair and replacement for which the fund is established, such balance shall be distributed equally to the Owners. Notwithstanding the foregoing, any portions which the Homeowners' Association determines are attributable solely to insurance proceeds or funds provided by one or more of the Dwellings shall be distributed to the Owner of such Dwelling(s).

9.14 Condemnation. In the event any portion of the Properties is condemned or taken through eminent domain, the Owner of the property so taken shall be entitled to the full award therefore as if this Declaration were not in existence and the other Owner(s) shall not be entitled to share in any portion of the award as a result of the existence of this Declaration; provided,

however, that the foregoing shall not prevent an award to any other Owner(s) for the diminution in value of the property of the other Owner(s), provided same does not reduce the award payable to the Owner whose property was condemned or taken.

Article 10 USE RESTRICTIONS

10.1 Nuisances. Nothing shall be done or maintained on any Dwelling which may be or become an annoyance or nuisance to the occupants of other portions of the Properties. Any activity on a Dwelling which interferes with television, cable or radio reception on another Dwelling shall be deemed a nuisance and a prohibited activity. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

10.2 Parking and Prohibited Vehicles. No person shall park any vehicle so as to obstruct or otherwise impede ingress or egress to any Driveway, including, without limitation, any Driveway assigned to another Dwelling. In addition to the foregoing, each Owner, and its respective tenant, shall require that any guests, licensees, invitees, and other visitors of such Owner, or its tenant (if applicable), refrain from parking in any Driveway assigned to another Dwelling, or any areas not designated for visitor parking, if any, and, instead, use off-site parking for the parking of any vehicles while visiting the Properties. Parking in the Properties shall be restricted to private automobiles and passenger-type vans, jeeps, pick-up trucks and sport utility vehicles, motorcycles, motor scooters (all of which are collectively referred to herein as "vehicles"). No person shall park, store or keep on any portion of the Properties any large commercial type vehicle (for example, dump truck, motor home, trailer, cement mixer truck, oil or gas truck and delivery truck), nor may any person keep any other vehicle within any portion of the Properties which is deemed to be a nuisance by the Board. No trailer, camper, motor home or recreational vehicle shall be used as a residence, either temporarily or permanently, or parked on the Properties. The Board shall have the authority to prohibit any vehicle, including any motorcycle or motor scooter, which it determines constitutes a nuisance due to its noise level, particularly where such vehicle is operated in the early morning or late evening hours. No vehicle is permitted within the Properties which leaks oil, brake fluid, transmission fluid or other fluids. No Owner, occupant or other person shall conduct repairs or restorations on any motor vehicle, or other vehicle, or race the engine of any vehicle, upon any portion of the Properties. No more than one (1) motorcycle or motor scooter may be parked in a single parking space, and in no event may a motorcycle or a motor scooter be parked in the same parking space as another vehicle or between any parking spaces. For so long as the Declarant conducts any sales or leasing activities on the Properties, its use of parking spaces shall not be impeded or restricted. The prohibitions on parking contained in this section shall not apply to temporary parking of: (a) commercial vehicles, such as for construction use or providing pick-up and delivery and other services related to the Dwellings; (b) any vehicles of the Declarant, or its affiliates or designees, used for construction, maintenance, repair, decorating, sales or marketing purposes; or (c) service vehicles operated in connection with the Homeowners' Association or its management company.

Subject to Applicable Law, any vehicle, boat, motorcycle or trailer parked in violation of these or other restrictions contained herein or in the Rules and Regulations may be towed by the Homeowners' Association at the sole expense of the owner of such vehicle. The Homeowners' Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor shall it be guilty of any criminal act, by reason of such towing.

EACH OWNER ACKNOWLEDGES AND AGREES THAT CERTAIN PORTIONS OF THE PROPERTIES MAY BE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE RATES, BOTH FOR THE HOMEOWNERS' ASSOCIATION IN INSURING THE COMMON AREAS IN WHICH PARKING SPACES ARE LOCATED, IF ANY, AND FOR OWNERS, MAY BE HIGHER THAN IF THE COMMON AREAS WERE ABOVE THE FEDERAL FLOOD PLAIN. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, OR USING A DWELLING, OR USE OF A PARKING SPACE, EACH OWNER, FOR ITSELF AND ITS TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

10.3 Visibility at Intersections. No obstruction to visibility at street intersections shall be permitted; provided that the Homeowners' Association shall not be liable in any manner to any person or entity, including Owners and Community Beneficiaries, for any damages, injuries or deaths arising from any violation of this section.

10.4 Exterior Alterations. No Owner or occupant of a Dwelling shall cause or allow improvements or changes to the structure or exterior of any Dwelling or in any manner change the appearance of any portion of the exterior of their Dwelling, without obtaining the prior written consent of the Homeowners' Association (in the manner specified herein). No spas, hot tubs, whirlpools or similar improvements shall be permitted on any patio or balcony without the prior written consent of the Homeowners' Association, except as initially installed by the Declarant. No exterior antennas, satellite dishes or similar equipment shall be permitted on any Dwelling or any portion of the Common Areas. Notwithstanding the foregoing, upon obtaining the prior written consent of the Homeowners' Association, satellite dishes and other devices permitted under Applicable Law, may be installed within the Dwellings or any Limited Common Areas appurtenant thereto. To the fullest extent permitted under Applicable Law, the Homeowners' Association may enact rules and regulations which prohibit or otherwise restrict individual antennas, including (without limitation): (a) prohibitions or restrictions based on the availability of a central antenna system or other central reception facilities; and (b) requirements that any devices which may be permitted under Applicable Law be of comparable size, weight and appearance, that any such devices be installed and maintained in a manner designed to protect the safety of the Buildings and its occupants, and that any such devices satisfy reasonable and uniform standards established by the Homeowners' Association for architectural appearance purposes.

10.5 Signs. No sign, poster, display, billboard or other advertising device of any kind including, without limitation, "FOR SALE," "FOR RENT," or construction signs shall be displayed to the public view on any portion of the Common Areas or the Limited Common Areas, without the prior written consent of the Homeowners' Association, except: (i) signs, regardless of size, used by the Declarant, its successors or assigns or a party developing or marketing any portion of the Properties, including signs used for construction or repairs, advertising, marketing, sales or leasing activities; (ii) signs installed as part of the initial construction of the Dwellings and replacements of such signs (similar or otherwise); (iii) bulletin boards, entrance, directional, informational and similar signs used by the Homeowners' Association; (iv) signs, of reasonable size, provided by a contractor for security services within ten (10) feet of any entrance to a Dwelling; and (v) as may be required by legal proceedings, it being understood that the Homeowners' Association may not grant permission for signs unless their erection is reasonably necessary to avert serious hardship to the applicable Owner. Furthermore, the size and design of all signs, house numbering, outside lamp posts, and other such materials shall be approved by the Homeowners' Association and shall display continuity and conformity throughout the entire Properties. If

permission is granted, the Homeowners' Association reserves the right to restrict size, color, content and location of signs. No sign shall be nailed or attached to a tree.

10.6 Animal Restrictions. No more than two (2) household pets (as may be defined and re-defined by the Homeowners' Association) shall be maintained in any Dwelling or any Limited Common Area yard appurtenant thereto, if any, or any portion of the Common Areas. In no event shall each such pet exceed seventy-five (75) pounds. Household pets shall not be kept, bred or maintained for any commercial purpose and shall not become a nuisance or annoyance to neighbors. Those pets which are not permitted under Applicable Law shall not be permitted within the Community. Additionally, those pets which, in the sole discretion of the Homeowners' Association, endanger health, safety, have the propensity for dangerous or vicious behavior (such as pit bulldogs or other similar breeds or mixed breeds), make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Dwellings shall be removed upon request of the Homeowners' Association. Owners must pick up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be kept on a leash of a length that affords reasonable control over the pet at all times, or must be carried, when in any portion of the Common Areas. No pet may be kept on a balcony or terrace when its owner is not in the Dwelling. Without limiting the generality of Article 11 of this Declaration, any violation of the provisions of this restriction shall entitle the Homeowners' Association to all of its rights and remedies, including, but not limited to, the right to fine the Owners and tenants (as provided in any applicable Rules and Regulations) and/or to require any pet to be permanently removed from the Properties. The Homeowners' Association may from time to time limit the areas designated for walking pets.

Each Owner or occupant of a Dwelling shall be required to register its pet with the Homeowners' Association. Owners and occupants or users of Dwellings, or any other portion of the Properties, must pick up all solid wastes of their pets and dispose of such wastes appropriately. The Homeowners' Association shall have the right, at any time, to require that any pet on the Properties provide a DNA sample, which sample may be taken by swab of the interior of such pet's mouth. The Homeowners' Association shall have the right to have any pet feces tested for purposes of matching such feces with the DNA on file with the Homeowners' Association and, in addition to any other remedy provided to the Homeowners' Association under this Declaration or Applicable Law, shall have the right to fine Owners and tenants for each violation of the foregoing restriction.

The Homeowners' Association may establish rules and regulations and a registration fee to defray the costs associated with the accommodation of pets at the Properties.

In addition to any other rights provided under this Declaration or under Applicable Law, the Board of the Homeowners' Association may require the Owner or other occupant of a Dwelling to remove any pet from the Properties for repeated violations of this section, or, in the Board's sole discretion, if such pet constitutes a danger to the Owners and other occupants of Dwellings. If the owner of such pet fails to comply with such request, the Board may cause the pet to be removed from the Properties, and all costs of such removal shall be the responsibility of the owner. Every pet owner shall be strictly responsible for the behavior of such owner's pet, including any damage to property or injury to persons caused by such pet, and shall indemnify and hold the Declarant, the Homeowners' Association and every other Owner or occupant of a Dwelling harmless from any damage or injury caused by the pet. The Homeowners' Association may adopt rules and regulations that further regulate the keeping of pets within the Properties, including, without limitation, the disposal of pet waste, noise, access to elevators and Common Areas with pets, and the regulation or prohibition of pet activities within the Common Areas or other portions of the Properties.

Any violation of the provisions of this restriction shall entitle the Homeowners' Association to all of its respective rights and remedies, including, without limitation, the right to fine Owners and tenants (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Properties.

10.7 Trash. No Dwelling shall be used or maintained as a dumping ground for rubbish, trash or other waste. All trash, garbage, grass, shrub or tree clippings and other waste shall be kept in sanitary containers and, except during pickup, all containers shall be kept within enclosures within each Dwelling (or in a containment area, if provided). No containers shall be placed along the roadway prior to 7:00 p.m. of the day prior to each scheduled pick up. No odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any Dwelling in the vicinity thereof or to its occupants. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, except within an enclosed structure appropriately screened from view erected for that purpose, if any, and otherwise in accordance with the approval of the Homeowners' Association.

10.8 Temporary Structures. Except as may be used or permitted by the Declarant during periods of construction or renovation, no structure of a temporary nature (including, without limitation, trailers, tents, shacks or mobile offices) shall be located or used within the Properties. Nothing herein shall prevent the Owner or occupant of a Dwelling from the display of one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display in a respectful manner portable, removable official flags, not larger than 4 1/2 feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations and provided such flag is not consistently stored in the front porch, terrace, balcony or otherwise visible from the roadway.

10.9 Renewable Resource Devices. Nothing in this Declaration shall be deemed to prohibit the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, that same shall be installed only in accordance with the reasonable standards adopted from time to time by the Homeowners' Association. Such standards shall be reasonably calculated to maintain the aesthetic integrity of the Properties without making the cost of the aforesaid devices prohibitively expensive.

10.10 Outside Items. No linens, clothing, household fabrics, curtains, rugs, or laundry of any kind shall be hung, dried or aired from any windows, doors, balconies, terraces or other portions of the Dwellings including any Limited Common Areas appurtenant thereto, or any portions of the Common Areas. No equipment, materials or other items shall be placed on balconies, patios or similar areas. The foregoing shall not prevent placing and using patio-type furniture, planters and other items in such areas if the same are normally and customarily used for a residential balcony or terrace area. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Board of the Homeowners' Association shall be final and dispositive.

10.11 Bicycles, Play Equipment, Strollers, Etc. Bicycles, tricycles, scooters, skateboards, and other play equipment, baby strollers and similar items shall not at any time be left in the Driveways or other Common Areas of the Properties or in the Limited Common Areas (including balconies, terraces and patios).

10.12 Occupancy and Use Restrictions; Permitted Uses. Except as otherwise herein expressly provided, each Dwelling may be used only for residential purposes (other than in the

case of rights reserved to the Declarant). Notwithstanding the foregoing restriction, each Dwelling may be used as a home office or other commercial uses to the extent permitted under Applicable Law.

10.13 Leasing of Dwellings. Leasing of Dwellings shall be subject to the prior written approval of the Homeowners' Association. The Homeowners' Association shall from time to time promulgate rules requiring a deposit from the prospective tenant in an amount not to exceed one (1) month's rent ("Deposit"), to be held in an escrow account maintained by the Homeowners' Association; provided, however, that the Deposit shall not be required for any Dwelling which is rented or leased directly by or to the Declarant. No lease of a Dwelling shall be for a term of less than three (3) months. When a Dwelling is leased, a tenant shall have all use rights in Homeowners' Association Property and those Common Areas otherwise readily available for use generally by the Owners, and the Owner(s) of the leased Dwelling shall not have such rights, except as a guest, unless such rights are waived in writing by the tenant. Nothing herein shall interfere with the access rights of the Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Homeowners' Association shall have the right to adopt rules to prohibit dual usage by an Owner and a tenant of Homeowners' Association Property and Common Areas otherwise readily available for use generally by Owners. Additionally, copies of all leases of Dwellings shall be submitted to the Homeowners' Association and the tenants thereunder must register with the Homeowners' Association prior to any occupancy. The Owner of a leased Dwelling shall be jointly and severally liable with its tenants for any violations of this Declaration or the Rules and Regulations of the Homeowners' Association, and agrees to pay any claim for injury or damage to property caused by the negligence of the tenant and a special charge may be levied against the Dwelling therefor.

Every lease shall provide (or, if it does not, shall be automatically deemed to provide) that: (i) a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all exhibits hereto), and with any and all Rules and Regulations adopted by the Homeowners' Association from time to time (before or after the execution of the lease); and (ii) that a tenant may not, under any circumstances, sublet the Dwelling (or any portion thereof) to any other person or permit occupancy by any other person.

All leases are hereby made subordinate to any lien filed by the Homeowners' Association whether prior or subsequent to such lease.

10.14 Variances. The Board of Directors of the Homeowners' Association shall have the right and power to grant variances from the provisions of this Article 10 (as they may relate to the Common Areas) and from the Rules and Regulations (as they may relate to the Common Areas) for good cause shown, as determined in the reasonable discretion of the Board. No variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article 10 in any instance in which such variance is not granted.

10.15 Declarant Exemption. Except as may be expressly provided to the contrary in this Declaration, the Declarant shall be exempt from all restrictions set forth in this Declaration to the extent such restrictions interfere in any manner with Declarant's plans for construction, repair, development, use, sale or other disposition of the Properties, or any part thereof. In order that the development of the Properties may be undertaken and the Properties established as a fully occupied community, neither any Owner, nor the Homeowners' Association, shall do anything to interfere with Declarant's activities. Without limiting the generality of the foregoing, nothing in this Declaration shall be understood or construed to:

10.15.1 Prevent Declarant, its successors or assigns, or its contractors or subcontractors, from doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of the development of the Properties, or the future development thereof (if any) including, without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development (and all models or sketches showing plans for future development of the Properties, as same may be expanded, may be modified by the Declarant at any time and from time to time, without notice); or

10.15.2 Prevent Declarant, its successors or assigns, or its contractors, subcontractors or representatives, from erecting, constructing and maintaining on any property owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said development, construction or repair, or any future development, construction or repairs, and establishing the Properties as a community and disposing of the same by sale, lease or otherwise; or

10.15.3 Prevent Declarant, its successors or assigns, or its contractors or subcontractors, from conducting on any property owned or controlled by Declarant, or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements in the Properties and of disposing of Dwellings, or interests therein, by sale, lease or otherwise, or any other portion of the Properties; or

10.15.4 Prevent Declarant, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be initially constructed, or may in the future be constructed, as part of the Properties; or

10.15.5 Prevent Declarant, its successors or assigns or its contractors or subcontractors, from maintaining such sign or signs on any property owned or controlled by any of them as may be necessary in connection with the operation of any Dwelling owned by Declarant (its successors or assigns) or the sale, lease or other marketing of any Dwellings or any other portion of the Properties, or otherwise from taking such other actions deemed appropriate; or

10.15.6 Prevent Declarant, or its successors or assigns from filing Supplemental Declarations which modify or amend this Declaration, or which add or withdraw additional property as otherwise provided in this Declaration; or

10.15.7 Prevent Declarant from modifying, changing, reconfiguring, removing or otherwise altering any improvements located on the Common Areas; or

10.15.8 Prevent Declarant from exercising or otherwise utilizing or benefiting from any future development rights or other reserved rights which it may have retained with respect to all or any portion of the Properties.

Article 11 ENFORCEMENTS AND REMEDIES

11.1 Enforcement. This Declaration, the Articles and the By-Laws may be enforced by the Homeowners' Association as follows:

11.1.1 Breach of any of the covenants contained in this Declaration or the By-Laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by the Declarant, the Homeowners' Association or their successors-in-interest.

11.1.2 The result of every act or omission whereby any of the covenants contained in this Declaration or the By-Laws are violated in whole or in part is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity with respect to nuisances either public or private shall be applicable and may be exercised by the Declarant or the Homeowners' Association or their successors-in-interest.

11.1.3 The remedies herein provided for breach of the covenants contained in this Declaration or in the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

11.1.4 The failure of the Homeowners' Association to enforce any of the covenants contained in this Declaration or in the By-Laws shall not constitute a waiver of the right to enforce the same thereafter.

11.1.5 A breach of the covenants, conditions or restrictions contained in this Declaration or in the By-Laws shall not affect or impair the lien or charge of any Institutional Mortgagee made in good faith and for value on any Dwelling; provided, however, that any subsequent Owner of such Dwelling shall be bound by said covenants, conditions and restrictions, whether such Owner's title was acquired by foreclosure sale or otherwise.

11.2 Fines. In addition to all remedies, in the sole discretion of the Board, a fine or fines may be imposed upon an Owner and his Dwelling for failure of an Owner, his family, guests, invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Articles or By-Laws, provided the following procedures are adhered to. To the maximum extent permitted under Applicable Law, Declarant shall be exempt from the imposition of fines described in the foregoing sentence.

11.3 Notice. The Homeowners' Association shall notify the Owner or occupant of the infraction or infractions. Included in the notice shall be a date and time of the next Board meeting at which time the Owner or occupant shall present reasons why fines should not be imposed. A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended

(i) Hearing: The non-compliance shall be presented to a committee of at least three (3) members appointed by the Board who are not Officers, Members of the Board of Directors, or employees of the Homeowners' Association, or the spouse, parent, child, brother, or sister of an Officer, Member of the Board of Directors, or employee. The committee shall hear reasons why fines should not be imposed. A written decision of the committee shall be submitted to the Owner or occupant by not later than twenty-one (21) days after the Board's meeting. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(ii) Penalties: The committee may levy reasonable fines, not to exceed One Hundred and No/100 U.S. Dollars (\$100.00) per violation or any greater amount permitted under Applicable Law, against any Member, Owner or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed the maximum amount, if any, permitted under Applicable Law.

(iii) Payment of Penalties: Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.

(iv) Collection of Fines: To the extent permitted under Applicable Law, Fines shall be treated as an Assessment subject to the provisions for the collection of Assessments (including, without limitation, those as to liens) as set forth in this Declaration and in the By-Laws.

(v) Application of Penalties: All monies received from fines shall be allocated as directed by the Board.

(vi) Suspension. In addition to fines, the Homeowners' Association may suspend, for a reasonable period of time, the rights of a Member or an Owner, or an Owner's tenants, guests, or invitees, or both, to use Common Areas and other facilities. Suspension of Common Area use rights shall not impair the right of an Owner or tenant of a Dwelling to have vehicular and pedestrian ingress or egress.

(vii) Assessments. The requirements of this section do not apply to the imposition of suspensions or fines upon any Owner because of the failure of the Owner to pay Assessments or other charges when due; provided, however, that the Homeowners' Association may suspend the voting rights of an Owner for the nonpayment of any Assessments that are delinquent in excess of ninety (90) days.

11.4 Remedies. Anything to the contrary contained in this Declaration notwithstanding, in the event of a violation or breach of any of the provisions contained in this Declaration, specific performance and/or injunctive relief shall specifically be available, it being agreed that damages would, at best, be difficult to ascertain and would be an inadequate remedy in any event. The fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Homeowners' Association may be otherwise legally entitled; however, any penalty paid by the offending Owner or occupant shall be deducted from or offset against any damages which the Homeowners' Association may otherwise be entitled to recover by law from such Owner or occupant. **EACH OWNER, MEMBER, AND EACH ASSOCIATION, SHALL BE DEEMED TO HAVE EACH HEREBY WAIVED TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM PERTAINING TO THIS AGREEMENT.**

11.5 Attorneys' Fees. The prevailing party in any action brought in connection with this Declaration (whether in tort, contract or otherwise) shall be entitled to the award of court costs and reasonable attorneys' and paralegals' fees at all trial and all appellate levels and in connection with all proceedings, whether or not suit is instituted.

Article 12 MODIFICATIONS, SUPPLEMENTS AND AMENDMENTS

12.1 Legal Descriptions. It is understood that this Declaration is being executed prior to the completion of construction of the improvements on certain portions of the Properties. Any legal descriptions attached hereto for any portion of the Properties are based on a surveyor's determination of the lines dividing the Dwellings and the remainder of the Properties, and the actual location may vary somewhat. Therefore, Declarant reserves the right, power and authority by itself, without the joinder or any person or entity whatsoever other than its mortgagee, if any, to modify the legal descriptions of the dividing lines between Dwellings and the remainder of the Properties, to conform to the "as built" improvements by recording a Supplemental Declaration in the Public Records of the County, in which event the legal descriptions for any Dwelling, and the

remainder of the Properties, set forth in or attached to the Supplemental Declaration in the Public Records of the County, shall supersede those attached hereto.

12.2 Relocation of Utility Facilities. If either the Declarant or the Homeowners' Association needs or desires from time to time to relocate or add to any of the existing utility facilities serving any Dwelling or any other portion of the Properties (including easement areas), the party so adding to, changing, rearranging, altering, modifying, relocating or building upon said facilities shall be responsible, at its cost, for adding to, changing, rearranging, altering, modifying, relocating or building upon said facilities shall be responsible, at its cost, for adding to, changing, rearranging, altering, modifying, relocating or building upon such utility facilities, and same shall be accomplished in a manner so as to minimize inconvenience to the Owners and the other Community Beneficiaries.

12.3 Modification of Easements. Subject to the provisions in this Declaration, the Homeowners' Association reserves the right at any time and from time to time, without the need for obtaining consent or approval from any Owner to change, rearrange, alter, modify or otherwise reduce any easements created hereby, provided same does not materially and adversely affect any such other Owner(s). In the event any of same are accomplished with respect to the easement areas located on any Dwelling same shall automatically release the area which is so changed, rearranged, altered, modified, or otherwise removed from this Declaration.

12.4 Modifications to the Properties. The Buildings, and the improvements within a Dwelling shall not be modified in such a way as to materially and adversely affect an Owner of another Dwelling. Therefore, it is understood and agreed that, after initial construction, the improvements on a Dwelling shall not be altered to: (a) materially increase the size or volume, (b) materially change the configuration, or (c) increase the square footage, height or setbacks without, in any such case, the consent of the applicable Owner and any mortgagee of the Dwelling. In addition, the exterior portions of a Dwelling shall be maintained substantially in the manner in which they were originally constructed and no material change in or to the exterior portions (such as the color or finishes) of the improvements in a Dwelling shall be permitted without the prior written consent of the Homeowners' Association.

12.5 Supplements. During the period in which the Declarant is the Class B Member of the Homeowners' Association, and thereafter, to the extent permitted by Applicable Law, the Declarant may, in its sole discretion and from time to time, add other property to the provisions of this Declaration by Supplemental Declaration (which shall not require the consent of then existing Owners, the Homeowners' Association, or any other Community Beneficiaries) and thereby add to the Properties. Nothing in this Declaration shall, however, obligate Declarant to add to the Properties, nor to prohibit Declarant from rezoning and changing its development plan with respect to such future portions. All Owners, by acceptance of a deed to or other conveyance of their Dwelling and all mortgagees of Owners, by acceptance of a mortgage on any Dwelling, thereby automatically consent to any such rezoning, change, addition or deletion thereafter made by the Declarant and shall evidence such consent in writing if requested to do so by the Declarant at any time (providing, however, that the refusal to give such written consent shall not obviate the general effect of this provision).

12.6 Withdrawal. During the period in which the Declarant is the Class B Member of the Homeowners' Association, and thereafter, to the fullest extent permitted by Applicable Law, the Declarant reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates from the provisions of this Declaration

to the extent included originally in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant.

12.7 Declarant Amendments. During the period in which the Declarant is the Class B Member of the Homeowners' Association, and thereafter, to the extent permitted by Applicable Law, this Declaration may be amended by the Declarant to correct any errors or omissions or to effect any other amendments whatsoever, provided such other amendment does not, in the Declarant's sole judgment, have a materially adverse effect on substantial rights of any Institutional Mortgagee who has not consented in writing to the amendment. In addition, during the period in which the Declarant is the Class B Member of the Homeowners' Association, and thereafter, to the extent permitted by Applicable Law, the Declarant shall have an absolute right to make any amendments to this Declaration (without any other party's consent or joinder) that are requested or required by the FNMA/FHLMC, the Government National Mortgagee or any other governmental, quasi-governmental or governmental-chartered entity which owns or expects to own one or more Institutional Mortgages encumbering the Properties, or any portion thereof, or to insure the payment of one or more such mortgages, or that are requested or required by any Institutional Mortgagee or prospective Institutional Mortgagee to enhance the marketability of its mortgages to one or more of the foregoing. In addition, as long as it owns any portion of the Properties, the Declarant shall have an absolute right to make any amendments to this Declaration (without any other party's consent or joinder) that are requested or required by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or any other governmental, quasi-governmental or government-chartered entity which owns or expects to own one or more first mortgages within the Properties, or to insure the payment of one or more such mortgages, or that are requested or required by any first mortgagee or prospective first mortgagee to enhance the marketability of its mortgages to one or more of the foregoing. Except to the extent otherwise provided in this Declaration, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a Dwelling or increase the proportion or percentage by which a Dwelling shares in the Common Expenses unless the record Owner and all record Owners of liens on such Dwelling, as well as a majority voting interests of the Owners, join in the execution of the amendment.

12.8 Owner Amendments. This Declaration may also be amended by an instrument signed by the President of the Homeowners' Association, attested to by its Secretary and certifying that the amendment set forth in the instrument was adopted by a vote of at least sixty-six and two-thirds percent (66 2/3%) of the votes to be cast by all Voting Members, at a duly called meeting thereof; provided, however, that so long as Declarant or its affiliates is the Owner of any Dwelling affected by this Declaration, and unless prohibited under Applicable Law, Declarant's consent must be obtained if such amendment, in the sole opinion of Declarant, affects its interest.

12.9 Water Management District. No amendment may be adopted which would affect the surface water management and/or drainage systems, including environmental conservation areas, without the consent of the applicable water management district (the "District"). The District shall determine whether the amendment necessitates a modification of the current surface water management permit (the "District Permit"). If a modification is necessary, the District will advise the Association. The District has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the surface water management system facilities or in mitigation or conservation areas under the responsibility or control of the Association.

12.10 Reservation of Development Rights, Entitlements, Signage Rights and Roof Rights. The Declarant reserves and retains unto itself, on behalf of itself and its affiliates, their

respective successors and assigns, for their sole use and benefit, any and all right, title, interest and ownership of, whether now or hereafter existing the following: (a) the development rights to any and all future improvements which may from time to time be permitted under Applicable Law to be developed on any portion of the Properties including, without limitation (i) the right (but not the obligation) to construct additional improvements, and (ii) any and all unused development rights and interests relating to the Properties, including, without limitation, any and all severable or transferable density allocations and use rights (collectively, the "Development Rights"); (b) the impact, tax and other fees and credits, reimbursements, rebates, abatements, entitlements and other benefits relating to the past, present or future development of all or any portion of the Properties, which may now or hereafter be available from any Federal, state or local governmental agency (the "Entitlements"); (c) any and all monument signs and other areas for signage on the surface of the exterior portions of the Buildings, along with the exclusive naming rights for the Buildings and all rights to use the name "VANDERBILT RESERVE" and derivations thereof (the "Signage Rights"); and (d) the roof of each Building (other than rooftop terraces designated as Limited Common Areas to the Dwellings) and other improvements within the Properties (the "Roof Rights"). In no event shall the foregoing reservations be deemed to include any subsurface rights, within the meaning of Section 689.29, F.S., or any right of entry in connection therewith.

In connection with the foregoing rights, the Declarant further reserves and retains, on behalf of itself and its affiliates and their respective successors and assigns, such easements on, over, under, through and across the Properties (including, without limitation, the Dwellings therein) as may be necessary for use and enjoyment of its Development Rights, Entitlements, Air Rights, Signage Rights, and Roof Rights, including, without limitation, the installation, repair, replacement and maintenance of any such improvements and installations (whether placed or constructed upon the roof of a Building or elsewhere) within the Properties. The Declarant, and its successors and assigns shall also have an easement of subjacent lateral support and all other support over any portions of the Properties which may now or hereafter contribute to the support of any such improvements which are now or hereafter constructed within the Properties.

Notwithstanding anything to the contrary in this Declaration, in no event shall any Development Rights, Entitlements, Air Rights, Signage Rights or Roof Rights, or any rights relating thereto or otherwise arising in connection therewith, be deemed to be Common Areas of the Properties, or an appurtenance to a Dwelling which automatically runs with title thereto unless assigned by Declarant to such Dwelling. The rights and privileges reserved by the Declarant in this section may at any time be assigned, leased, transferred and/or conveyed (in whole or in part) to any affiliate of the Declarant or to any third party. Each Owner, by acceptance of title to a Dwelling, and the Homeowners' Association, automatically and unconditionally (a) waives, relinquishes and quitclaims unto the Declarant, and its successors and assigns, any and all right, title and interest that it may now or hereafter have in the Development Rights, Entitlements, Air Rights, Signage Rights and Roof Rights, and in any and all rights relating thereto or otherwise arising in connection therewith; (b) acknowledges and agrees that the reservations of such rights were fully taken into account in determining the purchase price of a Dwelling; (c) agrees to execute, at the request of the Declarant, or any successor or assign thereof, all documents or consents which may be required by any governmental or quasi-governmental agencies to allow such party to obtain the benefits of the Development Rights, Entitlements, Air Rights, Signage Rights and Roof Rights, including, without limitation, any plat or re-plat, unity of title, declaration, covenant running with the land in lieu of unity of title, applications, permits or other documents, amendments or modifications of subdivision restrictions or declarations of easement, or the use of any Signage Rights by the Declarant, by any affiliate thereof, or by any third party; and (d) appoints the Declarant, and any successor or assign or designee thereof, as its agent and attorney-in-fact to execute, on behalf and in the name of such Owners and Condominium Associations, any and

all such documents or consents. Notwithstanding the foregoing, if requested by the applicable party, each Owner and Homeowners' Association shall evidence their consent in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). The foregoing power of attorney is irrevocable and coupled with an interest. To the fullest extent permitted under Applicable Law, no portion of this section may be amended, waived or otherwise abridged without the prior written consent of the Declarant.

No amendment, rule or regulation may be adopted by the Homeowners' Association, or by the Members, which would eliminate, modify, prejudice, abridge or otherwise alter in any way the rights granted or reserved, in this Declaration, in favor of the Declarant, without the approval of at least eighty percent (80%) of all voting interests in the Properties, subject to the following sentence; provided however, that nothing herein shall limit or impair the amendment rights of the Declarant. Additionally, all rights granted or reserved to Declarant in this Declaration shall be deemed an appurtenance to any Dwellings owned by the Declarant or its assigns (but only for so long as the Declarant or its assigns owns such Dwellings), and shall not be eliminated, modified or impaired by any amendment or by rule or regulation (other than an amendment enacted by the Declarant) without the consent of the Declarant or its assigns, as appropriate

12.11 Effects of Amendments. Any duly adopted amendment to this Declaration shall run with and bind the Properties for the same period and to the same extent as do the covenants and restrictions set forth herein.

Article 13 DISCLAIMERS

13.1 **GENERAL DISCLAIMER.** DECLARANT HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE DWELLINGS AND REMAINDER OF THE PROPERTIES, EXCEPT AS MAY BE REQUIRED BY APPLICABLE LAW. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND AS TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

13.2 **SPECIFIC ADDITIONAL DISCLAIMERS OF REPRESENTATIONS, WARRANTIES AND LIABILITY.** NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT, THE HOMEOWNERS' ASSOCIATION, OR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") NOR SHALL ANY SUCH PARTIES BE LIABLE OR RESPONSIBLE FOR SUCH, UNLESS EXPRESSLY SET FORTH IN THIS DECLARATION, AND DECLARANT AND THE LISTED PARTIES HEREBY SPECIFICALLY DISCLAIM ANY LIABILITY OR RESPONSIBILITY FOR THE FOLLOWING:

13.2.1 ANY MATTERS RELATING TO THE VIEW, SECURITY, PRIVACY, LOCATION, DESIGN AND DENSITY OF THE PROPERTIES, INCLUDING ANY DWELLINGS.

13.2.2 THE PREVENTION OF TORTIOUS ACTIVITIES, THE SECURITY, HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT, COMMUNITY BENEFICIARY, OR USE OF ANY OTHER PORTION OF THE PROPERTIES, INCLUDING, WITHOUT LIMITATION, THEIR TENANTS, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS. ANY PROVISIONS OF THIS DECLARATION, OR

OF THE ARTICLES OR BY-LAWS, SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO ACCESS CONTROL FACILITIES, HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE RECIPIENT OF SUCH ASSESSMENT FUNDS TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENTS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

13.2.3 THE PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAW, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OF ANY PORTION OF THE COMMON AREAS OR OTHER PORTIONS OF THE PROPERTIES, INCLUDING, WITHOUT LIMITATION, THE SALE, OPERATION, LEVEL OR COST OF MAINTENANCE, TAXES OR REGULATION THEREOF AND, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SUITABILITY FOR INTENDED USE OF THE DWELLINGS, OR ALL OR ANY OTHER PORTION OF THE COMMON AREAS, OR OTHER PORTIONS OF THE PROPERTIES.

13.2.4 BOWING AND/OR DEFLECTION OF MATERIALS, AND CRACKING AND SETTLEMENT OF IMPROVEMENTS, WHICH EACH OWNER RECOGNIZES AND AGREES IS TYPICAL OF THE TYPE OF IMPROVEMENTS IN THE PROPERTIES.

13.2.5 MOLDS, MILDEW, TOXINS AND FUNGI WHICH, GIVEN THE CLIMATE AND HUMID CONDITIONS IN FLORIDA, MAY EXIST AND/OR DEVELOP WITHIN THE DWELLINGS AND OTHER PORTIONS OF THE PROPERTIES. EACH OWNER IS HEREBY ADVISED THAT CERTAIN MOLDS, MILDEW, TOXINS AND/OR FUNGI MAY BE, OR IF ALLOWED TO REMAIN FOR A SUFFICIENT PERIOD MAY BECOME, TOXIC AND MAY POTENTIALLY POSE A HEALTH RISK. EACH OWNER AGREES TO REGULARLY INSPECT ITS DWELLING FOR PLUMBING LEAKS, WATER ACCUMULATION, CONDENSATION, AND WATER INTRUSION THROUGH WINDOWS, DOORS AND ROOFS FOR ANY SIGNS OF MOLD AND REGULARLY MAINTAIN ADEQUATE AIR CIRCULATION AND VENTILATION BY CONTINUOUSLY OPERATING ITS HVAC SYSTEM.

13.2.6 NOISE, COMMOTION, ODOR AND OTHER UNPLEASANT EFFECTS OF NEARBY CONSTRUCTION ACTIVITY, WHICH MAY IMPEDE THE USE OF PORTIONS OF THE DWELLINGS, THE COMMON AREAS OR THE REMAINDER OF THE PROPERTIES FOR SOME TIME IN THE FUTURE.

13.2.7 NOISE, MUSIC, VIBRATIONS, UNPLEASANT ODORS, FUMES, SMOKE, COMMOTION AND OTHER UNPLEASANT EFFECTS EMANATING FROM THE DWELLINGS AND OTHER PORTIONS OF THE PROPERTIES AND THE SURROUNDING AREAS, INCLUDING, WITHOUT LIMITATION, FROM THE ACTIVITIES CONDUCTED WITHIN OR OUTSIDE THE PROPERTIES, WHICH MAY CREATE DISTURBANCES AND IMPEDE USE AND ENJOYMENT OF ALL OR A PORTION OF THE PROPERTIES.

13.2.8 ALL MATTERS RELATING TO OR OTHERWISE ARISING FROM THE MASTER COVENANTS OR THE PROPERTIES GOVERNED THEREBY, INCLUDING, WITHOUT LIMITATION, THE ACTIONS OR INACTIONS OF, OR ANY BREACHES BY, THE MASTER ASSOCIATION.

13.2.9 ACTS OF GOD AND UNCONTROLLABLE EVENTS AND, GIVEN THE LOCATION OF THE PROPERTIES, THE EXPOSURE TO THE POTENTIAL DAMAGES FROM FLOODING AND FROM TROPICAL STORMS AND HURRICANES INCLUDING, WITHOUT

LIMITATION, DAMAGES FROM STORM SURGES AND WIND-DRIVEN RAIN AND IN ANY PORTIONS OF THE IMPROVEMENTS LOCATED BELOW THE FEDERAL FLOOD PLAIN. EACH OWNER ACKNOWLEDGES THAT PORTIONS OF THE IMPROVEMENTS MAY BE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY PROPERTY THEREIN IS SUSCEPTIBLE TO WATER DAMAGE.

13.3 EACH OWNER, BY ACCEPTING AND ACQUIRING TITLE TO A DWELLING, AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES), SHALL BE BOUND BY THIS ARTICLE, SHALL BE DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH EACH OF THE ABOVE MATTERS AND OCCURENCES AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE DECLARANT AND THE HOMEOWNERS' ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE AFOREMENTIONED PARTIES HAS BEEN DISCLAIMED IN THIS ARTICLE.

13.4 RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY HEALTH DEPARTMENT. THE FOREGOING NOTICE IS PROVIDED IN ORDER TO COMPLY WITH STATE LAW AND IS FOR INFORMATIONAL PURPOSES ONLY. SELLER DOES NOT CONDUCT RADON TESTING WITH RESPECT TO THE DWELLINGS OR THE REMAINDER OF THE PROPERTIES, AND SPECIFICALLY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES AS TO THE ABSENCE OF RADON GAS OR RADON PRODUCING CONDITIONS IN CONNECTION WITH THE DWELLINGS AND THE PROPERTIES.

13.5 LIMITATION OF DAMAGES. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. ALL OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE DWELLINGS (WHETHER FROM THE DECLARANT OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND ANY AND ALL CLAIMS INCIDENTAL AND CONSEQUENTIAL DAMAGES.

13.6 REFERENCES TO DECLARANT AND HOMEOWNERS' ASSOCIATION. AS USED IN THIS ARTICLE, REFERENCES TO DECLARANT SHALL INCLUDE WITHIN THEIR MEANING THE DECLARANT AND ITS AFFILIATES, AND ALL OF THEIR MEMBERS, MANAGERS, PARTNERS, SHAREHOLDERS, DIRECTORS, OFFICERS, BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUPPLIERS, AFFILIATES AND SUCCESSORS AND ASSIGNS. REFERENCES TO THE "HOMEOWNERS' ASSOCIATION" SHALL INCLUDE WITHIN THEIR MEANING ALL OF ITS DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

Article 14
GENERAL PROVISIONS

14.1 Institutional Mortgagee Protection. The following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this Declaration, these added provisions shall control):

a) The Homeowners' Association shall be required to make available to all Owners and Institutional Mortgagees, and to insurers and guarantors of any first Institutional Mortgage, for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of this Declaration (with all amendments) and the Articles, By-Laws and Rules and Regulations and the books and records of the Homeowners' Association. Furthermore, such persons shall be entitled, upon written request (which request is hereby deemed given by Declarant's Mortgagee), to (i) receive a copy of the Homeowners' Association's financial statement for the immediately preceding fiscal year, (ii) receive notices of and attend the Homeowners' Association meetings, (iii) receive notice from the Homeowners' Association of an alleged default by an Owner in the performance of such Owner's obligations under this Declaration, the Articles or the By-Laws of the Homeowners' Association, which default is not cured within thirty (30) days after the Homeowners' Association learns of such default, and (iv) receive notice of any substantial damage or loss to the Common Areas.

b) Any holder, insurer or guarantor of an Institutional Mortgage on a Dwelling shall have, if first requested in writing (which request is hereby deemed given by Declarant's Mortgagee), the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Common Areas, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Dwelling, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Homeowners' Association, and (iv) any proposed action which requires the consent of a specified number of Institutional Mortgage holders.

c) Any holder, insurer or guarantor of an Institutional Mortgage on a Dwelling shall have the right to pay, singly or jointly, taxes or other charges that are delinquent and have resulted or may result in a lien against any portion of the Common Areas and receive immediate reimbursement from the Homeowners' Association.

d) Any holder, insurer or guarantor of an Institutional Mortgage on a Dwelling shall have the right to pay, singly or jointly, any overdue premiums on any hazard insurance policy covering the Common Areas or obtain, singly or jointly, new hazard insurance coverage on the Common Areas upon the lapse of a policy and, in either case, receive immediate reimbursement from the Homeowners' Association.

e) Notwithstanding anything to the contrary contained herein, no portion of the Properties may be withdrawn from the effect of this Declaration without the prior written consent of Declarant's Institutional Mortgagee.

14.2 Term. Subject to the amendment provisions of Article 12 hereof, the easements, covenants and restrictions of this Declaration shall run with and bind the properties covered hereby, and shall inure to the benefit of and be enforceable by the Homeowners' Association, the Declarant and their respective successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions, easements, reservations of easement, equitable servitudes and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, approved by seventy-five percent (75%) of the

Owners and seventy-five percent (75%) (in dollar amount) of the first mortgagees of record, has been recorded revoking said covenants. If revoked in any other manner while the Declarant owns any portion of the Properties, title to the Common Areas shall remain vested in the name of the Declarant and the Declarant shall be free to erect barricades and prevent use of all or any portion thereof. No prescriptive rights shall be established regardless of the nature or duration of use of the Common Areas or any portion thereof.

14.3 Interpretation and Conflicts. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Community and for the maintenance of community facilities and Common Areas. The provisions of this Declaration as well as those of the Articles, By-Laws and Rules and Regulations of the Homeowners' Association shall be interpreted by the Homeowners' Association. Any such interpretation of the Homeowners' Association which is rendered in good faith shall be final, binding and conclusive if the Homeowners' Association receives the confirming consent of Declarant and a written opinion of legal counsel to the Homeowners' Association, or the counsel having drafted this Declaration or other applicable document, that the interpretation is not unreasonable, which opinion may be rendered before or after the interpretation is adopted. Notwithstanding any rule of law to the contrary, the provisions of this Declaration and the Articles, By-Laws and the Rules and Regulations of the Homeowners' Association shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Homeowners' Association and the Properties, the preservation of the values of the Dwellings, and the protection of Declarant's rights, benefits and privileges herein contemplated. Section and subsection headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter genders shall each include the others. This Declaration shall be read as cumulative to and not in limitation of any other applicable declaration of covenants and restrictions or declaration of condominium and exhibits thereto. As used in this section, the words "its successors and assigns" specifically do not include purchasers of completed Dwellings. This Declaration shall take precedence over conflicting provisions in the Articles and By-Laws of the Homeowners' Association and said Articles shall take precedence over the By-Laws. The Board shall be the ultimate interpreter of this Declaration and an opinion of counsel from counsel engaged by the Board for such purpose, stating that any such interpretation is not unreasonable, shall establish the validity of any such interpretation.

14.4 No Public Dedication or Grant of Riparian Rights. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Areas to the public, or for any public use. Nothing in this Declaration shall be construed to expressly or impliedly grant to any Owner, the Homeowners' Association or any other owner(s) of property within the Properties any riparian rights appurtenant to any portion of the Properties, if any.

14.5 Water Management District Provisions. The following provisions are set forth in satisfaction of the requirements of the District:

a) Conservation Easements. Dwellings may be adjacent to wetland preservation or mitigation areas and upland buffers which are protected under conservation easements.

b) Maintenance of Conservation Easements. The Association shall have the responsibility to perpetually maintain conservation easements (preserved/restored/created

wetlands areas and upland buffer zones) and shall take action against Owners as necessary to enforce the conditions of any and all conservation easements.

c) Enforcement. The Association reserves the right to levy fees and penalties to cover the costs of maintenance activities related to the conservation easements.

d) Exceptions. Owners may not alter wetlands and upland buffers from their natural/permitted condition with the exception of exotic or nuisance vegetation removal or restoration in accordance with the restoration plan included in the conservation easement. Exotic vegetation may include, but is not limited to, melaleuca, Brazilian pepper, Australian pine, and Japanese climbing fern, or any other species currently listed by the Florida Exotic Pest Plant Council. Nuisance vegetation may include, but is not limited to, cattails, primrose willow, and grapevine.

e) Notice. The Homeowners' Association shall provide notice to Owners regarding any mitigation/monitoring and/or financial assurances for which the Association is responsible.

f) Signage. Owners shall be responsible for the perpetual maintenance of any signage located on their property that is required by the District and relative to this section.

14.6 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Dwelling or other portion of the Properties shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference hereto is contained in the instrument by which such person acquired an interest in such Dwelling or other property.

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

14.8 Covenant Running With the Land. All covenants and provisions of this Declaration, the Articles, the By-Laws and the Rules and Regulations of the Homeowners' Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Declarant and subsequent owner(s) of the land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Owners, tenants and occupants of Dwellings shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and Rules and Regulations, all as may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Dwelling, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable Rules and Regulations of the Homeowners' Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein. In the event that any word, clause, sentence, paragraph, subsection, or section hereof shall be judicially determined to prevent this Declaration from being fully enforceable and running with the land as aforesaid, then such portion hereof shall be judicially modified, if at all

possible and, if not, shall be stricken herefrom (but only to the most limited extent necessary) so that the paramount goal of the Declarant in making this Declaration (i.e., that this Declaration be a fully enforceable covenant running with the land) is accomplished cy pres.

14.9 Declarant Assignments. Notwithstanding anything to the contrary in this Declaration, the Declarant may, from time to time, assign all or any portion of its rights hereunder, or all or a portion of such rights in connection with a portion of the Properties. In the event of a full ("blanket") assignment of all of the Declarant's rights (or remaining rights) hereunder to a successor, assignee or pledgee, the result of which is that the Declarant named herein shall no longer have any rights hereunder (whether immediately, because the assignment is absolute, or after foreclosure of the assignee's security instrument, because the assignment is collateral in nature), such assignee (or the purchaser at the foreclosure sale, if that is the case) shall be deemed the Declarant for all purposes hereunder. In the event of an assignment of less than all of the rights of the Declarant, as aforesaid, the assignee shall not be deemed the Declarant, but may exercise such rights of the Declarant as are specifically assigned to it. Any partial (but not "blanket") assignment of the Declarant's rights may be made on an exclusive, non-exclusive, or conditional basis. The Declarant may not assign all (or all its remaining) rights hereunder to more than one person or party hereunder at any one time unless the only such prior "blanket" assignment(s) is/are collateral in nature (as security for a loan), in which event the Declarant may make subsequent "blanket" collateral assignments which shall be subject and subordinate to the security interest(s) of the prior collateral assignee(s). Any person or entity as to whom or which all or certain of the Declarant's rights hereunder have been assigned may further assign such assignee's rights, in whole or in part, unless restricted or prohibited in the assignment made by the Declarant or a successor assignor thereof. Nothing contained in this Declaration, other than in this section, shall be effective or construed to limit any of the foregoing rights of the Declarant (or its or any other assignees or successors) to make any or all of the assignments provided for in this section. If any assignment of all (or all then remaining) or a portion of the Declarant's rights is given as security for a loan (whether by pledge, mortgage or other device which creates a security interest in all or a portion of such rights), such assignee shall not have the right to exercise such rights of the Declarant except as provided in the instrument of such assignment or, after foreclosure of such security interest, in accordance with Applicable Law. Such assignee's rights will inure to the benefit of any purchaser at a foreclosure sale which includes such rights; provided, however, that such purchaser shall become the Declarant, as provided herein, only if the aforesaid instrument of assignment is a full ("blanket") assignment of all of the Declarant's rights (or remaining rights) hereunder.

14.10 Cooperation. Each Owner, by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to cooperate in, and support, any and all zoning, administrative, governmental and/or quasi-governmental filings, applications, requests, submissions and other actions necessary or desired for development and/or improvement of the Properties, including, without limitation, signing any required applications, plats, etc. as the Owner of any portion of the Properties owned or controlled thereby when necessary or requested.

14.11 Standards for Consent, Approval and Other Actions. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Declarant or its affiliates, the Homeowners' Association, the Board, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Declarant or its affiliates or the Homeowners' Association shall be deemed so completed or substantially completed when such matters have been completed or substantially

completed in the reasonable opinion of the Declarant or Homeowners' Association, as appropriate.

14.12 Attorneys' Fees/Litigation/Waiver of Jury Trial. The prevailing party in any action brought pursuant to or in connection with this Declaration (whether in tort, contract or otherwise) shall be entitled to the award of court costs and reasonable attorneys' and paralegals' fees at all trial and all appellate levels and in connection with all proceedings, whether or not suit is instituted. As to any claim arising from or connected with the Declarant's construction, development, repair, replacement or maintenance of the Properties, or the Declarant's operation of the Homeowners' Association ("Development Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Development Matters that (i) the party or parties bringing same shall have first given notice to the Declarant or other party against whom/which relief or recovery is sought (the "Defendant") of the specific Development Matters complained of and what actions are necessary to cure or correct same, and (ii) the Defendant shall have been given at least forty-five (45) days (subject to extension by reason of matters beyond the control of the Defendant or because of the nature of the applicable Development Matter(s) and the time necessary to cure or correct same) in which to cure or correct the applicable Development Matter(s) and shall have materially failed to do so. **THE DECLARANT, THE HOMEOWNERS' ASSOCIATION, AND EACH OWNER AND OTHER PERSON ACQUIRING ANY RIGHT, TITLE OR INTEREST IN OR TO ANY DWELLING, OR ANY RIGHTS UNDER THIS DECLARATION, EACH HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM PERTAINING TO OR ARISING FROM THIS DECLARATION (WHETHER IN TORT, CONTRACT OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, ANY ACTION RELATING TO A DEVELOPMENT MATTER.** Without limiting the general binding effect of this Declaration, each Owner and other person acquiring any right, title or interest in or to any Dwelling, shall be deemed, by virtue of the acceptance of the conveyance, grant, transfer or assignment thereof, to be fully bound by the provisions of this section, as shall the Declarant and the Homeowners' Association.

14.13 Severability. The invalidity or unenforceability of any one of these covenants or restrictions or any section, subsection, paragraph, subparagraph, sentence, clause, phrase or word, or any other provision of this Declaration, the exhibits annexed hereto, or applicable Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity and enforceability of the remaining portions hereof and thereof, all of which shall remain in full force and effect.

14.14 Declarant Liability. To the fullest extent permitted under Applicable Law, the liability of the Declarant under this Declaration, or any amendment or any instrument or document executed in connection with this Declaration, shall be limited to and enforceable solely against the interest of the Declarant in the Properties, and not against any other assets of the Declarant, or any member or partner thereof (or any of their officers, principals, directors, employees, managers, members or agents). Except to the extent, if any, set forth in an assignment of Declarant's rights under this Declaration, any prior Declarant shall not be liable for any actions or inaction of any subsequent Declarant, and any subsequent Declarant shall not be liable for any actions or inactions of any prior Declarant.

14.15 Effective Date. This Declaration shall become effective upon its recordation in the Public Records of the County.

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

Signed, sealed and delivered in the presence of:

Sobel Vanderbilt, LLC, a Florida limited liability company

Print: _____

Print: _____

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by _____, as _____ of Sobel Vanderbilt, LLC, a Florida limited liability company, who is personally known to me, or who has provided proper identification in the form of _____.

[Notary Seal]:

Notary Public, State of _____ at Large
Print Name: _____
My Commission Expires: _____

JOINDER

VANDERBILT RESERVE HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and exhibits attached hereto.

IN WITNESS WHEREOF, VANDERBILT RESERVE HOMEOWNERS' ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this ____ day of _____, 201__.

Witnessed by:

VANDERBILT RESERVE HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not-for-profit

Name: _____

By: _____
_____, President

Name: _____

Address: _____

[Corporate Seal]

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing joinder was acknowledged before me this ____ day of _____, 201__ by _____, as President of Vanderbilt Reserve Homeowners Association, Inc., a Florida not-for-profit corporation, who is personally known to me, or who has provided proper identification in the form of _____.

[Notary Seal]:

Notary Public, State of Florida
Print Name: _____
My Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTIES

EXHIBIT "B"

ARTICLES OF INCORPORATION

EXHIBIT "C"

BY-LAWS

EXHIBIT "D"

DRAINAGE EASEMENT

DRAFT