

Prepared by and return to:
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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR WARM SPRINGS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR WARM SPRINGS is made as of the 26th day of January, 2016, by **ARGO WARM SPRINGS, LLP**, a Florida limited liability limited partnership ("Declarant"), whose mailing address is 21141 Bella Terra Blvd., Estero, FL 33928.

RECITALS:

- A. Declarant (as hereinafter defined) is the owner of certain real property located in Collier County, Florida, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property");
- B. Declarant intends to develop the Property into a community known as Warm Springs ("the Community"), which shall consist of Single Family Residences, recreational facilities and other amenities and the supporting infrastructure in accordance with the master plan and respective approved site plans; and
- C. Declarant wishes to provide for the creation, maintenance, preservation and operation of a common scheme of development and common interest to provide for the maintenance of the common property and other community facilities; and to this end, desires to subject the Property within the Community to the covenants, conditions, restrictions, provisions, easements, charges, and liens hereinafter set forth; and
- D. Declarant has deemed it desirable in order to effectuate its intent to create an association to exercise the powers of owning, maintaining, leasing and/or administering the common areas, administering and enforcing the covenants and restrictions contained hereinafter, collecting and disbursing the assessments and charges hereinafter created and otherwise fulfilling the rights and obligations of such association as contemplated herein and Chapters 617 and 720, *Florida Statutes*; and
- E. Warm Springs Community Association, Inc. has been formed under the laws of the State of Florida, as a not-for-profit corporation, for the purpose of exercising the functions, responsibilities, duties, and other actions contemplated herein; and

F. Declarant hereby declares that the Property shall be held, transferred, sold, conveyed, leased, mortgaged, used, occupied, and otherwise dealt with subject to the terms of the covenants, conditions, restrictions, provisions, easements, charges, and liens hereinafter set forth, all of which are created in the best interest of the owners and residents of the Property, and which will run with the land and shall be binding upon all persons having and/or acquiring any right, title or interest in the Property or any portion thereof, or shall occupy any portion of such Property, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the Property or any portion thereof.

NOW, THEREFORE, the foregoing recitals are hereby incorporated as if fully set forth hereinafter, and in consideration of the foregoing, the Declarant hereby states as follows:

ARTICLE 1 DEFINITIONS

The following words and phrases when used in this Declaration (unless the context shall prohibit) and any supplemental declaration thereto shall have the following meanings:

1.1 "Act". "Act" means and refers to Chapter 720, *Florida Statutes*, as existing on the date of recordation of this Declaration.

1.2 "Additional Property". "Additional Property" means and refers to the real property (excluding the Property) together with any improvements thereon, which hereafter may be made subject to this Declaration by annexation pursuant to Article 2 of this Declaration.

1.3 "Amenity Area". "Amenity Area" means and refers to Tract "R" on the Plat which is intended for the installation of certain recreational amenities intended for use by all Owners, which Amenity Area will be a portion of the Common Area.

1.4 "Articles of Incorporation". "Articles of Incorporation" means and refers to the Articles of Incorporation for the Association, as they may exist from time to time, which are attached hereto as Exhibit "B", and are incorporated herein by reference.

1.5 "Assessment". "Assessment" means and refers to the assessments described in Article 4 herein.

1.6 "Association". "Association" means and refers to WARM SPRINGS COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, which shall at all times be in good standing with the Florida Secretary of State.

1.7 "Board of Directors". "Board of Directors" means and refers to the Board of Directors of the Association

1.8 "Builder". "Builder" means and refers to any Person or entity that purchases a Lot from Declarant for purposes of constructing a home thereon for resale in the ordinary course of its business, as designated by Declarant, in an instrument recorded in the Public Records of the County.

1.9 "Bylaws". "Bylaws" means and refers to the Bylaws for the Association, as they may exist from time to time, which are attached hereto as Exhibit "C", and are incorporated herein by reference.

1.10 "Common Area". "Common Area" means and refers to all real property (including the Improvements thereto and any Amenity Area therein) owned by the Association for the common use, enjoyment and benefit of Owners (but not including any parcel or portion thereof dedicated on the Plat to the public or to a public utility provider); together with all personal property, landscaping and any improvements thereon, including, without limitation, but not limited to, all structures, open space, conservation areas, retention areas, walkways, entrance markers and features, signs, and street lights, if any, but excluding any public utility installations thereon, subject to the uses and restrictions set forth on the Plat and herein and the Rules and Regulations of the Association, from time to time promulgated by the Association. The Common Area is comprised of the parcels set forth on Exhibit "A-1" attached hereto. In the event of a conflict between this Section 1.10 and Exhibit "A-1", Section 1.10 shall control.

1.11 "Common Expense(s)". "Common Expense(s)" means and refers to the following expenses, including but shall not be limited to: (a) costs of insurance from time to time obtained by the Association; (b) costs of operating and maintaining all other improvements and easement areas for which the Association is responsible for maintaining, repairing and/or replacing, including but not limited to all Common Areas, and the grass, landscaping and irrigation system and amenities in an Amenity Area, within in the Common Areas; (c) all utility charges and other taxes on Association-owned property or on property for which the Association is responsible; (d) the cost of the Association's performance of all obligations imposed upon the Association by this Declaration, the Association's Articles of Incorporation, the Association's Bylaws or otherwise; (e) operating costs of the Association; and (f) costs and fees of accountants, attorneys and other professionals retained by the Board of Directors to serve, represent or advise the Association.

1.12 "Community". "Community" means and refers to the Property, hereinafter defined, as well as any additional property(ies) which may be added to the scheme of this Declaration.

1.13 "County". "County" means and refers to Collier County, Florida.

1.14 "Declaration". "Declaration" means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements for Warm Springs, as recorded in the Public Records of Collier County, Florida, as the same may be amended and supplemented from time to time.

1.15 "Declarant". "Declarant" means and refers to Argo Warm Springs LLLP, a Florida limited liability limited partnership and its successors, assigns, and designees, including, but not limited to, assigns by operation of law. The term "Declarant" shall not include any Person (including a joint venture involving Declarant) who purchases a Residence or obtains a mortgage on any portion of the Property. The rights of Declarant may be assigned in whole or in part as more particularly set forth in Section 13.6 herein.

1.16 "Development Approvals". "Development Approvals" means and refers to the Plat, the permit issued or to be issued by the District and all such other governmental approvals for the Community as may from time to time exist as determined in Declarant's sole and absolute discretion. Such Development Approvals are subject to change.

1.17 "District". "District" means and refers to the Southwest Florida Water Management District

1.18 "District Permit". District Permit means and refers to any permits issued by the Southwest Florida Water Management District for the Property, as they may be amended from time to time.

1.19 "Drainage Easements". "Drainage Easements" means and refers to the drainage and retention easements declared and reserved on the Plat or subsequently recorded in the Public Records of Collier County, Florida encumbering all or a portion of the Property.

1.20 "Enforcement Costs". "Enforcement Costs" means and refers to all reasonable costs of collection and enforcement, whether or not any suit or other judicial or administrative proceeding is filed, and if a proceeding is filed, all reasonable costs before and during any such proceeding, before trial, at trial and upon all appellate levels, in any post-judgment proceedings, in any judgment enforcement proceedings, in any enforcement actions, in any collections proceedings or in any bankruptcy proceedings, including but not limited to, court costs and attorneys', paralegals' and expert fees and disbursements. Enforcement Costs shall also be deemed to include, without limitation, costs and expenses for consultation with an attorney due to a possible violation of the Governing Documents or due to a failure of the Association to receive sums when due, and costs and expenses charged by such attorney for services related in any way to the failure by an Owner to abide by the Governing Documents or pay sums due the Association (such as without limitation fees for telephone calls, preparation of correspondence, attendance at meetings, etc.).

1.21 "Entitled to Vote". "Entitled to Vote" means and refers to that Lot Owner who shall cast a vote for a Lot at an Association meeting. If more than one person or legal entity shall own any Lot, the legal entity or the owners thereof shall determine among themselves who shall be the Member Entitled To Vote. Said determination shall be manifested upon a voting certificate, signed by all Owners of said Lot, or the owners of the legal entity, and given to the Association Secretary for placement in the Association records. Notwithstanding anything contained herein to the contrary, all Lot Owners whether Entitled To Vote or not are assured of all other privileges, rights, and obligations of Association membership and shall be Members of the Association. In no

event shall any mortgagee or other party holding any type of security interest in a Lot or the Residence constructed thereon be Entitled To Vote for purposes hereof, unless and until any of said parties obtain or receive fee simple title to such Lot

1.22 "Governing Documents". "Governing Documents" means and refers to this Declaration, the Articles of Incorporation attached hereto as Exhibit "B" and the Bylaws attached hereto as Exhibit "C" and each incorporated herein by reference; as such documents may be amended and supplemented from time to time, together with the Rules and Regulations of the Association from time to time existing.

1.23 "Institutional Lender" or "Institutional Mortgagee". "Institutional Lender" or "Institutional Mortgagee" means and refers to a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, public or private pension fund, pension trust, or any other generally recognized in the community as an institutional type lender or its loan correspondent, the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), and to any successor or assignee thereof.

1.24 "Lot". "Lot" means and refers to any lot as shown on the Plat, within the Property, on which a Residence could be constructed or has been constructed, whether improved or unimproved.

1.25 "Member". "Member" means and refers to all those Owners who are Members of the Association as provided in Article 3 of this Declaration.

1.26 "MSTU" means and refers to a special purpose municipal service taxing unit which may be formed by the County to levy MSTU assessments on Owners and Lots to be used to maintain certain Common Areas or other improvements within the Property, as more particularly described in Section 14.5 herein.

1.27 "Owner". "Owner" means and refers to the record owner, whether one or more persons or entities, including any Builder, of the fee simple title to any Lot situated upon the Property. Each Owner shall be a member of the Association

1.28 "Person" or "Persons". "Person" or "Persons" shall mean and refer to an individual, a corporation, a partnership, a limited liability company or any other legal entity.

1.29 "Plat". "Plat" means and refers to the plat of Warm Springs to be recorded in the Public Records of Collier County, Florida. Additional plats and/or re-plats may from time to time encumber the Community. Where may be advisable, such additional plats and/or re-plats may be referenced in a Supplemental Declaration.

1.30 "Property". "Property" means and refers to the real property which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference as well as any additional property(ties) which may be added to the scheme of this Declaration.

1.31 "Related Party of the Association". "Related Party of the Association" means and refers to each employee, agent, contractor, subcontractor, officer, director, committee member, board member and management agent of the Association.

1.32 "Related Party of Builder". "Related Party of Builder" means and refers to each employee, agent, member, partner, manager, contractor, subcontractor, officer, director, board member, and committee member of a Builder.

1.33 "Related Party of Declarant". "Related Party of Declarant" means and refers to each employee, agent, member, partner, manager, contractor, subcontractor, officer, director, board member, and committee member of Declarant.

1.34 "Residence". "Residence" means and refers to a Single Family Residence.

1.35 "Rules and Regulations". "Rules and Regulations" means and refers to the rules and regulations promulgated by the Board of Directors or the Architectural Review Board from time to time.

1.36 "Single Family Residence". "Single Family Residence" means and refers to a single family residence located on a Lot intended for use and occupancy as a single family residential dwelling for which a certificate of occupancy has been duly issued.

1.37 "Stormwater Management System". "Stormwater Management System" means and refers to the overall system that has been designed and will be constructed and implemented upon the Common Area within the Property to control discharges caused by rainfall events, which system is intended to collect, convey, store, absorb, inhibit, treat, use and/or reuse water in order to prevent or reduce flooding, over drainage, environmental degradation and water pollution, and to control the quality and quantity of discharges from the system, all as permitted by the District pursuant to the applicable provisions of the Florida Administrative Code and the District Permit. The Stormwater Management System includes all land, easements, and other facilities and appurtenances, including but not limited to, inlets, ditches, swales, culverts, water control structures, pipes, drainage structures, drainage facilities, retention ponds, detention ponds, dry detention areas, lakes, floodplain compensation areas, conservation areas, wetlands, buffer areas and wetland mitigation areas, that together constitute and comprise the surface water or storm water management and drainage system of the Property as reflected on the plans for the Property on file with and approved by the County and/or the District, as the same may be amended and/or supplemented from time to time with the approval of the District. Unless otherwise determined by the Declarant or the Association, the Stormwater Management System does not include any drainage improvements constructed on a Lot, which only services such Lot. The maintenance of the Stormwater Management System shall be by the Association in accordance with the District Permit.

1.38 "Transfer of Control". "Transfer of Control" means and refers that date upon which Declarant transfers majority control of the Board of Directors as provided in Section 3.4 hereof

All definitions contained in the Governing Documents other than this Declaration are hereby incorporated into this Declaration (most specifically the definitions contained in the exhibits to this Declaration), as the context may require.

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

2.1 Legal Description. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Collier County, Florida, and is more particularly described as on Exhibit "A" attached hereto and made a part hereof (the "Property").

2.2 Additional Property.

(a) Annexation by Declarant. Declarant, for so long as it is a Class B Member, reserves and shall have the right in its sole and absolute discretion, but not the obligation, to bring within the scope of this Declaration and the jurisdiction of the Association as Additional Property any other real property desired by Declarant to be annexed, within 2 miles of the Community, whether or not contiguous to the Property. Any annexation by Declarant shall be effected by filing a Supplemental Declaration in the Official Records of Collier County, Florida, describing all or such portion of the Additional Property. Such Supplemental Declaration shall not require the consent of Members and/or the Association, but shall require the consent of and be signed by the owner of the Additional Property contemplated to be annexed, if the owner of that Additional Property is other than Declarant. A Supplemental Declaration may contain additional terms desired by Declarant to reflect the different character, if any, of the Additional Property being annexed or of the development approaches being implemented in that Additional Property. From and after recordation of any Supplemental Declaration in the Public Records of Collier County, Florida, the Additional Property therein described shall be subject to all of the terms and provisions of this Declaration and to the jurisdiction of the Association, and it will be considered part of the Land as fully as though originally designated herein as part of the Property.

(b) Annexation with Approval of Membership.

(i) After the Declarant is no longer a Class B Member, the Association may annex any Additional Property to the provisions of this Declaration with all of the following: (i) consent of the owner of such property; (ii) majority affirmative vote of Members Entitled to Vote representing a majority of Class A votes of the Association represented at a meeting duly called for such purposes; and (iii) consent of Declarant, so long as Declarant owns any portion of the Property subject to this Declaration.

(ii) Any annexation by the Association as set forth in (a) above shall be effected by filing a Supplemental Declaration in the Public Records of Collier County, Florida describing the Additional Property to be annexed. Such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the property being annexed, and by Declarant, if Declarant's consent is

required. Any such annexation shall be effective upon recording a Supplemental Declaration, unless otherwise provided therein.

2.3 Transfer of Right. Declarant may transfer or assign its right to annex Additional Property pursuant to Section 2.2 above, provided that the transferee or assignee is the developer of at least a portion of the Property and that such transfer is memorialized in a written recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any Additional Property as part of the Community in any manner whatsoever.

2.4 Withdrawal. 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 Property (including, without limitation, Lots, Residences and Common Area) then owned by the Declarant or its affiliates or the Association 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 Property desired to be effected by the Declarant; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property. Further, Declarant reserves the right to amend this Declaration unilaterally prior to Turn Over, and after Turn Over, by the Association, without the joinder and consent of any other Owner, to remove any portion of the Property intended to be conveyed to the County, MSTU or other appropriate entity, as may be requested by the County, District, MSTU or other appropriate entity. All Owners, by acceptance of a deed to or such other conveyance of their Lots shall be deemed to have automatically consented to any such Supplemental Declaration.

2.5 Additional Covenants, Restrictions and Easements. Declarant may unilaterally subject any portion of the Property or Additional Property to additional covenants, restrictions and easements, including, without limitation, covenants obligating the Association to maintain and/or insure each Lot on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either as a part of, concurrent with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property, if other than Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character or intended use of such property. For so long as Declarant is a Class B Member, such Supplemental Declaration shall not require the joinder or consent of the Members or the Association.

2.6 Platting. The Declarant, its successors and assigns, shall be entitled at any time and from time to time, to plat and/or replat all or any part of the Property, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Property.

2.7 Common Area. In the event of any doubt, conflict or dispute as to whether any portion of the Property is or is not a Common Area under this Declaration, the

Declarant may, without the consent of the Association or then existing Owners, record in the public records of the County, a Supplemental Declaration resolving such issue and such Supplemental Declaration shall be dispositive and binding. After the Declarant no longer owns any portion of the Property, the Association may, without the consent of the then existing Owners, record the aforesaid Supplemental Declaration, which shall have the same dispositive and binding effect. Notwithstanding the foregoing, no portion of the Property may be deleted from this Declaration unless at the time of such deletion and removal no Residence or material Common Area improvements have been constructed thereon (unless the removal is for the purpose of accomplishing minor adjustments to the boundaries of Lots or the Property). No deletion of any portion of the Property shall occur if such deletion would act to terminate access to any right-of-way or utility line unless reasonable alternative provisions are made for such access. No deletion of any portion of the Property shall affect the assessment lien on the deleted portion of the Property for Assessments accruing prior to deletion, if applicable.

2.8 Use and Enjoyment of Common Area. Subject to the terms and provisions of this Declaration, the Development Approvals, the Rules and Regulations adopted and promulgated pursuant to this Declaration, and subject to any and all easements granted or reserved in this Declaration and/or the Plat, the Common Areas, whether owned or maintained by the Association, shall be for the non-exclusive common use and enjoyment of all the Members, their guests, invitees and tenants. Further, the Common Areas shall be subject to the following provisions.

(a) All real estate taxes assessed against the Common Areas shall be included in the Common Expenses of the Association's Operating Budget. The Association shall be responsible for the payment (subject to protest or appeal before or after payment) of the same, including taxes on any improvements and any personal property thereon accruing from and after the date this Declaration is recorded.

(b) A Member, its family, tenants guests and others may be suspended from the use of the Common Areas for failure to comply with the terms of the Governing Documents and/or pay Assessments which may be due as set forth in this Declaration, so long as such suspension shall not prohibit access to such Member's Residence.

(c) All use the Common Areas may be subject to Rules and Regulations as adopted by the Association, from time to time.

(d) The Association shall have the right to take such actions as it may in its discretion deem appropriate in the administration, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Areas.

2.9 Conveyance of Common Area. The Association is obligated to accept ownership of all Common Areas designated by Declarant in its "as is" condition when conveyed or transferred to the Association, without warranty by and/or recourse against Declarant. Provided however, Declarant reserves the right, but not the obligation, to convey Common Area to the County, MSTU, other governmental or quasi-governmental entity or other appropriate entity (subject to such entity's acceptance of the same). The

conveyance of the real property comprising the Common Area shall be by Quit Claim Deed.

ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1 Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Section 3.1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association. Membership in the Association shall be appurtenant to each Lot and may not be separated from ownership of said Lot. The record title holder to each Lot shall automatically become a Member of the Association and shall be assured of all rights and privileges thereof upon presentation of a photostatically or otherwise reproduced copy of said Owner's deed to the Association Secretary for placement in the records of the Association. Each Owner shall also provide the Secretary of the Association with such Owner's mortgagee information, with servicing agent therefore, if requested, and from time to time. To the extent that said deed shall pass title to a new Lot Owner from an existing Lot Owner, membership in the Association shall be transferred from the existing Lot Owner to the new Lot Owner. In no event shall any mortgagee or other party holding any type of security interest in a Lot or the Residence constructed thereon be a Member of the Association unless said party obtains or receives fee simple title to such Lot.

3.2 Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A Membership shall be all Owners of Lots except the Declarant as long as the Class B membership shall exist, and thereafter, the Declarant shall be a Class A Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, but the vote for such Lot shall be exercised only by that one person who is Entitled To Vote. In no event shall more than one vote be cast with respect to any such Lot.

(b) Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by the Class B Member. All voting rights of Class B Membership shall be freely transferable, subject to this Declaration, to third parties. The Class B membership shall cease and terminate as set forth in Section 3.3 hereafter. Upon termination of the Class B membership as provided for herein, the Class B membership shall convert to Class A membership with voting strength as set forth above for Class A membership.

3.3 Termination of Class B Membership. Declarant's Class B membership status shall continue in effect during the period of time from the date of this Declaration until the earlier of the following:

(a) a triggering event contained in Section 720.307(1) of the Act; or

(b) the date that Declarant waives in writing its right to Class B membership, which waiver shall be evidenced by the recording of a certificate to such effect in the Public Records of the County.

(c) Subsequent to Transfer of Control. Subsequent to Transfer of Control, Declarant shall be entitled to elect at least one member of the Board (and in fact shall be entitled to elect all members of the Board which will constitute one less than a majority of the members of the Board) as long as Declarant holds for sale in the ordinary course of business at least 5% of the Lots in all phases of the Community that will ultimately be operated by the Association. After Declarant relinquishes control of the Association, Declarant may exercise the right to vote in the same manner as any other Member, except for purposes of reacquiring control of the Association by selecting the majority of the members of the Board of Directors.

3.4 Transition of Control. When Declarant's Class B membership terminates pursuant to Section 3.3 of this Declaration, Declarant shall call a special meeting of the Association's membership to advise of the termination of the Class B membership. At this special meeting of the Association's membership, Declarant shall turn over control of the Association ("Turn Over") to the Class A Members, and the Class A Voting Members shall elect Directors as provided in the Articles and/or Bylaws. Provided however, Declarant shall be entitled to elect at least one (1) member of the Board of Directors as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of the Community that will ultimately be operated by the Association. Upon termination of the Class B Membership, Declarant may exercise the right to vote in the same manner as any other Member, except for purposes of reacquiring control of the Association by selecting the majority of the members of the Board of Directors.

3.5 General Matters. When reference is made herein, or in the Articles of Incorporation, Bylaws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members Entitled To Vote and not of the Members themselves.

3.6 Cumulative Voting. No cumulative voting shall be permitted.

ARTICLE 4 ASSOCIATION COVENANT FOR ASSESSMENTS

4.1 Creation of the Lien and Personal Obligations for the Assessments.

(a) Covenant to Pay. Each Owner, by acceptance of title to any Lot, whether or not it shall be so expressed in any deed or other conveyance, covenants and agrees to pay to the Association pursuant to this Declaration: (1) Annual Assessments, (2) Initial Capital Contribution, (3) Initial Landscape Capital Contribution, (4) Special Assessments, (5) Individual Assessments and (6) Transfer Assessments. Assessments shall be fixed, established and assessed as herein provided. In the case of co-ownership of a Lot, each co-owner shall be jointly and severally liable for the entire amount of the

Assessments. Declarant shall be excused from payment of Annual Assessments, Individual Assessments and Special Assessments for so long as Declarant subsidizes the budget of the Association pursuant to Section 4.10 herein; However, all Builders shall be responsible for of Annual Assessments and Individual Assessments as hereinafter set forth. Neither Declarant nor any Builder shall be obligated to pay any Initial Capital Assessment, Initial Landscape Capital Assessment or Transfer Assessment.

(b) Lien and Personal Obligation. Assessments, together with such interest and late charges as shall be imposed by the Board of Directors pursuant to the terms hereof, and the Enforcement Costs thereof shall be a charge and a continuing lien upon the Lot against which such Assessment is made from and after the date on which such Assessment is due. Each Assessment, together with said interest, late charges and Enforcement Costs, shall also be the personal obligation of each person who was an Owner of the Lot at the time the Assessment fell due and shall pass with title to the new Owner thereof, subject to the provisions of Section 4.6 herein.

(c) Priority of Lien. The lien of the Association shall be effective from and after recording this Declaration in the Public Records of Collier County, Florida. All liens for Assessments provided for in this Declaration shall be prior to all other liens created except i) ad valorem real estate taxes and assessments levied by any governmental authority, ii) any first lien mortgage or first priority mortgage ("First Mortgage") held by an Institutional Lender expressly subject to the Association's right to collect Assessments from the holder of the First Mortgage pursuant to Florida Statutes 720.3085(2)(c) and as set forth herein and iii) other liens which by law are superior to the Assessment lien. The lien shall be prior to and superior in dignity to homestead status.

(d) Nonpayment of Assessments.

(i) If any Assessment or installment thereon is not paid when due, then such Assessment shall be delinquent and the delinquent Assessment, together with interest, late charges, and Enforcement Costs, shall be secured by a continuing lien on the Lot as to which the Assessment accrued which shall bind the Owner and each subsequent Owner of the Lot. The lien shall bind the Lot during the ownership by the Owner who owned the Lot at the time the Assessment fell due and the lien shall continue in effect following transfer of title to the relevant Lot to each subsequent Owner until all amounts secured by the lien have been paid. The personal obligation of the Owner to pay any delinquent Assessment shall remain that Owner's personal obligation for the statutory limitations period and personal liability shall pass to successors in title, except as otherwise provided in this Article 4. At the option of the Association, all Assessments attributable to the Lot for the existing fiscal year shall be accelerated and shall become immediately due and payable and shall, together with late charges, interest and the Enforcement Costs thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property.

(ii) If any installment of an Assessment is not paid within fifteen (15) days after the due date (or if no due date is established herein, then within fifteen (15) days after the date established by the Association for payment of any such

Assessment or installment thereof), the Association may (a) impose an administrative late fee not greater than Twenty Five and No/100 Dollars (\$25.00) or 5 percent (5%) of the amount of each installment that is paid past the due date per installment, (b) collect on all such sums due the Association interest from the dates when due until paid at the highest lawful rate, (c) bring an action at law or in equity against the Owner(s) personally obligated to pay the same or any other remedy permitted by law, (d) record a claim of lien (as evidence of its lien and lien rights as provided for in this Declaration) against the Lot as to which the delinquent Assessment remains unpaid, and foreclose the lien against the Lot by judicial foreclosure in the same manner as foreclosure of a mortgage, (e) suspend the Owner, its guests and invitees from use of any Common Area and Amenity Area (provided any such suspension shall not prohibit access to the Owner's Lot), (f) suspend voting rights of such Owner, (g) if the Owner's Lot is occupied by a tenant, to collect rent from such tenant as set forth in Florida Statutes 720.308(8), and (h) pursue one or more of such remedies at the same time or successively. The Association shall also have the right to recover its Enforcement Costs whether or not suit is filed. The Owner shall also be required to pay the Association any Assessments against the Lot which become due during the period of collection and foreclosure. The Association shall have the right and power to bid at the foreclosure sale and to own, sell, lease, encumber, use and otherwise deal with any Lot acquired by the Association through foreclosure.

(iii) In addition to the rights of collection of Assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot as to which the Assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall not be a Member Entitled to Vote at a duly called meeting of the Members nor to the enjoyment of the Common Areas until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid and no sale or other disposition of said Lot shall be permitted until an estoppel letter is received from the Association acknowledging payment in full of all Assessments and other sums due, subject to the provisions of Section 4.6 herein.

(iv) It shall be the legal right of the Association to enforce payment of the Assessments hereunder. Failure of the Association to send or deliver bills shall not, however, relieve Owners from their obligations hereunder.

4.2 Exempt Property. The following property shall be exempt from the Assessments and liens created herein: (i) the Common Area; (ii) any portion of the Property maintained by the Association outside of the Lots; (iii) lands dedicated to the County, District or other governmental authority, any utility company or the public; and (iv) Lots owned by Declarant during the period of time that Declarant subsidizes the Common Expenses of the Association pursuant to Section 4.10. No other land or improvements in the Property shall be exempt from Assessments or liens. No Owner may avoid Assessment obligations by virtue of non-use or abandonment of the Owner's Lot, Owner's Residence or the Common Area.

4.3 Purpose. The Assessments levied by the Association may be used to promote the recreation, health, safety and welfare of the Owners, to perform the Association's duties and to exercise the powers conferred on it, and to pursue any other

lawful purpose deemed desirable or appropriate by the Board of Directors, including without limitation any one or more of the following: (a) payment of Common Expenses and funding of reserves as required by this Declaration; (b) repayment of any deficits previously incurred by the Association; and (c) doing any other thing permitted by law, this Declaration, and the Association's Articles of Incorporation and Bylaws necessary or desirable in the judgment of the Board of Directors to keep the Property neat and attractive, to preserve or enhance the value thereof, to eliminate fire, health or safety hazards, or otherwise to benefit the Owners.

4.4 Annual Assessments.

(a) Operating Budget. At least forty five (45) days prior to the end of each fiscal year, the Board of Directors shall prepare and approve a budget of the estimated Common Expense of the Association for the coming year, together with any amounts necessary to fund any deficits from prior years and to provide reserves for future expenses, including but not limited to the annual capital contribution approved by the Board of Directors under Subsection (b) below.

(b) Capital Budget. Each year, the Board of Directors shall approve a capital budget taking into account the number, type, useful life and expected major repair or replacement cost of major components, such as improvements which may have been installed in any Amenity Area. The Board of Directors shall then set the required annual capital contribution in an amount sufficient to meet the projected capital needs of the Association on a timely basis. The annual capital contribution fixed by the Board of Directors shall then be included in the annual operating budget described in Subsection (a) above.

(c) Adoption of Operating Budget. The Association shall mail to each Member a copy of the capital budget, operating budget and projected Annual Assessments approved by the Board of Directors to be levied for the next fiscal year at least thirty (30) days prior to the end of the Association's current fiscal year, subject to the following:

(i) From and after January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, the maximum Annual Assessment may be increased each year without a vote of the Members Entitled to Vote by an amount not more than twenty percent (20%) over the maximum assessment for the preceding year.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, the maximum Annual Assessment may be increased by more than the amount permitted pursuant to Section (i) above of this Section 4.4(c) above, by an affirmative vote of two thirds (2/3) of each Class of Members Entitled To Vote who are voting in person or by proxy at a meeting called for such purpose.

(d) Approval. The operating budget and Annual Assessments not requiring a vote of Members Entitled to Vote shall be effective upon adoption by the Board of Directors. Operating Budgets and Annual Assessments requiring a vote shall be effective upon the approval of the Members Entitled to Vote as set forth above in Section (ii) of this Section 4.4(c) or adoption of a revised operating budget and Annual Assessment. If the operating budget and Annual Assessments proposed by the Board of Directors requires a vote of the Members Entitled to Vote as set forth above in Section (ii) of this Section 4.4(c), the operating budget and Annual Assessments for the prior year shall continue in effect until such time as the vote can be taken and/or a revised operating budget and Annual Assessment can be adopted in the manner set forth above.

(e) Allocation of Annual Assessments Among Lots and Residences. Annual Assessments shall be assessed equally against all Owners and their specific Lot type and size.

4.5 Initial Capital Assessments, Initial Landscape Capital Assessments, Special Assessments, Transfer Assessments and Individual Assessments.

(a) Initial Capital Contribution. At the time of the first closing of a Residence from Declarant or a Builder, the Owner of the Residence shall pay to the Association an "Initial Capital Assessment." This sum shall be used and applied for start-up costs and as a working fund in connection with any and all operating expenses of the Association and any and all obligations of the Association that may exist from time to time. This payment shall not be refundable or applied as a credit against the Owner's payment of Assessments. The amount of the Initial Capital Assessment shall be equal to two times the monthly Annual Assessment against the particular Lot. Different types of Lots may be required to pay differing amounts for the Initial Capital Contribution. All Initial Capital Assessment monies may be used by the Association as determined by the Board of Directors in its sole discretion from time to time, and shall be maintained in the Association's general operating accounts in the same manner as monies collected from other sources (exclusive of reserves). Neither Declarant nor any Builder shall be required to pay an Initial Capital Assessment.

(b) Initial Landscape Capital Assessment. At the time of the first closing of a Residence from Declarant or a Builder, the Owner of the Residence shall pay to the Association an "Initial Landscape Capital Assessment." The Initial Landscape Capital Assessment shall be separate and distinct from the Initial Capital Assessment. The Initial Landscape Capital Assessment shall be specifically utilized to provide for landscaping replacement and improvements (e.g., annuals, plants, trees and the supporting infrastructure) to the Common Areas or other lands required to be maintained by the Association pursuant to this Declaration or by separate agreement. This payment shall not be refundable or applied as a credit against the Owner's payment of Assessments. The amount of the Initial Landscape Capital Assessment shall be equal to two times the monthly Annual Assessment, against the particular Lot. Different types of Lots may be required to pay differing amounts for the Initial Landscape Capital Assessment. All Initial Landscape Capital Assessment monies shall be maintained in a special Association banking account (i.e., separate and apart from the general accounts of the Association).

that is created and designated solely for such landscaping capital contribution monies. All Initial Landscape Capital Assessment monies may be used by the Association as determined by the Board of Directors in its sole discretion from time to time. Neither Declarant, nor any Builder shall be required to pay an Initial Landscaping Capital Assessment.

(c) Special Assessments. In addition to Annual Assessments, the Board of Directors may levy at any time a Special Assessment for the purpose of defraying the cost of any construction, repair or replacement on the Common Areas, or on any easement benefiting the Association, for the purpose of covering any budget deficits of the Association, for additions to the Common Areas, including but not limited to installation of capital improvements such as security assistance services or systems, if any, and master graphics and signage for the Property, or those expenses incurred in the event of a casualty, catastrophe, act of God or other unforeseen expenses incurred by the Association; or for any other purpose deemed desirable or appropriate by the Board of Directors. Further, a Special Assessment need not be assessed against all Owners and their Lots in an equal amount, but may be assessed against a specific Lot type and size, if deemed appropriate by the Board of Directors. Notwithstanding the foregoing, during the development period of the Community and prior to Transfer of Control by Declarant, there will no Special Assessments for capital improvements which did not previously exist without the consent of seventy five percent (75%) of the Class A Members.

(d) Individual Assessment. The Board of Directors may levy an Individual Assessment against any Owner and that Owner's Lot in order to cover costs incurred by the Association: (i) for any service or benefit for a Lot; (ii) due to that Owner's failure to maintain that Owner's Lot or Residence pursuant to the requirements and/or standards set forth in this Declaration; (iii) for loss or damage to the Association or to any Common Area or easement area caused by that Owner or his tenant, agent, contractor, invitee, children or guest, and not covered by insurance; or (iv) for any other purpose expressly authorized by this Declaration. Individual Assessments shall be as determined by the Board of Directors.

(e) Transfer Assessment. A Transfer Assessment shall be due on each re-conveyance of a Residence after the closing of the first purchase of each Residence with Declarant or Builder. The new Owner shall pay to the Association the sum of One Hundred Twenty Five and no/100 Dollars (\$125.00) as a Transfer Assessment. The Transfer Assessment shall be the obligation of the new Owner for payment and shall be due the Association not later than ten (10) days after the date of any applicable conveyance. The Board of Directors may provide for exemptions from the application of the Transfer Assessment in the circumstance of i) conveyance to a Builder, ii) acquisition of title by judicial sale, iii) acquisition of title from an Institutional Lender, or iv) a gift and other similar circumstances. The Transfer Assessment shall be a continuing lien against the Lot until paid. Declarant or Builder shall never be obligated to pay a Transfer Assessment. The Association may use Transfer Assessments for any purpose as determined by the Board of Directors.

4.6 Commencement Dates; Initial Annual Assessments; Due Dates. Annual Assessments on the Lots shall commence on the day of the conveyance of fee simple title of a Residence to such Owner. At the closing of the sale of each Lot in the Property by Declarant to Builder or to the first purchaser, the Builder or purchaser shall pay to the Association the portion of the Annual Assessment, prorated on a per diem basis from the date of closing through the end of the applicable calendar month. Thereafter, Annual Assessments shall be due, in advance, on or before the beginning of each calendar month; but the Board of Directors may elect to collect Annual Assessments in monthly, quarterly or semi-annual installments. In the event of such deferred payments, the Board of Directors may but shall not be required to charge a uniform, lawful rate of interest on the unpaid balance. The Board of Directors may accelerate the balance of any Annual Assessment upon default in the payment of any installment thereon and require that payment be made for the remainder of the fiscal year of the Association. Annual Assessments which commence to accrue as to any Lot other than on the first day of the year shall be prorated for the balance of that year.

4.7 Subordination for First Mortgage; Effect of Delinquent Assessments. All liens for Assessments provided for in this Declaration shall be subordinated to the lien of a First Mortgage held by an Institutional Lender expressly subject to the Association's right to collect Assessments from the holder of the First Mortgage pursuant to Florida Statutes 720.3085(2)(c) and herein set forth.

(a) An Owner, regardless of how his or her title to a Lot has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all Assessments that come due while he or she is the owner. The Owner's liability for Assessments may not be avoided by waiver or suspension of the use or enjoyment of any Common Area or by abandonment of the Lot upon which the Assessments are made.

(b) An Owner is jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present Owner may have to recover any amounts paid by the present Owner from the previous Owner. For the purposes of this paragraph, the term "previous Owner" shall not include the Association that acquires title to a delinquent Lot through foreclosure or by deed in lieu of foreclosure. The present Owner's liability for unpaid Assessments is limited to any unpaid Assessments that accrued before the Association acquired title to the delinquent Lot through foreclosure or by deed in lieu of foreclosure.

(c) Notwithstanding anything to the contrary contained in this section, the liability of the holder of a First Mortgage, or its successor or assignee as a subsequent holder of the First Mortgage who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments that became due before the mortgagee's acquisition of title, shall be the lesser of:

(i) the Lot's unpaid Assessments (which shall include the Annual Assessments, Initial Capital Assessments, Initial Landscape Capital Assessments, Special Assessments, Individual Assessments, and Transfer Assessments and interest, fees and costs) that accrued or came due during the 12 months immediately preceding

the acquisition of title and for which payment in full has not been received by the Association; or

- (ii) one percent (1%) of the original mortgage debt.

The limitations on the holder of a First Mortgage liability provided by this paragraph apply only if the holder of a First Mortgage filed suit against the Owner and initially joined the Association as a defendant in the mortgagee foreclosure action and in all instances shall be compliant with Florida Statutes if the Florida Statutes are different than the above amounts.

(d) The Association, or its successor or assignee, that acquires title to a Lot through the foreclosure of its lien for assessments is not liable for any unpaid Assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the Association's acquisition of title in favor of any other association, as defined in Florida Statutes 720.301(9), which holds a superior lien interest on the Lot.

(e) In the event of the acquisition of title to a Lot by foreclosure or judicial sale, any Assessment or other charges as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Lots, including the Owner acquiring title by foreclosure or judicial sale, as part of the Common Expense, although nothing herein contained shall be construed as releasing the party personally liable for such delinquent Assessments from the payment thereof or enforcement of collection of such payment by means other than foreclosure.

(f) In any voluntary transfer of title of a Lot, the new Owner shall be jointly and severally liable with the previous Owner for all unpaid assessments against the previous Owner made prior to the time of such transfer of title, without prejudice of the rights of the new Owner to recover from the previous Owner the amount paid by the new Owner therefor.

(g) As to any Assessments which are not yet collected or collectible, the same shall become Common Expenses of the Association, without relieving the delinquent Owner, its successors and assigns, from liability therefor.

4.8 Assessment Rights for Owner's Failure to Perform Exterior Maintenance.
Other than to the extent maintenance obligations are specifically allocated to the Association in this Declaration, the Owner of each Lot shall maintain the exterior of such Owner's Residence and Lot at all times in a neat and attractive manner and as provided elsewhere herein. Upon the Owner's failure to do so, the Association may at its option, after giving the Owner thirty (30) days' written notice sent to such Owner's last known address, or to the address of the subject Residence, perform such reasonable maintenance and make such repairs as may be required to restore the neat and attractive appearance of the Lot and the exterior of the Residence located thereon. In order to discourage Owners from abandoning certain duties hereunder for the purpose of forcing the Association to assume such duties, and, additionally, to reimburse same for administrative expenses incurred, the applicable entity may impose a surcharge of

not more than fifteen percent (15%) of the cost of the applicable work (including materials) (or the maximum amount permitted by applicable law, whichever is less). The cost of any of the work (including materials) performed by the Association upon the Owner's failure to do so, together with surcharge, shall be immediately due and owing from the Owner of the Lot and shall constitute an Individual Assessment against the Lot on which the work was performed, collectible in a lump sum and secured by a lien against the Lot as herein provided in this Article 4. No bids need to be obtained by the Association for any such work and the Association shall designate the contractor in its sole discretion.

4.9 Certain Duties of the Board of Directors. Subject to other provisions hereof, the Association shall upon demand at any time furnish to any Owner liable for an Assessment a certificate in writing signed by an officer of the Association, setting forth whether such Assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid. The Association may charge a reasonable fee for such certificate. The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Declarant) for management services or for other services beneficial to the Association or the proper operation and maintenance of the Property. The Association shall have all other powers provided or implied elsewhere herein, in its Articles of Incorporation and its Bylaws.

4.10 Funding by Declarant. Notwithstanding anything contained in this Declaration to the contrary, Declarant shall not be obligated to pay any Annual Assessment, Individual Assessment or Special Assessment as to any Lot owned by Declarant during any period of time that Declarant pays the Common Expense receivable over and above the income receivable from Initial Capital Assessments, Initial Landscape Capital Assessments, Annual Assessments, Special Assessments, Individual Assessments and Transfer Assessments due from the other Owners pursuant to this Declaration and any other income receivable by the Association. For purposes of this subsidy arrangement, Declarant need not subsidize or pay replacement reserves, reserve accounts or capital expenditures. Declarant, at its option, may elect by written notice delivered to the Association at any time to abandon the subsidy approach and commence payment of the Annual Assessments, Individual Assessments and Special Assessments thereafter falling due for the Lots and Residences then owned by Declarant, prorated as of the date of such notice. Declarant shall never have an obligation to pay Initiation Assessments or Transfer Assessments.

4.11 Payment of Assessments not Substitute for Taxes. The payment of Assessments from time to time established, made, levied, imposed and collected by the Association pursuant to this Declaration, including without limitation, those for the maintenance of the Common Areas, shall not be deemed to be a substitute for or otherwise relieve any Owner from paying any other taxes, fees, charges or assessments imposed the County or any other governmental authority.

4.12 Association Funds. The portion of all Annual Assessments collected by the Association as reserves for future expenses in accordance with the Annual Budget, and

the entire amount of all Special Assessments, as well as other funds of the Association which are not immediately payable, may be held by the Association and may be invested in interest-bearing accounts, or in certificates of deposit, or other like instruments, or accounts available at banks or savings and loan institutions, the deposits of which are insured by an agency of the United States.

ARTICLE 5 MAINTENANCE AND REPAIR RESPONSIBILITIES

5.1 Exterior Maintenance.

(a) **By Owners.** Other than as specifically set forth in Section 5.1(b) as an obligation of the Association, each Owner shall be responsible for maintaining such Owner's Lot, the exterior of the Residence located thereon and the exterior of all other improvements located thereon in a neat and attractive manner in accordance with the architectural and decorative scheme promulgated by the Declarant and the Architectural Review Board, as applicable, subject to the provisions of Article 9 herein. Each Owner's maintenance obligations shall include, but shall not be limited to, repairing and replacing all doors, windows, screens and broken glass on the exterior of such Residence, and regularly painting the exterior of the Residence. Additionally, the Owner will be required to maintain the irrigation system on the Lot. Each Owner shall be responsible for the cost of replacement any landscape materials which deteriorate, become diseased or die. Until Class B Membership ceases to exist, no Owner or any other party may install any additional grass or additional landscaping on any Lot; provided, however, that after Class B membership in the Association ceases to exist, if an Owner seeks and obtains the approval of the ARB (as hereinafter defined) to install and maintain additional landscaping on such Owner's Lot, (i) the approval of the installation of any such additional landscaping may be conditioned upon the installation being by a contractor as approved by the Association, at the Owner's sole cost and expense and (ii) the additional cost of maintaining such additional landscaping shall be assessed to Owner as an Individual Assessment..

(b) **By the Association.** The Association shall maintain trees, grass, irrigation and landscaped areas from time to time located within the Common Area in a neat and attractive manner, as determined in the exercise of the Board of Directors' reasonable discretion as a Common Expense of the Association. Additionally, the Association shall perform routine maintenance of existing trees, grass, irrigation and landscaped areas on the Lots as a Common Expense of the Association. Each owner shall be responsible for the replacement or addition of any trees, plants, shrubs and sod within their Lot. Notwithstanding the foregoing, to the extent that any Owner, or any of such owner's agents, employees, guests, invitees or licensees, causes damage to any improvement for which the Association is obligated to maintain, repair and/or replace, then the Association, in the Association's sole discretion, shall have the option to (i) repair such damage and any cost incurred by the Association to maintain, repair or replace such damaged improvements shall be charged to such Owner as an Individual Assessment; (ii) allow the Owner to maintain, repair and/or replace such damage at the Owner's sole cost and expense. Additionally, to the extent that an Owner fails to maintain a Lot as

required by this Declaration, the Association is authorized to enter upon a Lot and perform such maintenance, at the Owner's sole cost and expense, as more particularly set forth in this Declaration. Any Association's maintenance or repair of the grass, irrigation and landscaped areas within the Lots shall not imply any warranty of said grass, irrigation and landscaped areas.

5.2 Interior Maintenance. Each Owner shall be responsible for maintaining the interior of such Owner's Residence in a neat and sanitary manner. The Association shall not be in any way responsible for any such interior maintenance, nor shall the Association be responsible for the maintenance of any of such Owner's electrical, plumbing, HVAC or any other mechanical systems or for any other maintenance obligations other than for the maintenance obligations specifically allocated to the Association in this Declaration. Notwithstanding anything in this Declaration to the contrary, each Owner shall be responsible for the condition of and the maintenance of such Owner's Lot, Residence and any and all other improvements from time to time located on such Owner's Lot other than to the extent any of such maintenance obligations are specifically allocated to the Association in this Declaration.

5.3 Irrigation. Irrigation water will be provided from an irrigation lake that will be fed through one or more recharge wells and the flow of natural waters and Community storm water runoff. The Association shall own and operate an underground irrigation distribution system which shall comprise a portion of the Common Area and will provide landscape irrigation to all Residences, Common Areas, and common elements, as well as other portions of the Community. All lines and facilities shall be constructed to the boundaries of each Lot and the Association shall maintain all portions of the underground irrigation distribution system and the lakes which are the source of the waters, as are contained on or within the portions of the Property owned by the Association from time to time. The Association is responsible for maintaining all lines and facilities up to the boundary of a Lot. The Owner is responsible for maintaining lines and facilities within the Lot. The Association, in order to ensure that all portions of the Community may have water for irrigation purposes, specifically reserves the right to control, in its sole discretion, the amount of irrigation water delivered to all particular portions of the Property. The Association will manage, maintain, and operate the irrigation system and shall perform such services in the same manner as the Association shall maintain other Common Area, and shall allocate to each Lot through the Assessment process, a portion of the cost of operating and maintaining the irrigation system and related costs and fees and an equal share of the cost of the irrigation water, regardless of the size or landscaped area of any Lot or the frequency of watering or volume of water used. The Association shall not be liable to any Owner for any interruption in irrigation service, any discoloration to the Residence that may be caused by irrigation water, the quality of irrigation water, the source of irrigation water or any damage to the landscaping or sod on a Lot or Common Area caused by providing or not providing irrigation service. Every Owner, by virtue of taking title to a portion of the Property, shall indemnify, defend, and hold harmless Declarant, each Related Party of Declarant, each Builder, each Related Party of a Builder, the Association and each Related Party of the Association against and in respect of, and reimburse the same on demand for any and all claims, demands, losses, costs, expenses, settlement, obligations, liabilities, damages, recourse and, deficiencies

including, but not limited to, interest penalties, attorneys' fees, and disbursements (even if incident to appeal) that the Association, its supervisors, officers, employees, and agents incur or suffer which arise, result from or relate to any claim made by any party based on the installation, operation, and maintenance of the irrigation system and the provision of irrigation service to the Lot, including, without limitation, property damage, personal injury, or claims for inconvenience. Nothing herein shall prevent the Association from contracting with the County for the use of treated reuse water should it become available in the future.

5.4 Use of Chemicals by the Association. The maintenance provided by the Association may include dispensing maintenance chemicals to the extent deemed necessary or desirable, in the judgment of the Board of Directors to control insects, vermin, weeds and fungi on the Property exclusive of the interior of buildings and other structures constructed thereon. The providing of maintenance chemicals as described above shall not be construed as an obligation on the part of the Association to provide such services. To the extent that an Owner elects to have plants in pots on patios or lanais ("Container Plants"), each Owner acknowledges and agrees that consumption of herbs, fruits and vegetables harvested from such Container Plants is at the sole risk of the consumer and Owners indemnify the Association and each Related Party of the Association related to such Container Plants. In addition, Owners agree and acknowledge specifically that the Association is unable to guarantee the safety or protection of Container Plants from spray/fertilizers that may be needed from time to time.

5.5 Other Maintenance Obligations. By Supplemental Declaration, additional maintenance responsibilities may be set forth.

5.6 Owner Obligation to Designate. To facilitate compliance by Owners with their maintenance obligations pursuant to this Declaration, in the event any Residence is to be unoccupied for a consecutive period of more than thirty (30) days or longer, the Association may require the Owner to designate a responsible firm or individual to undertake his or her general maintenance responsibilities, which responsibilities shall include, at a minimum maintaining exterior appearance, safeguarding the Residence and Lot and personal property thereon to prepare for severe weather and repairing the Residence and Lot in the event of any damage therefrom. At the request of the Association, the names and address of such firm or individual must be furnished to the Association.

ARTICLE 6
PROPERTY RIGHTS IN COMMON AREAS; OTHER EASEMENTS

6.1 Member Easements. Each Member, and every tenant, agent and invitee of such Member, shall have a nonexclusive permanent and perpetual easement over and upon the Common Area for the use and enjoyment thereof in common with all other such Members, their tenants, agents and invitees, subject to the following, among the other rights of the Association elsewhere provided in this Declaration:

(a) The right and duty of the Association to levy Assessments against each Lot for the purpose of maintaining the Common Area and other common facilities in compliance with the provisions of this Declaration and the Governing Documents of the Association;

(b) The right of the Association to suspend the Member's and/or Owner's voting rights for any period during which any Assessment against his Lot remains unpaid;

(c) The right of the Association to adopt at any time and from time to time and enforce Rules and Regulations governing the use of the Common Area and all facilities at any time situated thereon and other areas. Any Rule and/or Regulation so adopted shall apply until rescinded or modified as it originally set forth at length in this Declaration;

(d) The right of the Association to impose a fine for any infraction of the provisions of this Declaration or the Association's Rules and Regulations regarding the Common Area; and

(e) The right and duty of the Association to suspend the right of enjoyment of the Common Area in the event that an Owner fails to pay any Assessments applicable to their Lot.

6.2 Utility Easements. The Association shall have the right to grant permits, licenses, and easements over the Common Area within the Property for utilities, roads, pedestrians and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property. In addition, easements over, upon, under, through and across the Common Area within the Property are reserved to the Association and the Declarant, and may be declared or granted from time to time by the Declarant during any period that the Declarant shall own at least one (1) Lot, for such further utility, egress, ingress, or drainage easements through, over and across the Property as may be required from time to time to serve any other or additional lands during the course of development of same, whether such additional lands become subject to the jurisdiction of the Association and part of the Property or not. Any such easement declared by the Declarant, shall not require the joinder of the Association or any Lot Owner or Lot Owner's mortgagee.

6.3 Blanket Utility Easement. Declarant reserves for itself, its successors and assigns, and grants to the Association and to each Owner of a Residence and their designees, a nonexclusive, perpetual, alienable blanket easement upon, across, over,

through and under the Property (including each Lot) for ingress and egress, installation, replacement, repair, use and maintenance of all meter boxes, utility and service lines and service systems, public and private, including, but not limited to, water, sewer, drainage, irrigation, telephones, electric, cable television, internet or communication lines and systems now in existence or which are developed in the future. This easement shall in no way affect any recorded easements on the Property. Upon construction of a Residence on a Lot, the blanket easement reserved herein shall continue in effect in, on under and through the Lot for any necessary utility and ingress and egress easements to provide, maintain, replace or repair electric, telephone, water, sewer, drainage, cable television, internet and other utilities to each Residence.

6.4 Drainage Easements. Drainage Easements have been declared and reserved on the Plat, are part of the Common Area, and shall be maintained by the Association. Alteration, obstruction or removal of any drainage swales or drainage control facilities or structures other than by or on behalf of the Declarant and/or the Association is expressly prohibited. The Association may repair, replace and maintain such drainage swales, facilities and structures as it deems necessary and/or desirable in accordance with the terms of the Declaration. Further, no Owner shall place, erect or construct any improvements or otherwise permit anything to occur within any Drainage Easement area which would in any way affect said drainage easement or any swale, pipe or drainage control facility or structure located therein or thereon, unless, in the event of construction of any improvements, such improvements have been approved by the Association, the ARB and/or the District, as may be applicable.

6.5 Conservation Easement. A Conservation Easement over Tract "P" has been declared and reserved on the Plat for the benefit of the Association. Declarant hereby creates, declares and grants to and for the benefit of the Association, and the District, a non-exclusive Conservation Area Easement over and upon Tract "P". The clearing and removal of native trees and other natural vegetation within a Conservation Easement shall be prohibited and is subject to the restrictions on said Tract "P" as set forth on the Plat. The Declarant, the Association and the District may conduct regular and periodic maintenance, as provided for and as permitted by Section 704.06, Florida Statutes, within the Conservation Easement and for the purpose of controlling exotic and/or nuisance plant species conducive to the perpetration and maintenance of native plant species and conditions. The District shall have a conservation easement pursuant to Section 704.06, Florida Statutes, over Tract "P" as depicted on the Plat and designated as "Conservation Easement" on the Plat, which easement shall be recorded in the Public Records of Collier County, Florida. Tract "P" as depicted on the Plat as "Conservation Easement" shall be governed by Section 704.06, Florida Statutes. Such easement to the District may be in addition to the easement granted hereunder or on the Plat. There shall be no construction, clearing or grading in any area which is encumbered by a conservation easement, without approval from applicable governmental entities.

6.6 Irrigation Easement. A perpetual, non-exclusive easement is hereby granted to the Association over, across, under, and through the Property for the purpose of ingress and egress and designing, studying, mapping, engineering, constructing, maintaining, operating, and servicing any portion(s) of the irrigation system.

6.7 Easements for Construction, Maintenance and Performance of Obligations. Each Owner hereby grants to the Association, the Declarant, each Owner of the Lots immediately abutting the granting Owner's Lot, and all of their respective successors, assigns, employees, agents, contractors and subcontractors, a non-exclusive easement on the granting Owner's Lot and within such granting Owner's Residence to the extent reasonably necessary for the purpose of constructing, maintaining, repairing and replacing any improvements from time to time located on or to be constructed on any Lot abutting such Owner's Lot. In addition, each Owner hereby grants to the Association and the Association's successors, assigns, employees, agents, contractors and subcontractors, a non-exclusive easement on the granting Owner's Lot and within such granting Owner's Residence to the extent reasonably necessary for the purpose of allowing the Association to perform any and all of the Association's rights and/or obligations arising under this Declaration or elsewhere, including, but not limited to, the Association's right to perform emergency repairs.

6.8 Additional Easements for Expansion and Extension. Declarant hereby reserves for itself, its successors and assigns, an easement over, under, across and through the Property for the expansion and extension of roadways, utilities, drainage and services from time to time existing within the Property and to serve the Additional Property, if added to the scheme of this Declaration. Nothing contained herein shall require the expansion or extension of such improvements, only the right to do so, if so elected by Declarant, its successors and assigns.

6.9 Perimeter Easement. Declarant hereby reserves unto itself, and its successors and assigns, and for the benefit of the Association, non-exclusive easements over, under, upon and through to the Lots for the purpose of installation, construction, maintenance, repair and replacement of perimeter features which include, but are not limited to, landscaping, walls, fences, paths, driveways, walkways, signage and power, with appurtenant ingress and egress thereto.

6.10 Development and Use Easements Reserved to Declarant. Declarant hereby reserves unto itself, and its successors and assigns, non-exclusive easements over, under, upon and through, as well as the right to grant non-exclusive easements over, under, upon and through, all portions of the Property from time to time, whether or not such areas have been conveyed to third parties, for the purposes of (a) permitting and having ingress and egress to and from one portion of the Property to another, (b) constructing, maintaining, repairing, replacing, and/or reconstructing improvements, and (c) permitting all other activities necessary or associated with the development of the Community and each and every portion thereof.

6.11 Declarant's Rights; No Interference With Easements. Declarant, its successors and assigns shall have the unrestricted right, without approval or joinder of any other person or entity (unless the same is expressly restricted as set forth in this Declaration): (i) to designate the use of, alienate, release, or otherwise assign the easements shown in the Plat of the Property or described herein, (ii) to plat or replat all or any part of the Property owned by Declarant, and (iii) to widen or extend any rights of way shown on any plat of the Property or convert a Lot to use as a rights of way, provided

that Declarant owns the lands affected by such change. Owners of Lots subject to easements shown on any plat of the Property shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under the easement area. The Owners of Lots subject to any easements shall not construct any improvements on the easement areas, alter the flow or drainage, or landscape such areas with hedges, trees, or other landscape items that might interfere with the exercise of the easement rights. Any Owner who constructs any improvements or landscaping on such easement areas shall remove the improvements or landscape items upon written request of Declarant, the Association, or the grantee of the easement.

6.12 Declarant Offices. Notwithstanding anything in this Declaration to the contrary, the Declarant and Builder shall have the specific right to maintain (or have its designees maintain) upon any portion of the Property, sales (which shall include model homes), administrative, construction or other offices without charge, and appropriate easements of access, parking lot and use are expressly reserved unto the Declarant and Builder, and their designated successors, designated assigns, employees and contractors, for this purpose.

6.13 Additional Easements. Each Lot shall be subject to all easements as shown on the Plat.

6.14 Declarant/Builder Rights. The foregoing provisions of this Article are subject to the provisions of Article 13 herein.

7.1 Use Restrictions. The Property shall be subject to the following use restrictions which shall apply to all Owners, occupants, family members, contractors, agents, licensees and invitees:

(a) Use and Development Approvals. All Lots shall be used only for such purposes as are permitted in the Development Approvals, subject to such further restrictions as may be set forth in this Declaration or any Supplemental Declaration. No exterior changes may be made to any Improvements erected or approved by the Declarant or ARB without the prior written approval of the ARB. Each Owner shall fully comply with the Development Approvals which pertain to such Owner's Lot, and each Owner shall otherwise cooperate with the Declarant in its efforts to comply with the provisions of the Development Approvals.

(b) Land Use and Building Type. Neither any Lot nor any building constructed on a Lot shall be used except for residential purposes. No business, commercial, industrial, trade, professional or other nonresidential activity or use of any nature or kind shall be conducted on any Lot. However, the foregoing restriction shall not be deemed to prohibit a professional or home office i) so long as members of the public are not visiting the Lot for purposes of said business or profession, ii) said professional or home office is permitted by applicable law, and iii) the Owner has obtained any and all

occupational licenses from the appropriate governmental agencies which may be required. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Residence. Notwithstanding the foregoing, uses by Declarant and Builder (and their respective designees) for model homes, sales displays, parking lots, sales offices, construction offices and other offices, or any one or combination of such uses, shall be permitted.

(c) Opening Walls; Removing Walls or Landscaping. On the exterior of any Lot, no Owner shall make or permit any opening or other modification to be made in any Declarant erected or Association erected wall, except as such opening or modification is installed by Declarant or the Association. No such wall shall be demolished or removed without the prior written consent of the Declarant and the Architectural Review Board. No Owner of a Lot may modify any wall so existing nor may such Owner add any item to any wall, including but not limited to, decorative element or ornament or permit landscaping to sit upon or adorn such walls, nor may anything be attached to any such wall. Further, no landscaping installed by Declarant or the Association shall be removed. The foregoing restriction shall not apply to Declarant, nor shall it apply to the Association in its exercise of repair, maintenance or replacement of any such wall or landscaping.

(d) Easements. Easements for installation, replacement, connection to, disconnection from, and maintenance of utilities are reserved as shown on the Plat and as provided herein. Within these easements, no structure, planting or other material may be placed or permitted to remain that will interfere with or prevent the maintenance of utilities, unless said structure, planting or other material has been so placed by the Declarant or the Association or has been so placed with the permission of the Architectural Review Board. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot, except as provided herein to the contrary and except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric and gas utility company, telephone company, cable company, the District, the Association, and Declarant and their respective successors and assigns, shall have a perpetual non-exclusive easement for the installation, replacement, connection to, disconnection from, and maintenance, all underground, of water lines, sanitary sewers, storm drains, gas and electric, telephone and security lines, cables and conduits, under and through the utility and Drainage Easements, as the case may be, as shown on the Plat. Declarant and its designees, successors and assigns, shall have a perpetual easement for the installation and maintenance of cable, radio, television and security lines within utility easement areas shown on the Plat. All utility lines within the Property, whether in street rights-of-way or utility easements, shall be installed and maintained underground.

(e) Exterior Appearances. The color and type of any paint, coating, stain and other exterior finishing colors on all Residences shall be as set forth by Declarant as it performs the New Construction, defined in Article 9 hereafter and any change shall be a Modification requiring approval of the ARB as set forth in Article 9 hereafter. The frequency of painting the exterior of the Residence shall be determined by the Board of Directors in such Board of Directors' reasonable discretion.

(f) Garbage Collection, Storage, Trash Disposal and Meter Areas. No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority for disposal or collection of waste shall be complied with. All garbage and trash containers shall be kept within the Residences except for curbside pickup by the applicable governmental authority. Additional screening requirements for garbage storage and meter areas may be imposed by the Association.

(g) Fences. The installation of any fence placed upon any Lot may be subject to easements which run with the land, whether installed by Declarant or an Owner. In the event that any fence crosses any such easements, the installation by an Owner and the ARB's approval is still subject to Owner first receiving written approval from the grantee of such easements and all other applicable governmental authorities. In the event the grantee of any such easement which runs with the land (e.g., utility provider, or the County), its successors and/or assigns, requires the removal of any fence upon the Lot, then the Owner of said Lot shall, at the Owner's sole cost and expense, immediately remove the fence. Notwithstanding the foregoing or any permit or governmental approval to the contrary, no fence may be installed within any drainage easement(s) on the Property or on the Lots in a manner or location which would impede the flow of drainage, which shall be deemed to include the direction of such drainage and the capacity flow of such drainage. Fences must be free standing and may not connect to any retaining wall which exists on a Lot or be adjacent to a Lot. The Owner of a Lot, when installing any fence upon the Lot, shall comply with any and all laws, zoning ordinances, codes, rules and regulations of all applicable governmental bodies as applicable, in addition to the ARB approval required by Section 9.4 herein.

(h) Lakes and Ponds. No swimming, or recreational use, including but not limited to watercraft, flotation devices or other devices shall be permitted in any lake or pond within the Property. Such water bodies comprise a portion of the Stormwater Management System and are not designed for such uses. This prohibition shall not apply to the Association or the District in the carrying out their respective obligations with regard to the Stormwater Management System. Any watercraft used by the Association or District in carrying out their respective obligations shall be man powered or electric powered. Fishing shall only be permitted by an Owner directly behind his Lot. No Owner shall traverse behind the Residence of another to fish, unless the Owner of the abutting Lot has granted permission for such use.

(i) No Drying. To the extent lawful, no clothing, laundry or wash shall be aired or dried on any portion of the Property which is visible from the adjacent Lots, or the streets, or any other adjoining portion of the Property.

(j) Precedence Over Less Stringent Governmental Regulations. In those instances where the covenants, conditions and restrictions set forth in this Article set or establish minimum standards in excess of the ordinances, regulations and requirements of the County, and other applicable government authorities, including without limitation, building and zoning regulations, the covenants, conditions and

restrictions set forth in this Article shall take precedence and prevail over any such less stringent ordinances, regulations and requirements.

(k) Destruction. In the event of the destruction of all or any portion of a Residence on any Lot, the Owner of the Lot shall, within ninety (90) days, restore the Residence to its former condition. The Association's board of directors, in the exercise of its sole and absolute discretion, may extend the time frame within which such restoration work must be completed.

(l) Increase in Insurance. No Owner shall permit or suffer anything to be done or kept on his Lot or Residence thereon which could increase the rate of insurance on any Common Area or payable by the Association or any other Owner, or which could prevent the Association or any other Owner from obtaining such insurance, or which could annoy any other Owner by unreasonable noises or otherwise. Further, no Lot Owner shall commit or permit any nuisance, or immoral or illegal acts in or on any portion of the Property.

(m) Nuisances. Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the occupants of other Lots. Any activity on a Lot which interferes with television, cable or radio reception on another Lot 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.

(n) Oil and Mining Operation. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Property subject to these restrictions.

(o) Garage, Parking and Vehicular Restrictions. Parking in or on the Common Area or on any Lot shall be restricted to the parking areas therein designated for such purpose. However, this paragraph shall not apply to Declarant or Builder during any sales or construction period. No truck or van with more than ¾ ton capacity, boat, trailer, or recreational vehicle or commercial vehicle shall be parked, stored, or otherwise kept on any portion of the Property for more than twenty-four (24) hours, except that any of the foregoing vehicles may be stored in the garage on a Lot so long as the garage door is fully closed while such vehicle is located therein. The term "commercial vehicle" shall include, without limitation, all autos, trucks, vans and other vehicular equipment, which both: (1) bear signs or shall have printed thereon any reference to a commercial undertaking or enterprise (2) and which has ladders, racking, machinery, building materials or equipment, including without limitation, lawn mowers, air compressors, and the like, contained on or within said vehicle. Commercial vehicles in the process of loading or unloading shall not be considered to be "parked" so long as such vehicles shall not be kept on the Property overnight. No trailer, camper, motor home or recreation

vehicle or other type of vehicle shall be used as a residence. No person shall conduct major repairs (except in an emergency) or major restorations of any motor vehicle, boat, trailer, or other vehicle upon any portion of the Common Area or Lot. Disabled vehicles shall be promptly moved from the Lot, Common Area or street which abuts the Lot. The decision of Declarant to assign specific parking spaces within the Common Area to designated companies or persons, or for specified uses, shall be final, binding and conclusive. No conversion of garages to living spaces is permitted. No screening within a garage is permitted. No parking on or across any sidewalk is permitted. Parking may be subject to other Rules and Regulations now or hereafter adopted.

(p) Exterior Antennas, Satellite Dishes. To the extent permitted by law, no exterior antennas, satellite dishes or similar equipment shall be permitted on any portion of the Property or Improvement thereon, except that Declarant and its affiliates shall have the right to install and maintain community systems. Notwithstanding the foregoing, satellite dishes with a diameter of one (1) meter or less shall be permitted on Lots provided the location of such satellite dish shall be in the least obtrusive location where the satellite signal may be received. In all events any antenna, satellite dish or similar equipment shall be subject to architectural control under Article 9, to the extent permitted by law.

(q) Renewal 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 ARB and with such Board's approval. Such standards shall be reasonably calculated to maintain the aesthetic integrity of the Property without making the cost of the aforesaid devices prohibitively expensive.

(r) Signs. Except as may be permitted by law, no sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of a Lot or the Common Area without the prior written consent of the ARB, except signs, regardless of size, used by Declarant, its successors or assigns, including Builders, for advertising during the construction, sale and leasing period. In the event that any sign is placed on a Lot in violation, the Association may provide written notice of the violation to the Owner by mail to the Owner's last known address. If the violation has not been eliminated within three (3) business days after the mailing of such notice, the Association may enter the Lot and remove the violating sign(s) without liability to the Owner. If within ninety (90) days of such removal a similar sign violation occurs on such Lot, the Association may enter and remove the offending signs without further notice to the Owner and without liability to the Owner.

(s) Animal Restriction. No animals, reptiles, wildlife, livestock or poultry of any kind shall be raised, or kept on any Lot, except household pets. For purposes hereof "household pets" shall mean dogs, cats, fish, birds and other animals which are usually and commonly kept as household pets. All dogs and cats shall be on leashes while walking in Common Areas, unless otherwise designated as a dog park or similar enclosed area used for such purpose and subject to rules and regulations as may be

promulgated for such areas, should they exist. Wildlife and feral animals should not be fed by Owners, their guests and invitees. Provided however, the Association is not required to take legal action in order to enforce this provision. The Association may, in its sole discretion, determine to permit certain matters to be determined by and among the Owners.

(t) Leasing. Leasing and rental of any Residence for a period of less than 30 days shall be prohibited and no Residence shall be permitted to be leased or rented more than twice a year. Each Owner shall advise the Association at least 15 days prior to the commencement of a lease/rental and provide the Association with a copy of the applicable lease, with contact information for the tenant.

(u) Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted on Common Area except in containers located in appropriate areas, if any, and no odor shall be permitted to arise therefrom so as to render Common Area or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property 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 ARB.

(v) Sidewalks. Any Owner of a Lot constructing a Single Family Residence on such Lot shall construct a sidewalk on or in front of such Lot, in accordance with the construction plans submitted to and approved by the County and approved by the Association and Architectural Review Board. Each sidewalk shall be completed prior to the issuance of a certificate of occupancy for such Residence.

(w) Irrigation. Any Owner using irrigation shall be financially and otherwise responsible (and may be specially assessed) for any negative impact on water quality, water level or vegetation control caused by such irrigation use, and for repair or replacement of any discolored surfaces with which water comes into contact. If required by the Association or ARB, the applicable irrigation shall contain iron and other filtration devices or components. All irrigation shall comply with any irrigation for the Property or any appropriate portion thereof and all requirements of the District. If the supplier of the irrigation water promulgates a time schedule during which specified Residences should irrigate, then each Owner shall comply with such schedule.

(x) Prohibition Against Citrus and Other Fruit Trees in the Community; Landscaping Decontamination Requirements. No "citrus tree" (defined for purposes of this Section as a tree or bush bearing citrus fruit) shall be permitted to be contained in the Community, based upon the current and ongoing difficulties in the state of Florida with citrus canker and the fact that the only method for eradicating citrus canker is to wholly eradicate all citrus species in a community. Such prohibition against citrus trees shall apply both to citrus trees planted in the ground or any planter, pot, or other decorative feature. Any and all outside landscaping installation and maintenance contractors shall be required to comply with any decontamination procedures determined by the Board of Directors, in its sole discretion, to be reasonably necessary and warranted. In the event

there are citrus trees located in the Community prior to the recordation of this Declaration, no Owner or other resident of the Community shall be permitted to harvest any fruit from such trees. The Association shall have all right, power and authority to cut down and/or remove any and all citrus trees located in the Community, whether located on the Common Area or a Lot. The Association shall have the power to levy an Individual Assessment against an Owner who plants or otherwise places a citrus tree on any portion of the Property. All other types of "fruit trees," such as, but not limited to, mango, papaya, and banana trees, are also prohibited on any Lot because of the additional maintenance requirements for same that would be required by the Association.

(y) Hurricane and Storm Protection. Hurricane storm protection devices ("Hurricane Protection"), including but not limited to hurricane shutters or plywood placed over exposed windows and glass, as approved by the ARB, may be installed by an Owner or Owner's agent from the time a storm watch for the Property is issued by local news and/or weather center or national weather service until seven (7) calendar days after the same storm watch is declared terminated for the area by the local news and/or weather center or national weather service. Hurricane Protection shall not remain installed over any portion of a Residence for the entire hurricane season. Owners who travel during the summer or Owners that do not reside in their Residence for portions of the hurricane season are required to make arrangements to have their Hurricane Protection installed as described above. The duty to make such arrangements and coordinate the installation and removal of the Hurricane Protection in a timely manner shall be the sole responsibility of the individual Owner and the Association assumes no obligation to facilitate the installation or removal of the Hurricane Protection and assumes no obligation or liability in the event that that timely installation and/or removal cannot be accomplished by the Owner and/or Owner's agent.

(z) Hazardous Materials. No Owner shall use, generate, store, or dispose of hazardous materials on the Property or discharge or release any hazardous material on, above, or under the Property except in compliance with any program which may be developed by the Declarant or the Association for identification, storage and disposal of hazardous materials (the "**Hazardous Materials Management Plan**"), and all applicable laws, regulations, ordinances and permits. "Hazardous materials" means materials, substances, gases, or vapors identified as hazardous, toxic or radioactive by any applicable federal, state or local laws, regulations or ordinances. In connection with the foregoing, each Owner shall:

(i) disclose to the Board of Directors or its designee all hazardous materials proposed to be stored, used or generated upon or within a Lot (other than janitorial supplies and similar domestic use hazardous materials used in the ordinary course of maintenance of Improvements);

(ii) permit inspection by the Board of Directors or its designee of those portions of a Lot where hazardous materials are stored, used or generated;

(iii) provide all equipment and facilities in the Lot necessary to participate in any mandatory point of origin collection service for hazardous materials;

(iv) comply with all applicable laws and regulations, and rules adopted by the Board regarding maintenance, operation and monitoring of the Hazardous Materials Management Plan, including procedures followed in case of accidental spills; and

(v) guarantee financial responsibility for spill cleanup. In connection with such financial responsibility, each Owner hereby agrees to waive and release the Declarant, each Builder, each Related Party of a Builder the Association, each Related Party of Declarant and each Related Party of the Association for any financial responsibility, costs, or expenses related to any spill or spill cleanup of hazardous materials which occurs on the Owner's Lot or elsewhere within the Property or the Common Areas through the acts or omissions of the Owner, its employees or agents and to the fullest extent permitted by law, indemnify and hold harmless the Declarant, each Related Party of Declarant, each Builder, each Related Party of a Builder, the Association and each Related Party of the Association related to or arising from the foregoing.

(aa) Declarant/Builder Exemption. In order that the development of the Property may be undertaken and the Property established as a fully occupied community, no Owner, nor the Association, shall do anything to interfere with Declarant's or Builder's activities, as more particularly set forth in Article 13 herein.

7.2 Enforcement; Additional Restrictions; Waiver of Restrictions. The foregoing provision of this Article 7 shall be enforceable by the Association and shall not be enforceable by Owners, to the extent permitted by law. All Lots may also be subject to such further restrictions as Declarant may impose under and by virtue of Supplemental Declarations, deeds to Owners or other restrictive covenant agreements or recorded instruments. Restrictions identified in any such declaration, deed or other instrument as being enforceable by the Association shall be enforceable by the Association, acting through the Board of Directors, in the same manner as if such restrictions were set forth in this Declaration. The Association reserves the right to provide waivers to the foregoing provision of this Article 7, and any such waiver shall not obligate the Association to provide a waiver to any other Lot or constitute a waiver of the right of the Association to enforce such restriction in the future.

ARTICLE 8 RULES AND REGULATIONS.

8.1 Right to Promulgate Rules. The Association's Board of Directors shall have the right power and authority, subject to the prior written consent and approval of Declarant, so long as Declarant owns any Lot within the Property, to promulgate and impose Rules and Regulations governing and/or restricting the use of all the Property and Lots in its jurisdiction, and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no Rules and/or Regulations so promulgated shall be in conflict with the provisions of this Declaration, or any other Rules and Regulations promulgated by the Association. Any such Rules and Regulations shall be adopted by majority vote of the Board of Directors. The Rules and Regulations shall apply to all Owners, occupants, family members, contractors, agents, licensees and

invitees. Violation of any Rule and Regulation may permit the Association to impose sanctions.

8.2 Additional Rules by ARB. In addition to the foregoing, the ARB shall have the right, power and authority, subject to the prior written consent and approval of Declarant, to promulgate and impose Rules and Regulations governing and/or restricting the use of all the Property and Lots in its jurisdiction including without limitation rules and regulations relating to the placement or installation of any type of improvement on any Lot, and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no Rules and Regulations so promulgated shall be in conflict with the provisions of this Declaration. Any such Rules and Regulations so promulgated by the ARB shall be applicable to and binding upon all the Property and the Owners thereof and their successors and assigns, as well as all guests and invitees of and all parties claiming by, through or under such Owners. Notwithstanding the foregoing, the ARB shall not be entitled to promulgate any Rules and Regulations that are less restrictive than or contrary to any restriction or regulation set forth in this Declaration.

8.3 Conflict. In the event that any of the Rules and Regulations conflict with any provisions of (a) this Declaration, or (b) any rules and/or regulations promulgated by the Architectural Review Board, then the Association, or the ARB, as applicable, shall modify the Rules and Regulations such that no conflict exists. Should the Association and/or the ARB fail to do so, Owners shall not be obligated to abide by the conflicting Association or ARB rule.

ARTICLE 9
DECLARANT'S RESERVED RIGHTS AND ARCHITECTURAL REVIEW FOR
MODIFICATION

9.1 Improvements, New Construction, Modification. Any Improvement and all Improvements within the Property are intended to be initially installed and constructed by Declarant or Builder, their respective agents, contractors, subcontractors and/or its designated New Construction Designee(s), if any, other than utility providers and governmental and quasi-governmental entities who perform their own construction for purposes of provision of services to any portion of the Property. All such Improvements shall be of a use, material, color, design and type and in the location as Declarant, in its sole discretion, may determine subject to the Development Approvals, applicable law, ordinance, regulation and permit, and may vary among the Lots. An Improvement shall be deemed to commence as of the date of the start of any placement, installation or construction of such Improvement and shall end and be deemed to be a "Completed Improvement" upon receipt of a Certificate of Completion, Certificate of Occupancy or similar approval, or acceptance by the governmental or quasi-governmental entity responsible for such Improvement, as may be applicable. Any alteration, addition, change, change of location or other improvement to a Completed Improvement shall be deemed to be a "Modification", except for an Exempt Improvement, hereafter defined. "Exempt Improvement" shall be i) the maintenance, repair or replacement of a Completed Improvement of the same use, with the same material, color, design and

type, and in the same location; and ii) alteration of a Completed Improvement in the interior of a Residence which is not visible from the exterior of a Residence; and iii) maintenance, repair or replacement of Completed Improvements by Declarant, Builder, Declarant's designee or Builder's designee. Prior to the time an Improvement is deemed a Completed Improvement, it shall be deemed "New Construction".

"Improvement" or "Improvements" for purposes of this Article 9 shall be deemed to be installation, construction or placement of all vertical and horizontal improvements to the Property, including, but not limited to, a building, Residence, fence, wall, shed, gazebo, canopy, mailbox, lighting, temporary structure or other structure, grading, elevation or improvement (including, but not limited to, landscaping [including hedges]), irrigation, paths, walkways, hardscape, swimming pools, hot tubs, screen enclosures, irrigation, hurricane protection, basketball hoops, birdhouses, other pet houses, ponds, swales, lakes, asphaltting or other changes to the natural state of the Property and vegetation existing thereon.

"New Construction Designee" means a Builder or contractor to whom Declarant may sell a Lot for purposes of construction of a Residence and resale in its ordinary course of business. The appointment of a New Construction Designee may only be made by Declarant, its successors and assigns, and such appointment is subject to revocation by Declarant, its successors and assigns at such point such New Construction Designee has completed the New Construction, has been replaced and/or has been terminated.

9.2 Reservation of Right of Declarant for New Construction. There is no architectural review or approval for any New Construction, except as Declarant may reserve through any private covenant or document, if any, for its own account, its successors and assigns. Specifically, no Builder or New Construction Designee shall be required to obtain consent from Declarant for New Construction.

9.3 Reservation of Right of Declarant for Declarant Review and Approval of Modification. Declarant reserves unto itself, its successors and assigns, the right to review and approve any Modification within the Property, other than a Modification within the Lots as set forth in Section 9.4 below as to a Modification within the Lots. Upon the termination of the Class B Membership, or earlier at Declarant's election, this right of review and approval shall become the right and responsibility of the Association, which the Association is required to accept.

9.4 Architectural Review and Approval of Modification within Lots. In order to maintain the scheme of development and aesthetic character of the Property with respect to Lots, there shall be an Architectural Review Board to review and approve any Modification to the Lots and the unpaved rights of way abutting the Lots.

(a) Except for an Exempt Improvement, no Modification to any Completed Improvement shall be erected, placed or altered on any Lot or the unpaved rights of way abutting any Lot until the construction plans and specifications and a plan showing the location of the Improvement and any landscaping, color, or composition of the materials used therefor, as may be required by the Architectural Review Board

(sometimes referred to herein as the "ARB") have been approved in writing by the Architectural Review Board named below and all necessary governmental permits are obtained. Any Modification erected, placed or altered upon the Property must be in accordance with the plans and specifications and plot plan so approved and with the applicable governmental permits and requirements. The Architectural Review Board shall have the right, in its sole and absolute discretion, to refuse approval of the Modification based on any ground, including purely aesthetic grounds. The Architectural Review Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Section.

(i) So long as the Declarant is a Class B member, the ARB shall be appointed by the Declarant. Thereafter, the Architectural Review Board shall be a committee composed of or appointed by the Board of Directors of the Association, except that Declarant shall have the right to appoint at least one member of the ARB for so long as it owns one (1) Lot within the Property held for resale in the ordinary course of business. During the period in which the Declarant appoints the membership of the ARB, the ARB shall have three (3) members. At such time as the Board of Directors appoints the ARB members, the ARB shall have any number of members as deemed appropriate by the Board of Directors. Notwithstanding anything in this Declaration to the contrary, all members of the ARB shall be Owners of Lots within the Property or their designees (which shall include Declarant for so long as Declarant owns a Lot).

(ii) The address of the Architectural Review Board shall be the address of the Declarant or the Association, depending on which party appoints its membership. The Board of Directors of the Association and the ARB may employ personnel and consultants to assist the ARB. The members of the ARB shall not be entitled to any compensation for services performed pursuant to this Declaration. The Architectural Review Board shall act on submissions to it, or request further information thereon, within thirty (30) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved. A majority of the ARB shall constitute a quorum for a meeting and a majority of ARB to approve or disapprove any application.

(iii) The ARB may impose a reasonable fee for the application for review of any Modification which is nonrefundable.

(iv) The ARB may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, site plans, drainage plans, signage plans, landscaping plans, elevation drawings, light intensity and direction, and descriptions or samples of exterior materials and colors. The ARB shall have thirty (30) days after delivery of all required materials to approve or reject any such plans, and if not rejected within such thirty (30) day period, said plans shall be deemed approved. All work done by an Owner after receiving the approval of the ARB shall be subject to the inspection by, and final approval of, the ARB in accordance with its procedural rules adopted as herein provided and as may be promulgated in the future. Any approval of a Modification by the ARB may be with conditions, which may include, but not be limited to, imposing a time period in which such work must be performed or the

approval will lapse and where applicable, requiring the contractor to perform the work be licensed and to provide such a certificate of liability insurance to the Association, naming the Association as a named insured, prior to the commencement of any work.

(v) Inspection of work and correction of defects therein shall proceed as follows:

1. Upon the completion of any Modification for which approved plans are required under this Article, the Owner shall give written notice of completion to the ARB;

2. Within thirty (30) days thereafter, the ARB or its duly authorized representative may inspect such Improvement. If the ARB finds that such work was not affected in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same;

3. If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such noncompliance, the ARB shall notify the Board of Directors in writing of such failure. The Board of Directors shall then determine whether there is a noncompliance and if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the applicant shall remedy or remove the same within a period of not more than thirty (30) days from receipt of notice of the Board of Directors ruling. If the Owner does not comply with the Board of Directors ruling within such period, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Owner shall reimburse the Association upon demand, for all expenses incurred in connection therewith, plus an administrative surcharge up to fifteen percent (15%) to be determined by the Association. If such expenses are not promptly repaid by the Owner to the Association, the Board of Directors shall levy an Individual Assessment against such Owner and his Lot for reimbursement among all other rights as set forth in this Declaration; and

4. If for any reason the ARB fails to notify the Owner of any noncompliance within thirty (30) days after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to have been made in accordance with said approved plans.

(vi) There is no ARB approval required for an Exempt Improvement; however the ARB may impose reasonable Rules and Regulations with respect to construction activities of the Owner of Residences of Exempt Improvements, but which shall expressly not apply to Declarant, its successors and assigns. In the event an Owner is unsure of what constitutes an Exempt Improvement, the ARB shall determine the same, which decision of the ARB shall be dispositive of the question.

(vii) Notwithstanding anything in this Declaration to the contrary, the provisions of this Declaration regarding ARB approval shall not be applicable to the Declarant or to construction activities conducted by or on behalf of the Declarant.

(viii) Notwithstanding anything herein to the contrary, the ARB, in its sole and absolute discretion, may grant a variance as to any of the restrictions, conditions and requirements set forth in this Article so long as, in the judgment of the ARB, the noncompliance for which the variance is granted is not of a substantial nature and the granting of the variance shall not unreasonably detract from the use and enjoyment of the Lots and the Property. In no event shall the granting of a variance in one instance require the ARB to grant a similar or other type of variance in any other instance, it being understood that the granting of variances from the restrictions, conditions and requirements of this Article shall be in the sole and absolute discretion of the ARB.

(ix) Notwithstanding anything herein to the contrary, prior to commencing construction of improvements approved by the ARB, the Owner of the Lot upon which such improvements shall be installed shall obtain any and all appropriate governmental permits and approvals and shall construct the improvements in compliance with all terms and conditions of such permits and approvals. It is the responsibility of each Owner to insure that all appropriate approvals have been obtained.

(x) For so long as Declarant owns any Lot held for resale in its ordinary course of business, the ARB shall not approve any change which may be an impediment to the sale of the Lots owned by Declarant.

(b) Additional Guidelines of the ARB with respect to Modification. The ARB hereby sets forth certain guidelines with regard to a Modification for specified matters. These guidelines are subject to revision and update from time to time. A current set of guidelines may be obtained from the ARB from time to time and revisions are not required to be recorded in the Public Records of the County or imposed by Supplemental Declaration. For so long as Declarant has the right to appoint a member to the ARB, all guidelines shall require the consent of Declarant, which may be withheld for any reason whatsoever.

(i) Fences. Notwithstanding anything herein to the contrary, no fence, wall or other similar structure shall be erected on any Lot without the prior approval of the ARB. Any fences erected on a Lot must provide access for lawn maintenance. Any privacy fences approved by the ARB must be six feet (6') in height, composed of PVC material and of the color as set forth in the guidelines. Notwithstanding the foregoing, any Lots abutting a water body will only be permitted to have non-privacy fences composed of black aluminum of the size, style and type approved by the ARB. Any Owner erecting a fence shall assume complete responsibility to maintain the fence, including, but not limited to, trimming any grass, ivy or other plants from the fence. In the event the ARB approves the installation of a fence, it shall also have the right to require installation of landscaping, also subject to the ARB's approval, at the time the fence is installed.

Notwithstanding that an Owner has obtained the approval of the ARB to install a fence or landscape materials, as provided hereinabove, such installation shall be at the Owner's sole risk so long as Declarant has not yet begun or is engaged in the construction of a Residence on an adjacent Lot. In the event such construction activity on an adjacent Lot causes damage to or destruction of such Owner's fence or landscape materials or any part thereof, the Owner on whose Lot the fence and/or landscaping has been damaged shall be required, at the Owner's expense, to repair or replace such fence and/or landscape materials in conformance with the requirements of the ARB's approval of the initial installation of the fence and/or landscape materials and Declarant shall have no liability for any such damage or destruction. Such repair or replacement shall commence as soon as construction on the adjacent Lot has been completed and shall be pursued to completion with due diligence. For purposes of this paragraph, the term "landscape materials" shall include landscape materials located on or adjacent to any property line of a Lot, including, by way of example and not of limitation, hedges, shrubs and trees, whether associated with a fence or not.

In accordance with Section 7.1(g) herein, all fences shall be reviewed for location of existing easements, impacts to the flow of drainage and impacts to surrounding areas. The Owner of a Lot, when installing any fence upon the Lot, shall comply with any and all laws, zoning ordinances, codes, rules and regulations of all applicable governmental bodies, as applicable, in addition to the ARB approval required by this Section.

(ii) Mailboxes. No mailboxes including without limitation cluster mailboxes) or similar improvement shall be installed on any Lot unless the location thereof has been approved by the ARB and the materials, color and color thereof have been approved by the ARB and are in accordance with such standards for materials and colors as may be adopted by the ARB.

9.5 Non Liability. Neither Declarant, any Related Party of Declarant, the members of the Architectural Review Board, any Builder, any Related Party of a Builder the Association nor any Related Party of the Association shall, either jointly or severally, be liable to any Owner, such Owner's successors or assigns, or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance or non-performance of the duties under this Article 9. Review and approval or disapproval of all plans submitted for any proposed Modification is solely on the basis of aesthetic considerations and the benefit or detriment which would result to the immediate vicinity and to the Property, generally. Consideration shall be given to the aesthetic aspects of the architectural designs, placement of buildings, proximity to Residences, landscaping, color schemes, exterior finishes and materials and similar features, but there shall be no responsibility for reviewing, nor shall approval of any plan or design be deemed approval of, or warranty as to, any plan or design from the standpoint of structural safety or conformance with building or other codes. The approval of any proposed Modification shall not constitute a warranty or approval as to the safety, soundness, workmanship, materials or usefulness for any purpose of any such Improvement nor as to its compliance with governmental or industry codes or standards. By submitting a request for the approval of any Improvement, the requesting party shall be deemed to have automatically agreed that the Declarant, each Related Party of

Declarant, the members of the Architectural Review Board, each Builder, each Related Party of a Builder, the Association and each Related Party of the Association shall not, either jointly or severally, be liable or accountable in damages or otherwise to any Owner or other person or party whomsoever, by reason of or on account of any decision, approval or disapproval of any plans, specifications or other materials required to be submitted for review and approval pursuant to provisions of this Article 9 of this Declaration, or for any mistake in judgment, negligence, misfeasance, or nonfeasance related to or in connection with any such decision, approval or disapproval. Each Owner by acquiring title to any Lot or interest therein shall be deemed to have agreed to the foregoing and waives and releases any and all claims, damages, costs and causes of action that such submitting party may have.

9.6 Remedy for Violations. In the event that any Improvement is constructed without first obtaining the approval of Declarant, or the ARB, as applicable, or is not constructed in strict compliance with any approval given or deemed given by Declarant or the ARB, as applicable, the "Reviewing Entity" which granted the approval (i.e. such Reviewing Entity being either the Declarant or the Association, acting on behalf of the ARB, as set forth in this Article 9), shall have the specific right to injunctive relief to require the Owner, its applicable successors and assigns, to stop, remove and alter any Modification in order to comply with the requirements hereof or such Reviewing Entity may pursue any other remedy available to it. In connection with this enforcement Article 9, the Reviewing Entity shall have the right to enter into any portion of the Property and make any inspection necessary to determine that the provisions of this Article 9 has been complied with. The failure of any Reviewing Entity to object to any Modification prior to its completion shall not constitute a waiver of Reviewing Entity's right to enforce this Article 9. The foregoing rights shall be in addition to any other remedy set forth herein for violations of this Declaration.

ARTICLE 10

COMPLIANCE AND ENFORCEMENT

10.1 Compliance by Owners. Every Owner shall comply with the terms, provisions, restrictions and covenants set forth herein and any and all Rules and Regulations which from time to time may be adopted by the Association or the ARB. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the Owner's occupants, children, invitees, tenants, vendors, contractors, agents, employees, licensees and permittees of such Owner's Lot (each an "Allowed User" and collectively, "Allowed Users") and for any damage to the Common Area or Exclusive Common Area caused by the Owner or any of the Allowed Users.

10.2 Enforcement. If any Owner, or Allowed User of an Owner, fails to comply with and/or refuses to comply with any of the terms, provisions, covenants, conditions and/or restrictions contained in this Declaration and/or any of the Governing Documents, as they may be amended from time to time, the Association shall be entitled to take any action or remedy at law or in equity whether or not set forth elsewhere in this Declaration, which shall include, but not be limited to:

- a) take any action or remedy to recover damages;
- b) seek injunctive relief;
- c) seek or take any declaratory action;
- d) seek arbitration or mediation;
- e) take any administrative action or remedy;
- f) accelerate the timing of payment of Assessments;
- g) levy a fine;
- h) impose an administrative late fee for the payment of past due Assessments;
- i) impose a surcharge on work performed by the Association which was the Owner's responsibility;
- j) impose a suspension of Common Area use rights as to any Owner, or Allowed User of an Owner, provided however, the Owner shall not be denied access to his Residence;
- k) impose a suspension of voting rights of a Member Entitled to Vote in accordance with Florida Statutes 720.305(4);
- l) collect from a tenant in accordance with Florida Statutes 720.308(8);
- m) impose a lien;
- n) exercise self-help or take action to (i) abate any violation of the Governing Documents (including removing personal property that violates the Governing Documents or erection of Improvements constructed in violation of ARB approvals or without ARB approvals) in a non-emergency situation (in non-emergency situations such self-help shall be with prior notice and at reasonable hours), (ii) abate a violation on a Lot in any situation that requires prompt action to avoid potential injury or damage other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), and (iii) abate a violation on the Common Area under any circumstances. In all such cases entry shall not be deemed a trespass;
- o) impose an Individual Assessment against the Owner of the Lot which is either delinquent in its payments to the Association, or has violated the terms and conditions of this Declaration;
- p) collect Enforcement Costs; or
- q) Without liability, the Association may preclude any contractor,

subcontractor, agent, employee or other invitee of an Owner who causes damage to any portion of the Property owned by others or fails to comply with the Rules and Regulations of the Association, the ARB or other provisions of this Declaration from continuing or performing any further activities in the Property.

10.3 Fines and Suspensions. In addition to any other rights permitted at law or in equity, the Association shall have the right to suspend, for a reasonable period of time, the rights of any defaulting Owner or defaulting Owner's Allowed Users, to use the Common Areas, including Amenity Area, and may levy reasonable fines, not to exceed One Hundred and No/100 Dollars (\$100.00) per violation, up to a maximum of Five Thousand and no 10/100 Dollars (\$5,000.00) for a continuing violation against any Owner and/or Allowed User. The Association shall follow the procedures set forth in Section 720.305 of the Florida Statutes prior to imposition of any fine or suspension permitted by this paragraph and any such fine shall be a continuing lien on the Lot until paid. If any such fine is not paid within ten (10) days of its imposition, the Association shall have the right to lien such Owner's Lot to foreclose such lien, all as more specifically set forth herein, and shall be entitled to take all other actions as may be more specifically set forth herein, in the Association's Bylaws and as otherwise provided by law or in equity. No suspension shall deprive the Owner the right of access to its Lot.

10.4 No Waiver. The failure of Declarant or the Association to enforce any covenant, condition, term, provision, restriction, obligation, rule, regulation, right, power, privilege and/or reservation contained in any of the Governing Documents, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach and/or violation, or as to any other breach and/or violation occurring prior or subsequent thereto.

10.5 Nonexclusive Election. The remedies recited in this Article as well as those otherwise set forth in this Declaration, shall be cumulative, and shall be cumulative of all other legal, administrative and/or equitable remedies now or hereafter provided by Florida law or the Governing Documents, and all such remedies may be exercised and pursued singly, sequentially or in any combination. The election of one remedy shall not be exclusive and shall not preclude the election of additional remedies.

10.6 Discretion of the Board. The Association's decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, (i) the Board may determine that the Association's position is not strong enough to justify taking any further action, (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law, (ii) although a technical violation may have occurred, it is not of such a material nature as to be objectionable or justify spending the Association's resources, or (iv) that it is not in the Association's best interest, based on hardship, expense or other reasonable criteria, to pursue enforcement. A decision not to enforce a particular provision shall not prevent the Association from enforcement of the same provision at a later time or prevent the enforcement of any other covenant, restriction or rule.

10.7 Declarant Rights of Enforcement. In the event the Association fails or refuses to take action under this Article after notice from Declarant of a violation of the Governing Documents, the Declarant shall have the right to levy monetary fines on behalf of the Association after notice and hearing in the same manner as the Association as set forth in this Article. In addition, the Declarant may exercise self-help or take action to abate a violation or bring suit at law or in equity as the Association this Article.

10.8 District Rights of Enforcement. In addition, the District having jurisdiction over the Property shall have the right to enforce this Declaration with respect to the operation and maintenance of the Stormwater Management System for the Property, including a civil action for an injunction and penalties, against the Association to compel it to correct any outstanding problems with the Stormwater Management System facilities or in mitigation or conservation areas under the responsibility or control of the Association.

10.9 Owner Liability for Costs. The defaulting and/or offending Owner shall be responsible for all Enforcement Costs incurred in enforcement of this Declaration.

10.10 Dispute Resolution. If and where applicable, the Association and each Owner shall comply with the provisions of Florida Statutes 720.311 as to dispute resolution.

11.1 Stormwater Management System. The Association, its successors and assigns shall be responsible for maintaining the property containing the Stormwater Management System located within the Common Area in the Property and Drainage Easements, as more particularly set forth herein and the operation thereof. The term "maintaining" as applied to the Stormwater Management System, shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District, including (a) checking the inlets for accumulation of debris and sedimentation; (b) checking for pond side slope stability by replacing dead sod and, after mowing operations, checking for disturbed side banks; and (c) cleaning sediment out of mitered end sections (inflow to ponds). The Association shall have the right, but not the obligation, to maintain the Stormwater Management System and Drainage Easements at a level of service greater than required by the District. Any repair or reconstruction of the Stormwater Management System shall be as permitted, or if modified, then only as approved by the District. The provisions of this Article 11 shall not relieve the Owners of any of their obligations set out in this Declaration.

11.2 Conservation Areas. "Conservation Area" or "Conservation Areas" shall collectively mean and refer to all such areas designated as Conservation Easement, Wetland Preserve or Upland Preserve on any plat. The Conservation Areas are hereby declared to be subject to a Conservation Easement in favor of the District, for the purpose of retaining and maintaining the Conservation Areas in their predominantly natural condition as a wooded water recharge, detention and percolation and environmental conservation area. In furtherance of this, each of the following uses of the Conservation

Areas are hereby prohibited and restricted without the prior written consent of the District, to-wit:

- (a) The construction, installation or placement of signs, buildings, fences, walls, road or any other structures and improvements on or above the ground of the Conservation Areas; and
- (b) The dumping or placing of soil or other substances or materials as landfill or the dumping or placing of trash, waste or unsightly or offensive materials; and
- (c) The removal or destruction of trees, shrubs or other vegetation from the Conservation Areas (excepting therefrom any nuisance flora and fauna that may be removed pursuant to any permit issued by the District); and
- (d) The excavation, dredging or removal of loam, peat, gravel, rock, soil, or other material substances in such a manner as to affect the surface of the Conservation Areas; and
- (e) Any use which would be detrimental to the retention of the Conservation Areas in their natural condition; and
- (f) Acts or uses detrimental to such retention of land or water areas.

The Conservation Areas hereby created and declared shall be perpetual.

The Declarant, its successors and assigns, and the District shall have the right to enter upon the Conservation Areas at all reasonable times and in a reasonable manner, to assure compliance with the aforesaid prohibitions and restrictions. The Declarant and all subsequent owners of any land upon which there is located any Conservation Area shall be responsible for the periodic removal of trash and other debris which may accumulate on such Lot.

11.3 Wetland Buffers and Vegetative Natural Buffers. There may be areas designated on plats as "Wetland Buffer", "Upland Preserve", "Upland Buffers" or "Vegetative Natural Buffers." All such areas must be maintained in a natural state. Environmental swales may exist in such areas. No trees or other vegetation can be removed, nor shall any environmental swale be modified unless approved by the Declarant or ARB, as applicable and if necessary, the District.

11.4 Rights of the District. Notwithstanding any other provisions contained elsewhere in this Declaration, the District shall have the rights and powers enumerated in this Section. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation, and repair of the Stormwater Management System and Drainage Easements. Any repair or reconstruction of the Stormwater Management System and Drainage Easements shall be as permitted, or if modified, as approved by the District. No person shall alter the drainage flow of the Stormwater Management System or Drainage Easements, including any buffer areas, swales, treatment berms or swales, without the

prior written approval of the District. Any amendment to this Declaration which would affect the Stormwater Management System or Drainage Easements (including environmental conservation areas and water management portions of the Common Areas) will be submitted to the District for a determination of whether the amendment necessitates a modification of the District Permit. Any amendment affecting the Stormwater Management System will not be finalized until any necessary permit modification is approved by the District or the Association is advised that a modification is not necessary. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the Stormwater Management System and Drainage Easements must be assigned to and accepted by an entity approved by the District

11.5 District Permit. Attached hereto as Exhibit "D" is a copy of the District Permit as originally issued. The Registered Agent for the Association will maintain copies of all permitting actions for the benefit of the Association. Modifications to the District Permit or change of conditions of such District Permit need not be recorded in the Public Records of the County

11.6 Release and Indemnity. Declarant may be required to assume certain duties and liabilities for the maintenance of the Stormwater Management System, Drainage Easements or drainage system within the Property under the Plat, permits, District Permit or certain agreements with governmental agencies. Each Owner and the Association further agree that subsequent to the recording of this Declaration, the applicable party shall waive and release Declarant from all suits, actions, damages, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising out of any occurrence in, upon, at or from the maintenance of the Stormwater Management System and Drainage Easements occasioned in whole or in part by any action, omission of the Association, any Related Party of the Association or licensees of the Association but not excluding any liability occasioned wholly or in part by the acts of the Declarant, its successors or assigns. Upon completion of construction of the Stormwater Management System, Drainage Easements, or drainage system, Declarant shall assign all its rights, obligations and duties thereunder to the Association. The Association shall assume all such rights, duties and liabilities and waive, release and indemnify and hold Declarant and each Related Party of Declarant harmless from all such rights, duties and liabilities to the fullest extent permitted by law.

11.7 Drainage. All stormwater from any portion of the Property shall be drained in the manner approved by the District and the Association as operator of the Stormwater Management System, if such drainage is part of the Stormwater Management System and pursuant to the Drainage Easements. If such drainage is not part of the Stormwater Management System and is not required to be part of the Stormwater Management System, then the manner of its drainage shall be approved by the Declarant or ARB, as applicable. No Owner shall be permitted to alter the grade of or original drainage plan for any portion of the Property, or change the direction of, obstruct, alter or retard the flow of surface water drainage, nor to erect, place or maintain any structure which shall in any way obstruct drainage devices or facilities or impede their efficient operation, unless approved by the ARB and the owner and operator of the Stormwater Management System if such drainage is part of the Stormwater Management System, or unless

approved by the ARB, if such drainage is not part of the Stormwater Management System.

11.8 Conditions Related to Drainage Areas. Lakes, streams, canals, ponds, marshes, retention areas and other low lying lands are the natural habitat of the Florida alligator and other wildlife. Further, edges of such areas may erode and accrete with time and slopes may change. Due to fluctuating water levels, certain areas may be dry at times or have a surface which is unsuitable for walking or standing. Certain water bodies may be chemically treated which may be an irritant or toxic if ingested. All persons nearing the vicinity of such areas are alerted to use to caution and assume all risk in connection with areas.

11.9 No Liability. Neither Declarant, any Related Party of Declarant, any Builder, any Related Party of a Builder, the Association nor any Related Party of the Association shall have any liability whatsoever to owners, guests, tenants, or invitees in connection with the Stormwater Management System or other low lying lands. Each Owner, for itself and its guests, tenants, or invitees, releases Declarant, each Related Party of Declarant, each Builder, each Related Party of a Builder, the Association and each Related Party of the Association from any liability in connection therewith.

Neither Declarant, any Related Party of Declarant, the Association nor any Related Party of the Association shall be liable or responsible for maintaining or assuring the water quality or level in any lake, pond, retention area, canal, creek, marsh area, stream or other water body within or adjacent to the Property, except as such responsibility may be specifically imposed by an applicable governmental or quasi-governmental agency or entity as referenced herein. Further, all Owners and users of any portion of the Property located adjacent to or having a view of any of the aforesaid areas shall be deemed, by virtue of their acceptance of a deed to, or use of, such lands, to have agreed to waive, release and hold harmless Declarant, each Related Party of Declarant, each Builder, each Related Party of a Builder, the Association and each Related Party of the Association from any and all liability related to any changes in the quality and level of the water in such bodies or conditions which may be harmful to Persons or property.

ARTICLE 12 ROADWAYS

12.1 Private Roadways. All roadways within the Plat are private roadways. Neither Declarant nor any Lot Owner nor the Association shall receive a discount on any discount in property taxes or any other tax or fee because of the retention or private ownership of the roadways. Tract "A" which comprises the roadways, as shown on the Plat is Common Area of the Association. Further, the Declarant and/or the Association may enter into an agreement with the County for upgraded street lighting, if it so elects. The Association and the Owners are responsible for assessing, collecting and reserving sufficient funds to operate, maintain, repair and replace the roadways and applicable street lighting costs associated therewith. At no time shall the County be liable or responsible for the maintenance, repair and replacement of the roadways, installed or performed by Declarant or the Association.

12.2 Access Easement. Declarant hereby reserves for itself, the Association, each Owner, its guests, tenants, invitees, and such other Persons as the Declarant or the Association has designated or may designate, shall have the non-exclusive and perpetual right of ingress or egress for pedestrian and vehicular access over and across the roadways, subject to the provisions of Section 12.3. Additionally, Declarant hereby grants a non-exclusive and perpetual right of ingress or egress for pedestrian and vehicular access over and the roadways for law enforcement, firefighting, paramedic, rescue and other emergency services, vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment and personnel providing garbage collection service to the Community, provided that such easement shall not authorize any such Persons to enter the Community except while acting in their official capacities. The Declarant and/or the Association may be required to enter into an easement agreement with the County with respect to the foregoing.

12.3 Reservation of Rights of Declarant and Association. Notwithstanding the provisions of Section 12.2 herein, at any time after the recording of this Declaration, the Declarant, while it still owns any portion of the Property, may elect that the Property, or a portion of the Property, will be operated as a gated community limiting access by the public and the Declarant and Association shall have the right to enact reasonable rules for the operation of and access to the Property through said gate and impose for a fee for cards, clickers, or such other such automatic entry device, if any, which may be available to Owners of Lots so served by the gates. The ownership of the gates and related infrastructure (the "Gated Community Infrastructure"), should the same exist, shall be initially owned by and operated by the Declarant, but shall be ultimately conveyed by Bill of Sale and owned by the Association. If Declarant elects to install the Gated Community Infrastructure, then the costs of insurance, taxes, maintenance, repair and replacement thereof shall be a part of the Common Expenses of the Association and assessed against all Owners. During any sales and new construction period of Declarant, Builder and their designated successors and assigns, gates may be left in an open position for extended periods and may not be fully operational until the time of Transfer of Control of the Association. All persons are placed on notice of this fact. The fact of open position of any gates for extended periods shall not relieve the Owners and their respective Lots so assessed for payment of the costs and fees and therefore, nor shall it impose upon Declarant, Builder or the Association any liability therefore.

Should all or any portion of the portion of the Community be gated or otherwise provide for restricted access into the Community, or portion thereof, such restrictive access shall not be deemed an interference or violation with the access easement granted herein. Requiring proof of identification or use of a card, decal or electronic access reader or device shall not be deemed an interference or violation of the easements granted herein.

12.4 Enforcement of Traffic Laws. The enforcement of traffic laws within the Property, if and as requested by the Association, shall be the County sheriff, and all costs of enforcement incurred by the applicable law enforcement agency, if any, shall be paid by the Association as a Common Expense. However, the foregoing is not intended to prevent the Association from directing, conducting, maintaining or supporting private

security and traffic enforcement services within the Property as may be permitted by the applicable law enforcement agency.

12.5 Reserved Rights of Declarant. Declarant hereby reserves for itself and its agents, employees, successors and assigns, and each Builder and their respective invitees, a perpetual easement over the Private Roadways for the purposes of:

(a) access throughout the Community to showcase the Community in connection with the marketing and sale of property in the Community or in other communities being developed, marketed or sold by the Declarant, its affiliates, agents or designees;

(b) access to Common Areas for use as otherwise permitted by this Declaration; and

(c) constructing, maintaining, repairing or rebuilding any public or private infrastructure or subdivision improvements installed or to be installed in the Community and performing any other work within the Community that Declarant deems reasonably necessary, in its discretion, or that the Declarant is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Community.

With regard to construction on any of the Lots by the Owners thereof, the contractors, subcontractors, laborers, materialmen and other Persons providing construction services and materials to any such Lots shall have access to such Lots over the Private Roadways subject to such Rules and Regulations as the Association may adopt; however, during the period of marketing and sales by Declarant and Builder, its successors and assigns, Declarant shall have the right to prohibit the use of the Private Roadways by such Persons and to designate alternate access easements for such Persons.

12.6 Acknowledgment, Waiver and Release of Liability. Notwithstanding anything contained herein or in the Governing Documents or any other document governing or binding the Association (collectively, the "Association Documents"), it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Declarant and/or the Association and which govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof; the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, the County and/or any other jurisdiction or the prevention of tortious activities; and any provisions of the Governing Documents setting forth the uses of Assessments which relate to 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 Association to protect or further the health, safety or welfare of any Person(s), even if Assessment funds are chosen to be used for any such reason.

Neither the Declarant, any Related Party of Declarant, any Builder, any Related Party of Builder, the Association nor any Related Party of the Association shall, in any manner or way, be considered as or deemed or construed to be insurers or guarantors of the personal safety or security of any Persons, including, without limitation, any Owner or any tenant, guest, invitee, employee, agent or family member of such Owner, or of any property, whether real or personal, from time to time located within or upon the Property or any portion thereof.

Accordingly, neither the Declarant, any Related Party of Declarant, any Builder, any Related Party of a Builder, the Association nor any Related Party of the Association shall be responsible or held liable or accountable for the injury or death of any person or for the loss of or damage to any property by reason or on account of the failure of the Declarant, any Related Party of Declarant, any Builder, any Related Party of a Builder, the Association, any Related Party of the Association or such Gated Community Infrastructure to limit or control access to the Property or by reason or on account of the ineffectiveness of any activities directed, conducted, maintained or supported by the Declarant or Association for that purpose. In this regard, each Owner, for itself and on behalf of any tenants, employees, agents, guests, invitees or family members of such Owner, shall, by virtue of the acceptance of a deed or other conveyance of a Lot, and each other Person having a lien upon, or making or making use of any portion of the Property (by virtue of accepting such interest or lien or making such uses), shall be bound by this Section 14.6 and be deemed to have acknowledged, understood and agreed to the foregoing and further (a) that notwithstanding any efforts or activities on the part of the Declarant or Association to limit or control access to the Property, each Owner for itself and on behalf of any tenants, employees, agents, guests, invitees and family members of such Owner, (i) shall take title to its Lot and Residence subject to, and hereby assumes, all risk of personal injury or death and damage to or loss of property of whatever nature, while present or situate within or upon the Property and (ii) waives, releases and holds harmless Declarant, each Related Party of Declarant, each Builder, each Related Party of a Builder, the Association and each Related Party of the Association from, any and all claims, losses, damages, causes of action or liabilities with respect to any personal injury or death or damage to or loss of property while present or situate within or upon the Property (b) that neither Declarant, any Related Party of Declarant, any Builder, any Related Party of a Builder, the Association, nor any Related Party of the Association have made, nor has any Owner, or any of Owner's tenants, employees, agents, guests, invitees or family members relied upon, any representation or warranty, whether express or implied, pertaining to (i) the exclusivity or safety of the Property, (ii) the effectiveness of any activities directed, conducted, maintained or supported by the Declarant, any Related Party of Declarant, any Builder, any Related Party of a Builder, the Association or any Related Party of the Association in order to provide for the exclusivity of, or limit or control access to, the Property, or (iii) the safety or security of Persons or property while located or situate on or within the Property.

ARTICLE 13 DECLARANT RIGHTS

13.1 General Provisions. Without limiting the generality of the foregoing, nothing in this Declaration or the Articles or Bylaws shall be understood or construed to:

(a) Prevent Declarant, Builder, or their respective contractors or subcontractors, from doing on any portion of the Property owned by them whatever they determine to be necessary or advisable in connection with the completion of the Community, including without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development (all models or sketches showing plans for future development of the Property may be modified by Declarant or Builder at any time and from time to time, without notice); or

(b) Prevent Declarant, Builder, or their respective contractors, subcontractors, or representatives from erecting, constructing, and maintaining on any property owned or controlled by Declarant, a Builder, or any of their respective contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing the Community and establishing the Community and disposing of the same by sale, lease, or otherwise; or

(c) Prevent Declarant, Builder, or their respective contractors or subcontractors, from conducting on any property owned or controlled by Declarant, Builder or their respective businesses of developing, subdividing, grading, and constructing improvements on the Property and of disposing of Lots, Residences and parcels therein by sale, lease or otherwise; or

(d) Prevent Declarant or a Builder from determining in their respective sole discretion the nature of any type of improvements to be constructed as part of the Community; or

(e) Prevent Declarant or a Builder or their respective 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 Lots owned by Declarant or Builder or the sale, lease or other marketing of Lots and/or Residences, or otherwise from taking such other actions deemed appropriate; or

(f) 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

(g) Prevent Declarant from modifying, changing, re-configuring, removing or otherwise altering any improvements located on the Common Area.

In general, the Declarant, and where noted, Builder, shall be exempt from all restrictions set forth in this Declaration to the extent such restrictions interfere in any manner with Declarant's or Builder's plans for construction, development, use, sale or other disposition of the Property, or any part thereof.

13.2 Reserved Use Rights of Declarant/Builder. Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sale of Lots and Residences shall continue, it shall be expressly permissible for Declarant or a Builder to maintain and carry on upon portions of the Common Areas, Lots and parcels

owned by Declarant or a Builder such facilities and activities as, in the respective sole opinion of Declarant or a Builder, may be reasonably required, convenient, or incidental to the construction or sale of Lots and Residences, including, but not limited to, business offices, construction offices, signs, model lots, and sales offices, and each of Declarant and each Builder shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use any Lot or Residence owned by Declarant or a Builder as models, or information or sales offices.

13.3 Requirement for Declarant/Builder Consent. So long as Declarant or Builder continues to have rights under this Article, no Person shall record any declaration or similar instrument affecting any portion of the Property without Declarant's and/or Builder's review and written consent thereto, as may be applicable, and any attempted recordation without compliance herewith shall result in such declaration or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant or Builder, as may be applicable.

13.4 Future Easements and Modifications. Declarant reserves the right to grant, modify, or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants, and rights of way to modify the boundary lines and to plat or replat portions of the Property for development of the Community.

13.5 Amendment of this Article. This Article may not be amended without the express written consent of Declarant; provided, however, Declarant's rights contained in this Article shall terminate upon the earlier of (a) 35 years from the date this Declaration is recorded, or (b) upon recording by Declarant or a Builder of a written statement that all sales activity has ceased.

13.6 Transfer/Assignment of Declarant's Rights. Any or all of the rights, privileges, or options provided to or reserved by Declarant in this Declaration, the Articles or the Bylaws, may be transferred and assigned by Declarant, in whole or in part, as to all or any portion of the Property, to any person or entity pursuant to an assignment recorded in the public records of the County. Any partial assignee of any of the rights of Declarant shall be deemed a Declarant but shall have no other rights, privileges or options other than as are specifically assigned. If, however, such assignee is specifically assigned all the rights held by Declarant hereunder, such assignee shall be deemed the full Declarant and may exercise all the rights of Declarant hereunder. Any full or partial assignment of Declarant's rights shall be by an express written assignment recorded in the public records of the County, specifically setting forth the description of the rights assigned and the specific property of assignee to which the assigned rights apply. Any partial assignment may be made on a non-exclusive basis and in the event of a dispute between the assignor (and its successors or assignee of full Declarant's rights hereunder) and any assignee of a portion of Declarant's rights hereunder, the exercise of rights by the assignor as Declarant hereunder (and its successors or assignee of full Declarant's rights) shall be controlling. No assignee of Declarant shall have any liability for any acts of Declarant or any prior Declarant unless such assignee is assigned and agrees to assume such liability.

ARTICLE 14 GENERAL PROVISIONS

14.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and, except as otherwise expressly provided herein, be enforceable by the Declarant, the Association, the Owners and the ARB, and their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then owners of seventy-five percent (75%) of all Lots in the Property agreeing to revoke said covenants has been recorded and the Association has given its prior written consent thereto. No such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such agreement and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. No consent of any mortgagee shall be required unless such revocation shall be deemed to adversely affect the priority of such mortgagee's lien, the mortgagee's rights to foreclose its lien or otherwise materially affects the rights and interests of the mortgagees.

14.2 Amendment. This Declaration may be amended as follows:

(a) Amendment by Declarant for ambiguities, concerns, and/or scrivener's errors. By the Declarant (without the consent of any other party whatsoever) to clarify any ambiguities, concerns, and/or scrivener's errors, or

(b) Other Amendment by Declarant. For so long as there is a Class B Member, Declarant may amend this Declaration for any purpose without the consent of any other Person, by the recordation of an amendment thereto in the Public Records of Collier County, Florida, executed by Declarant only. Notwithstanding the foregoing unilateral right of Declarant to amend this Declaration for any purpose without the consent of any other person, such amendment shall not (i) be arbitrary, capricious, or in bad faith, (ii) destroy the general plan of development.

(c) Amendment by the Association. For so long as there is a Class B Member, this Declaration may be amended by the Association only upon approval of such proposed amendment by a simple majority of the votes entitled to be cast by the Members Entitled to Vote for such purpose, joined and consented to by Declarant. If there is no Class B Member, this Declaration may be amended by the affirmative vote or written consent of seventy-five percent (75%) of the votes entitled to be cast by the Members for such purpose. No amendment may (i) directly or indirectly remove, revoke or modify the status of or any right or privilege of, the Declarant without written consent of the Declarant (or the assignee of such right or privilege) or (ii) impose a change which may be detrimental to the sales of the Lots by Declarant.

(d) Recordation. Any amendment to this Declaration must be recorded in the Public Records of the County.

(e) No Consent. No consent of a mortgagee to any amendment shall be required except to the extent that such amendment (i) adversely affects the priority of the mortgagee's lien, (ii) the mortgagee's rights to foreclose its lien or (iii) adversely affect the rights and interests of such mortgagees. Such consent, if any, shall be in accordance with Florida Statutes 720.306(1)(d).

14.3 Notice. 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, sent via overnight courier delivery service or mailed, postage prepaid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing or to such Owner's Residence. Where permitted by law or regulation, such notice may be sent electronically.

14.4 Access. Owners shall allow the Board of Directors or the agents, contractors or employees of the Association to enter upon any Lot for the purpose of maintenance, inspection, repair or replacement of the Improvements upon the Lot, or in the case of emergency, for any lawful purpose, or to determine compliance with this Declaration.

14.5 Municipal Service (taxing Unit.) In order to perform the services contemplated by this Declaration to the extent allowed by applicable law, the Association or Declarant (in conjunction with the County) may seek the formation of a MSTU. The MSTU will have responsibilities defined in its enabling resolution which may include, but is not limited to, maintenance of (i) street lighting, landscaping, irrigation, common signage and hardscape within the rights of way of streets; and (ii) sidewalks, Stormwater Management System, Drainage Easements and Common Areas/open space element within the Property. If one or more MSTU's are formed, each Lot (including each Residence) will be subject to assessment for the cost of services performed within the MSTU and personnel working for or under contract with the County (which may include the Association) shall have the right to enter upon lands within the Property to affect the services contemplated. Each Owner, by acquiring a Lot within the Property, or owner acquiring a Residence agrees and covenants (a) to be bound by any agreement or resolution creating a such district or MSTU, and Owners shall join in and execute any instrument which may be required in connection with the establishment of such district, and (b) to pay each and every MSTU assessment imposed upon the Owner's Lot(s) or owner's Residence in a timely manner. The MSTU assessment for each Lot or Residence shall be determined by the County Property Appraiser. If an Owner or owner of a Residence fails to pay each and every MSTU assessment, such assessment and any special charges shall be a lien upon that Owner's Lot(s). The Association retains the right to contract with the County to provide the services funded by the MSTU.

14.6 Severability. Invalidity of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

14.7 Effective Date. This Declaration shall become effective upon its recordation in the Public Records of Collier County, Florida.

14.8 Conflict. To the extent legally permissible, this Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and Bylaws of the Association.

14.9 Standards for Consent, Approval, Completion, Other Action and Interpretation. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Declarant, the Association or the Architectural Review Board, such consent, approval or action may be withheld in the reasonable 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, the Association, the ARB or an Owner shall be deemed completed or substantially completed when so determined in the discretion of the Declarant or ARB, as appropriate.

14.10 Easements. 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 of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the 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 hereby designate the Declarant and the Association (or either of them) 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.

14.11 Waivers. So long as Declarant owns any Lot, Declarant may waive any of the obligations (except the obligations to pay Assessments as described hereinabove) which are set forth in this Declaration.

14.12 Covenants Running With The Land. Notwithstanding anything to the contrary herein and without limiting the generality it is the intention of all parties affected hereby (and their respective heirs, personal representatives, successors and assigns) that these covenants and restrictions shall run with the land and with title to the Property. If any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if at all possible, to come as close as possible to the intent of such provision or application and then be enforced in a manner which will allow these covenants and restrictions to so run with the land; but if such provision and/or application cannot be so modified, such provision and/or application shall be unenforceable and considered null and void in order that the paramount goal of the parties affected hereby (that these covenants and restrictions run with the land as aforesaid) be achieved.

14.13 Dissolution of Association. In the event of a permanent dissolution of the Association, (i) all assets of the Association shall be conveyed to a non-profit organization with similar purposes or (ii) all Association assets may be dedicated to the County, District or any applicable municipal or other governmental authority to the extent such governmental entity is willing to accept such assets and is willing to assist with the Association's obligations arising hereunder. Said successor non-profit organization or governmental entity shall, pursuant to this Declaration provide for the continued maintenance and upkeep of the Common Area, including without any limitation, the Stormwater Management System and Amenity Area and such other property as may be contemplated herein.

14.14 Transfer of Control. The Transfer of Control of the Association by the Declarant shall occur at the times specified in the documents which govern the Association. The Transfer of Control meeting shall be conducted in accordance with the most recent revision of Robert's Rules of Order. Notwithstanding the foregoing, however, for as long as the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the lots in the Property, it shall have the right to appoint one (1) member of the Board of Directors.

14.15 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Area to the public, or for any public use.

14.16 No Representations or Warranties. **NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT, ANY RELATED PARTY OF DECLARANT, BUILDER OR ANY RELATED PARTY OF BUILDER, IN CONNECTION WITH ANY PORTION OF THE COMMON AREA, THEIR PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT (A) AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION OR IN DOCUMENTS WHICH MAY BE FILED BY DECLARANT FROM TIME TO TIME WITH APPLICABLE REGULATORY AGENCIES, AND (B) AS OTHERWISE REQUIRED BY LAW. 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. ALL OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE LOTS AND/OR RESIDENCES (WHETHER FROM THE DECLARANT OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.**

14.17 No Assurance of Development. The Property is subject to certain Development Approvals and governmental or quasi-governmental regulations. Declarant makes no assurance to any Owner, Institutional Mortgagee or any other party

that the Property will be developed in strict compliance with any such Development Approvals and regulations. All site plans, development plans, advertising material and similar material developed or produced in connection with the marketing and sale of the Property is subject to change in the Declarant's sole discretion. All uses not yet constructed are subject to change in size, use and location. Further, lands in the vicinity of the Property are subject to their own respective development approvals which may change from time to time and Declarant makes no assurances as to the uses, density, type of development, timing of development or other matters with respect to such lands. By acceptance of title to a Lot, each Owner hereby waives any and all rights they have to object to changes in the plans which may be made by Declarant pursuant to this Section or to changes in the vicinity of the Property.

14.18 No View Easements. Ownership of a Lot in the Property does not carry with it any view easements. Other Owners may be permitted to construct dwelling units, accessory structures, parking areas, install fences or other uses and/or landscaping which may obstruct your view. Further, uses and development in the vicinity of the Property may obstruct your view.

14.19 Off Site Matters. Traffic, lights, noise and odors may emanate from the development, re-development, operation or uses within the vicinity of the Community, which may affect the Lots within the Community. Views may also be affected. Lands may be, from time to time, subject to redevelopment which may change the current use, character and impacts. Neither the Declarant nor the Association undertakes any duty to inform any Owner within the Community of the status of operations, as the same may change over time, concerning the sites and their respective uses or of any other uses in the vicinity of the Community. By closing on a Lot, each Owner acknowledges receipt of this notice, waives and releases Declarant, each Related Party of Declarant, each Builder, each Related Party of a Builder, the Association and each Related Party of the Association from liability of any nature or type regarding off-site uses, agrees to perform its own investigation of the uses of such sites and any other lands within the vicinity of the Property, whether developed or undeveloped.

14.20 Tax Deeds and Foreclosure. All provisions of the Declaration relating to a Lot which has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or upon a foreclosure of an Assessment, a certificate or lien, a tax deed, tax certificate or tax lien, to the same extent that they would be enforceable against a voluntary grantee of title before such transfer.

14.21 Legal Fees and Costs. The prevailing party in any dispute arising out of the subject matter of this Declaration or its subsequent performance shall be entitled to reimbursement of its costs and attorney's fees, whether incurred before or at trial, on appeal, in bankruptcy, in post-judgment collection, or in any dispute resolution proceeding, and whether or not a lawsuit is commenced.

14.22 Law to Govern. This Declaration shall be governed by and construed in accordance with the laws of the State of Florida, both substantive and remedial.

14.23 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners, Members, Association or Declarant, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each such entity shall be considered a separate entity and no such entity shall have the right to act as an agent for another unless expressly authorized to do so herein or by separate instrument signed by the parties to be charged.

14.24 Non Merger. Notwithstanding any applicable law or legal concept or theory, no interest, right, benefit, obligation, terms provision or covenant contained herein or established hereby shall be deemed to merge with any other interest, right, benefit, obligation, term, provision or covenant contained herein or established hereby. Notwithstanding any applicable legal principle or theory, including, but not limited to, the principle known as "merger", the ownership of the entirety of the lands defined as the "Property" by the same party at the same time shall not result in or cause the termination of this Declaration and, likewise, ownership by the same party at the of both the benefited and the burdened lands associated with any of the easements created herein shall not result in or cause the termination of any of such easements.

14.25 Captions. The captions used in this Declaration and exhibits attached hereto, amendments thereof and supplements thereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text of this Declaration or any exhibits hereto or amendments thereof and supplements thereto.

14.26 Plats. In addition to this Declaration, the Property shall be subject to the additional covenants, restrictions, reservations and other terms and provisions set forth on the Plat and any additional plats affecting the Property which are recorded or are to be recorded in the Public Records of the County.

14.27 Gender and Plurality. Whenever the context so requires, the use of the masculine gender shall include the feminine gender, the use of the singular shall include the plural, and the use of the plural shall include the singular.

14.28 Disclosure Concerning Development, Construction Noise and Activities. All Owners, occupants, residents and users of the Community are hereby placed on notice that Declarant, Builders and/or their agents, contractors, subcontractors, licensees, and other designees will be, from time to time, conducting blasting, excavation, construction and other activities within or in proximity to the Community. By the acceptance of a deed or other conveyance or mortgage, leasehold, license or other interest, and by using any portion of the Community, each such Owner, occupant, resident and user automatically acknowledges, stipulates and agrees (i) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, hereunder or at law generally, (ii) not to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Community where such activity is being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (iii) that Declarant and the other aforesaid related parties shall not

be liable for any and all losses, damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the aforesaid activities, except resulting directly from Declarant's gross negligence or willful misconduct, (iv) that any purchase or use of any portion of the Community has been and will be made with full knowledge of the foregoing, and (v) that this acknowledgment and agreement is a material inducement to Declarant to sell, convey, and/or allow the use of the Residence to third parties. This section shall survive the closing and delivery of a deed of conveyance.

14.29 Collier County Fees. Collier County may impose and levy taxes or assessments, or both taxes and assessments, on the Residence or Lot by virtue of approved ordinances. These taxes and assessments pay for the construction, operation, and maintenance costs of certain public facilities and services of the County and are set annually by the Board of County Commissioners. These taxes and assessments are in addition to County and other local governmental taxes and all other taxes and assessments provided for by law.

14.30 Hurricane Disclosure Statement. Each Owner is hereby notified that (1) the Residence or Lot that the Owner has purchased or is in the process of purchasing is located within a hurricane vulnerability zone; (2) the hurricane evacuation time for the Gulf Coast of Florida region is high; and (3) hurricane shelter space is limited.

14.31 Flood Zones. Flood zone determinations are made by the Federal Emergency Management Agency. Declarant makes no assurance, with regard to any portion of the Property, that any flood zone designation for a Residence or Lot existing as of a particular date will remain the same. Declarant further advises that any such flood designation could be changed due to re-grading of the land as a result of the land development project. Each Owner, by virtue of taking title to a Lot or Residence, acknowledges and agrees, and shall be deemed to have acknowledged and agreed, that Declarant has no involvement in the determination or designation of flood zone designations for any portion of the Property.

14.32 Owner Acceptance and Ratification. By acquisition of title to real property subject to this Declaration, each Owner thereby irrevocably ratifies, approves and affirms all provisions of the Declaration and actions of the Board with respect to the method of determination and collection of assessments and assessment rates for the year during which such Owner acquired title to his respective Lot.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE TO FOLLOW.]

EXECUTED as of the date first above written.

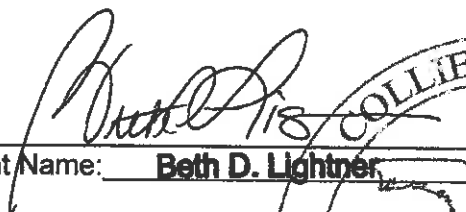
Signed, sealed and delivered in the presence of the following witnesses:

ARGO WARM SPRINGS, LLLP, a Florida limited liability limited partnership

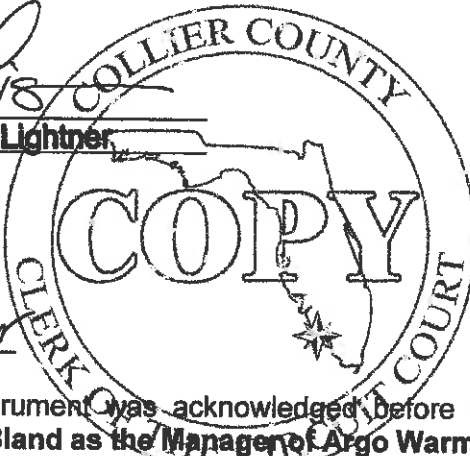
BY: **Argo Warm Springs, LLC**, a Florida limited liability company, its general partner


Print Name: **Ashley Bokshan**

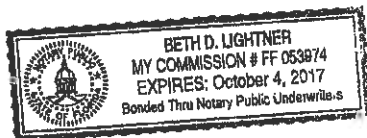
By: 
Scott Bland, Manager


Print Name: **Beth D. Lightner**

STATE OF FLORIDA
COUNTY OF **Collier**



The foregoing instrument was acknowledged before me this **26th** day of January, 2016, by **Scott Bland as the Manager of Argo Warm Springs, LLC, a Florida limited liability company, as general partner of Argo Warm Springs, LLLP, a Florida limited liability limited partnership**, on behalf of the company. He is personally known to me or has produced _____ as identification.



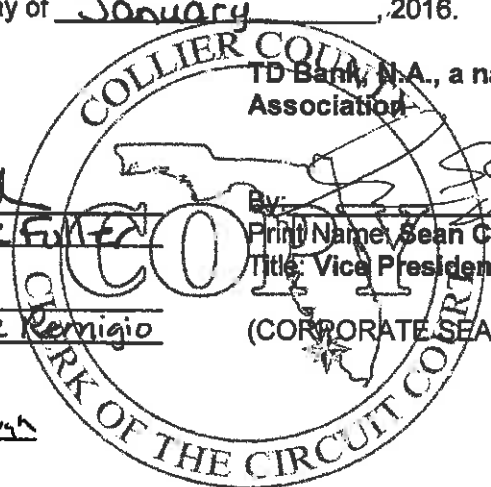

Notary Public Signature
Printed Name: **Beth D. Lightner**
Commission no.: _____
My Commission Expires: _____

CONSENT OF MORTGAGEE

The undersigned is the holder of that certain Mortgage and Security Agreement recorded in Official Records Book 5226, page 3361, of the current public records of Collier County, Florida ("Mortgage") and hereby consents to the recording of the DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR WARM SPRINGS, to which this Consent is attached, and the Plat of Warm Springs, to be recorded hereafter in the Public Records of Collier County, Florida and subordinates the lien of its Mortgage to the terms and conditions thereof.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed in its name this 25th day of January, 2016.

Witnesses:

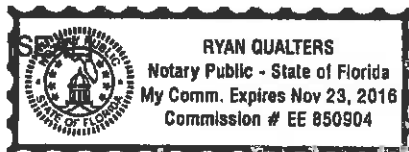


 By: Sean C. Dunne
 Print Name: Sean C. Dunne
 Title: Vice President
 (CORPORATE SEAL)

Paulette Full
 Print Name: Paulette Full
Stephanie Remigio
 Print Name: Stephanie Remigio

STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 25th day of January, 2016, by Sean C. Dunne, as Vice President of TD Bank, N.A., a national banking association, on behalf of the company, who is personally known to the undersigned or who produced _____ as identification, and he acknowledged to and before me that he executed the same as the Vice President of TD Bank, N.A., a national banking association, for and on behalf of said company.



Ryan Qualters
 (Signature of Notary Public)
Ryan Qualters
 (Print Name of Notary Public)
 NOTARY PUBLIC, STATE OF FLORIDA
 My commission expires: 11/23/16
 Commission number: EE 850904

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA; THENCE RUN NORTH $02^{\circ}19'00''$ WEST, ALONG THE EAST LINE OF SAID SECTION 26, FOR A DISTANCE OF 40.03 FEET TO A POINT; THENCE LEAVING SAID EAST LINE OF SECTION 26, S $89^{\circ}58'17''$ W, FOR A DISTANCE OF 235.19' TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED;

THENCE RUN SOUTH $89^{\circ}58'17''$ WEST, ALONG A LINE 40.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 26, FOR A DISTANCE OF 565.05 FEET TO THE EAST CORNER OF AN ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 4533, PAGE 3116 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE RUN ALONG SAID ORDER OF TAKING FOR THE FOLLOWING THREE (3) COURSES AND DISTANCES: (1) NORTH $87^{\circ}09'58''$ WEST, FOR A DISTANCE OF 200.25 FEET; (2) SOUTH $89^{\circ}58'17''$ WEST, FOR A DISTANCE OF 120.00 FEET; (3) SOUTH $87^{\circ}06'32''$ WEST, FOR A DISTANCE OF 200.25 FEET TO A POINT ON A LINE 40.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 26; THENCE RUN ALONG SAID LINE, SOUTH $89^{\circ}58'17''$ WEST, FOR A DISTANCE OF 1,321.94 FEET; THENCE CONTINUE ALONG A LINE 40.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 26, SOUTH $89^{\circ}58'48''$ WEST, FOR A DISTANCE OF 2,545.32 FEET TO A POINT ON A LINE THAT IS 100 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SECTION 26, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA; THENCE ALONG SAID LINE, NORTH $02^{\circ}15'37''$ WEST, FOR A DISTANCE OF 964.28 FEET TO THE SOUTHWEST CORNER OF CRYSTAL LAKE RV RESORT, PHASE ONE AS RECORDED IN PLAT BOOK 16, PAGE 61 THROUGH 65 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE LEAVING SAID LINE, SOUTH $89^{\circ}59'42''$ EAST, FOR A DISTANCE OF 2,542.51 FEET TO THE SOUTHEAST CORNER OF CRYSTAL LAKE RV RESORT, PHASE THREE AS RECORDED IN PLAT BOOK 20, PAGE 3 THROUGH 5, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE RUN NORTH $89^{\circ}57'56''$ EAST, FOR A DISTANCE OF 2,609.05 FEET TO A POINT ON THE WEST LINE OF AN ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 4533, PAGE 3116 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE ALONG THE WEST LINE OF SAID ORDER OF TAKING FOR THE FOLLOWING FOUR (4) COURSES AND DISTANCES: (1) SOUTH $02^{\circ}19'00''$ EAST, FOR A DISTANCE OF 798.34 FEET; (2) SOUTH $05^{\circ}29'04''$ WEST, FOR A DISTANCE OF 110.51 FEET; (3) SOUTH $53^{\circ}39'57''$ WEST, FOR A DISTANCE OF 42.23 FEET; (4) SOUTH $78^{\circ}34'41''$ WEST, FOR A DISTANCE OF 151.91 FEET TO THE POINT OF BEGINNING.

EXHIBIT "A-1"
COMMON AREA OF THE ASSOCIATION PER THE PLAT

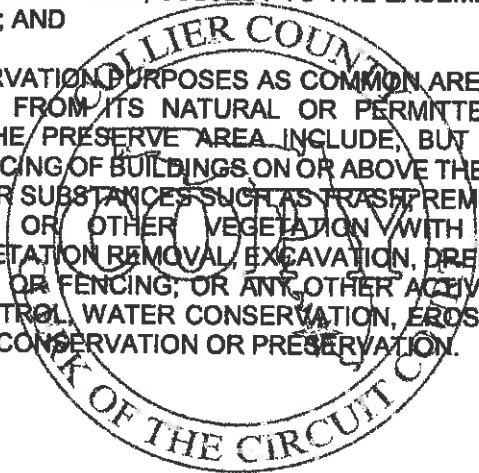
TRACT "A" AS PRIVATE ROAD RIGHT-OF-WAY (R.O.W.) SUBJECT TO THE EASEMENTS DEPICTED ON THE PLAT TO BE RECORDED;

TRACTS "OS-1", "OS-2", "OS-3", "OS-4", "OS-5", "OS-6" AND "OS-7", AS OPEN SPACE FOR LANDSCAPING, HARDSCAPE AND SIGNAGE PURPOSES SUBJECT TO THE EASEMENTS DEPICTED ON THE PLAT TO BE RECORDED;

TRACTS "L-1", "L-2" AND "L-3" AS LAKES FOR DRAINAGE AND STORM WATER MANAGEMENT PURPOSES SUBJECT TO THE EASEMENTS DEPICTED ON THE PLAT TO BE RECORDED;

TRACT "R" AS A RECREATION AREA, SUBJECT TO THE EASEMENTS DEPICTED ON THE PLAT TO BE RECORDED; AND

TRACT "P" FOR CONSERVATION PURPOSES AS COMMON AREAS. THE TRACT MAY IN NO WAY BE ALTERED FROM ITS NATURAL OR PERMITTED STATE. ACTIVITIES PROHIBITED WITHIN THE PRESERVE AREA INCLUDE, BUT ARE NOT LIMITED TO: CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS, OR OTHER VEGETATION WITH THE EXCEPTION OF EXOTIC/NUISANCE VEGETATION REMOVAL; EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL; DIKING OR FENCING; OR ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE, FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.



(iv) comply with all applicable laws and regulations, and rules adopted by the Board regarding maintenance, operation and monitoring of the Hazardous Materials Management Plan, including procedures followed in case of accidental spills; and

(v) guarantee financial responsibility for spill cleanup. In connection with such financial responsibility, each Owner hereby agrees to waive and release the Declarant, each Builder, each Related Party of a Builder the Association, each Related Party of Declarant and each Related Party of the Association for any financial responsibility, costs, or expenses related to any spill or spill cleanup of hazardous materials which occurs on the Owner's Lot or elsewhere within the Property or the Common Areas through the acts or omissions of the Owner, its employees or agents and to the fullest extent permitted by law, indemnify and hold harmless the Declarant, each Related Party of Declarant, each Builder, each Related Party of a Builder, the Association and each Related Party of the Association related to or arising from the foregoing.

(aa) Declarant/Builder Exemption. In order that the development of the Property may be undertaken and the Property established as a fully occupied community, no Owner, nor the Association, shall do anything to interfere with Declarant's or Builder's activities, as more particularly set forth in Article 13 herein.

7.2 Enforcement; Additional Restrictions; Waiver of Restrictions. The foregoing provision of this Article 7 shall be enforceable by the Association and shall not be enforceable by Owners, to the extent permitted by law. All Lots may also be subject to such further restrictions as Declarant may impose under and by virtue of Supplemental Declarations, deeds to Owners or other restrictive covenant agreements or recorded instruments. Restrictions identified in any such declaration, deed or other instrument as being enforceable by the Association shall be enforceable by the Association, acting through the Board of Directors, in the same manner as if such restrictions were set forth in this Declaration. The Association reserves the right to provide waivers to the foregoing provision of this Article 7, and any such waiver shall not obligate the Association to provide a waiver to any other Lot or constitute a waiver of the right of the Association to enforce such restriction in the future.

ARTICLE 8 RULES AND REGULATIONS.

8.1 Right to Promulgate Rules. The Association's Board of Directors shall have the right power and authority, subject to the prior written consent and approval of Declarant, so long as Declarant owns any Lot within the Property, to promulgate and impose Rules and Regulations governing and/or restricting the use of all the Property and Lots in its jurisdiction, and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no Rules and/or Regulations so promulgated shall be in conflict with the provisions of this Declaration, or any other Rules and Regulations promulgated by the Association. Any such Rules and Regulations shall be adopted by majority vote of the Board of Directors. The Rules and Regulations shall apply to all Owners, occupants, family members, contractors, agents, licensees and

invitees. Violation of any Rule and Regulation may permit the Association to impose sanctions.

8.2 Additional Rules by ARB. In addition to the foregoing, the ARB shall have the right, power and authority, subject to the prior written consent and approval of Declarant, to promulgate and impose Rules and Regulations governing and/or restricting the use of all the Property and Lots in its jurisdiction including without limitation rules and regulations relating to the placement or installation of any type of improvement on any Lot, and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no Rules and Regulations so promulgated shall be in conflict with the provisions of this Declaration. Any such Rules and Regulations so promulgated by the ARB shall be applicable to and binding upon all the Property and the Owners thereof and their successors and assigns, as well as all guests and invitees of and all parties claiming by, through or under such Owners. Notwithstanding the foregoing, the ARB shall not be entitled to promulgate any Rules and Regulations that are less restrictive than or contrary to any restriction or regulation set forth in this Declaration.

8.3 Conflict. In the event that any of the Rules and Regulations conflict with any provisions of (a) this Declaration, or (b) any rules and/or regulations promulgated by the Architectural Review Board, then the Association, or the ARB, as applicable, shall modify the Rules and Regulations such that no conflict exists. Should the Association and/or the ARB fail to do so, Owners shall not be obligated to abide by the conflicting Association or ARB rule.

ARTICLE 9
DECLARANT'S RESERVED RIGHTS AND ARCHITECTURAL REVIEW FOR
MODIFICATION

9.1 Improvements, New Construction, Modification. Any Improvement and all Improvements within the Property are intended to be initially installed and constructed by Declarant or Builder, their respective agents, contractors, subcontractors and/or its designated New Construction Designee(s), if any, other than utility providers and governmental and quasi-governmental entities who perform their own construction for purposes of provision of services to any portion of the Property. All such Improvements shall be of a use, material, color, design and type and in the location as Declarant, in its sole discretion, may determine subject to the Development Approvals, applicable law, ordinance, regulation and permit, and may vary among the Lots. An Improvement shall be deemed to commence as of the date of the start of any placement, installation or construction of such Improvement and shall end and be deemed to be a "Completed Improvement" upon receipt of a Certificate of Completion, Certificate of Occupancy or similar approval, or acceptance by the governmental or quasi-governmental entity responsible for such Improvement, as may be applicable. Any alteration, addition, change, change of location or other improvement to a Completed Improvement shall be deemed to be a "Modification", except for an Exempt Improvement, hereafter defined. "Exempt Improvement" shall be i) the maintenance, repair or replacement of a Completed Improvement of the same use, with the same material, color, design and

type, and in the same location; and ii) alteration of a Completed Improvement in the interior of a Residence which is not visible from the exterior of a Residence; and iii) maintenance, repair or replacement of Completed Improvements by Declarant, Builder, Declarant's designee or Builder's designee. Prior to the time an Improvement is deemed a Completed Improvement, it shall be deemed "New Construction".

"Improvement" or "Improvements" for purposes of this Article 9 shall be deemed to be installation, construction or placement of all vertical and horizontal improvements to the Property, including, but not limited to, a building, Residence, fence, wall, shed, gazebo, canopy, mailbox, lighting, temporary structure or other structure, grading, elevation or improvement (including, but not limited to, landscaping [including hedges]), irrigation, paths, walkways, hardscape, swimming pools, hot tubs, screen enclosures, irrigation, hurricane protection, basketball hoops, birdhouses, other pet houses, ponds, swales, lakes, asphaltting or other changes to the natural state of the Property and vegetation existing thereon.

"New Construction Designee" means a Builder or contractor to whom Declarant may sell a Lot for purposes of construction of a Residence and resale in its ordinary course of business. The appointment of a New Construction Designee may only be made by Declarant, its successors and assigns, and such appointment is subject to revocation by Declarant, its successors and assigns at such point such New Construction Designee has completed the New Construction, has been replaced and/or has been terminated.

9.2 Reservation of Right of Declarant for New Construction. There is no architectural review or approval for any New Construction, except as Declarant may reserve through any private covenant or document, if any, for its own account, its successors and assigns. Specifically, no Builder or New Construction Designee shall be required to obtain consent from Declarant for New Construction.

9.3 Reservation of Right of Declarant for Declarant Review and Approval of Modification. Declarant reserves unto itself, its successors and assigns, the right to review and approve any Modification within the Property, other than a Modification within the Lots as set forth in Section 9.4 below as to a Modification within the Lots. Upon the termination of the Class B Membership, or earlier at Declarant's election, this right of review and approval shall become the right and responsibility of the Association, which the Association is required to accept.

9.4 Architectural Review and Approval of Modification within Lots. In order to maintain the scheme of development and aesthetic character of the Property with respect to Lots, there shall be an Architectural Review Board to review and approve any Modification to the Lots and the unpaved rights of way abutting the Lots.

(a) Except for an Exempt Improvement, no Modification to any Completed Improvement shall be erected, placed or altered on any Lot or the unpaved rights of way abutting any Lot until the construction plans and specifications and a plan showing the location of the Improvement and any landscaping, color, or composition of the materials used therefor, as may be required by the Architectural Review Board