

**AMENDED AND RESTATED
DECLARATION
OF PROTECTIVE COVENANTS, RESTRICTIONS & EASEMENTS FOR
INDIAN WELLS GOLF VILLAS**

KNOW ALL MEN BY THESE PRESENTS that on December 13, 1996, the original Declaration was recorded in Official Record Book 2260, at Page 1941 *et seq.*, of the Public Records of Collier County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety, as amended.

The land subject to this Declaration (hereinafter the "Property") is legally described on Exhibit "A" attached hereto.

No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a lot or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a lot or the Property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

1. DEFINITIONS. The following words and terms used in this Declaration or any of the governing documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.1 "Architectural Review Board" or "ARB" means the architectural review board for Indian Wells Golf Villas established in this Declaration.

1.2 "Articles" and "Bylaws" as used herein, means the Articles of Incorporation and the Bylaws of Indian Wells Golf Villas Homeowners Association, Inc., as amended from time to time. A copy of the Amended and Restated Articles of Incorporation and Bylaws are attached hereto as Exhibit "B" and "C" respectively.

1.3 "Assessments" means a share of the funds required for the payment of Common Expenses and individual expenses which from time to time are assessed by the Association against an Owner as Regular, Special, and Individual Assessments.

1.4 "Association" means Indian Wells Golf Villas Homeowners Association, Inc., a Florida not for profit corporation, which is responsible for the maintenance and operation of the Common Areas and amenities.

1.5 "Board" means the Board of Directors responsible for the administration of the Indian Wells

Golf Villas Homeowners Association, Inc.

1.6 "Common Areas" means all real property including any improvements and fixtures thereon, owned, leased or the use of which has been granted or dedicated to the Association for the common use and enjoyment of its members. The Common Areas of the Association include all land described above and subject to this Declaration save and except for the individual Lots. The Common Areas include but are not limited to the storm water management and drainage features and all other areas shown on the on the plat recorded in the Plat except the Lots.

1.7 "Common Expenses" means the expenses incurred by the Association in the course of performing its duties under the Governing Documents and the law. Common Expenses of the Association include the costs of operating the Association, the costs of administration, Maintenance, operation, Repair, and Replacement of the Common Areas, other expenses declared by the Governing Documents to be Common Expenses, and any other valid expenses or debts of the Property as a whole of the Association which are assessed against the Lot Owners.

1.8 "Common Surplus" means the excess of all receipts of the Association, including but not limited to Assessments, rents, profits and revenues over the Common Expenses.

1.9 "Declaration" means this Declaration as amended from time to time.

1.10 "Family" or "Single Family" shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others. In the case of foster children, the number of people who are not related to some or all of the others is increased to two.

1.11 "Governing Documents" means and includes this Declaration, the Articles, the Bylaws, the Master Declaration, the Master Articles of Incorporation, the Master Bylaws, the Rules and Regulations of the Association, and the Rules and Regulations of the Master Association and all recorded exhibits thereto, as amended from time to time.

1.12 "Guest" means any unrelated person who is not the Owner or a lessee of a Lot or a member of the Owner's or lessee's Family, who is physically present in, or occupies a Home on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

1.13 "Home" means a residential dwelling unit intended for residential use which is constructed on a Lot.

1.14 "**Lease**" means the grant by an Owner of a temporary right of use of the Owner's Home with or without valuable consideration.

1.15 "**Lely Resort**" means the real property described in Exhibit "A" of the Master Declaration.

1.16 "**Lot**" means the lots of land located within the real property according to the Plat. That description is hereby incorporated by reference. No additional land is being added by this instrument and no land is being removed by this instrument. All of said land has been subdivided for residential use with fee simple title to each Lot having been conveyed to an Owner for use as a residential homesite. No Lot shall include the Common Areas. No lot may be subdivided or joined together without the consent of the Association. The Lots may be depicted and numbered on sketches or surveys as recorded in the Public Records of Collier County, Florida.

1.17 "**Maintenance**", "**Repair**" and "**Replacement**" Maintenance means the upkeep or preservation of the condition of the Property. Repair means to mend, remedy, or restore to a sound or good state after decay, injury, dilapidation or partial destruction. Replace means to place again; restore to a former condition after destruction.

1.18 "**Master Association**" means Lely Resort Master Property Owners Association, Inc., as defined in the Master Declaration.

1.19 "**Master Declaration**" means the Declaration of General Covenants, Conditions, and Restrictions for Lely Resort recorded at Official Records Book 1513, Page 823 et. seq. of the Public Records of Collier County, and any amendments, supplements, and modifications thereto.

1.20 "**Members**" means and refers to those persons who are entitled to membership in the Association as provided in its Articles of Incorporation and Bylaws.

1.21 "**Occupy**" when used in connection with a Home, means the act of staying overnight in a Home. "**Occupant**" is a person who occupies a Home.

1.22 "**Owner**" or "**Lot Owner**" means the record owner of legal title to a Lot.

1.23 "**Primary Occupant**" means the natural person approved for occupancy of a Home when title to the Lot is held in the name of two or more persons who are not married, or by a trustee or a corporation or other entity which is not a natural person. When used in reference to a Home owned in one of the forms listed above, the term "primary occupant" shall be synonymous with the term "owner".

1.24 "**Property**" or "**Community**" means all the real property which is subject to this Declaration.

1.25 "**Structure**" means that which is built or constructed, or any piece of work artificially built

up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof". The term includes, without limitation swimming pools, fences, flagpoles, antennas, playground equipment, and storage sheds.

1.26 **"Voting Interests"** means the voting rights distributed to the Association members pursuant to the Bylaws.

2. ASSOCIATION.

2.1 **Membership**. Every Owner of a Lot shall be a Member of the Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each Owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of the Governing Documents, as amended from time to time.

2.2 **Voting Rights**. Voting rights are set forth in the Bylaws of the Association.

2.3 **Articles of Incorporation**. A copy of the Amended and Restated Articles of Incorporation of the Association is attached to this Declaration as Exhibit "B".

2.4 **Bylaws**. A copy of the Amended and Restated Bylaws of the Association is attached to this Declaration as Exhibit "C".

2.5 **Delegation of Management**. The Association may contract for the management and maintenance of those portions of the Property it is required to maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing functions which may include but are not limited to the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the Common Areas with funds made available by the Association for such purposes.

2.6 **Acts of the Association**. Unless the approval or affirmative vote of the Lot Owners is specifically made necessary by some provision of the law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Owners. The officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for or bind the Association by reason of being an Owner.

2.7 **Powers and Duties**. The powers and duties of the Association include those set forth in Chapters 617 and 720, Florida Statutes, and in the Governing Documents. The Association may contract, sue or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the Maintenance, management, and operation of the Common Areas. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory, easement or use

interests in lands or facilities for the use and enjoyment of the Owners.

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

2.9 Purchase of Lots. The Association has the power to purchase Lots in the community in connection with the foreclosure of an Association lien for Assessments, charges or fines or any other foreclosure of an interest that affects the Association's lien and to hold, lease, mortgage, encumber or convey them with such power to be exercised by the Board of Directors without prior approval of the Owners.

2.10 Interests in Real Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 2.9 above and 4.6 below, the power to acquire, encumber or convey ownership interests in real property, including recreational facilities, whether or not contiguous with the property, shall be exercised by the Board of Directors only after approval by at least a majority of the voting interests of the Association.

2.11 Disposition of Personal Property. Any personal property owned by the Association, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the Lot Owners.

2.12 Roster. The Association shall maintain a current roster of names and mailing addresses of Owners, based upon information supplied by the Owners. Owners are responsible for notifying the Association of any change in their mailing address. All such notices shall be in writing. A copy of the roster shall be made available to any member upon request.

2.13 Alterations, Improvements, Additions. The Association has the power to make material alterations, improvements and additions to the Common Areas, including but not limited to, installation of gates, gate houses, speed bumps and other traffic controls, as well any other alterations or additions and the power shall be exercised by the Board of Directors.

2.14 Initiation of Legal Action. Notwithstanding anything contained in the contrary, the Association shall be required to obtain the approval of the Owners of a majority of the Lots or Homes within the Property prior to contracting persons or entities for the purpose of investigating or commencing any lawsuit other than for the following purposes:

(A) The collection of Assessments; or

(B) The collection of other charges which Owners are obligated to pay pursuant to the Governing Documents; or

(C) The enforcement of the use and Occupancy restrictions contained in the Governing Documents; or

(D) In an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Property or to the Owner(s).

3. ASSESSMENTS. The provision of this section shall govern Assessments payable by all Lot Owners, for the Common Expenses of the Association not directly attributable to one of the Lots.

3.1 Covenant to Pay Assessments. Each Owner of a Lot by the act of becoming an Owner covenants and agrees, and each subsequent Owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

(A) The Lot Owner's share of annual Assessments based on the annual budget adopted by the Board of Directors of the Association;

(B) The Lot Owner's pro rata share of special assessments for capital improvements or other Association expenditures not provided for by annual Assessments;

(C) Any charges properly levied against individual Lot Owner(s) ("Individual Assessments") without participation from other Owners.

Assessments and charges shall be established and collected as provided herein and elsewhere in the Governing Documents. The Owner of each Lot, regardless of how title was acquired, is liable for all Assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as provided in Section 3.10 below, whenever title to a Lot is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid Assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No Owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the Common Areas, by abandonment, or otherwise. Except as provided elsewhere in the Governing Documents as to Institutional Mortgagees, no Owner may be excused from the payment of Assessments unless all Owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No Lot Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot. No Owner can withdraw or receive distribution of his prior payments to the Common Surplus or Association reserves, except as otherwise provided herein or by law.

3.2 Purposes of Assessments. The Assessments levied by the Association shall be used for the purposes of promoting the general welfare of the Lot Owners and residents and to perform all other duties and responsibilities of the Association as provided in the Governing Documents. Such uses include, but are not limited to:

- (A) Any and all taxes levied or assessed at any and all times upon the Common Areas by any and all taxing authorities,
- (B) All charges levied for utilities providing services for the Common Areas,
- (C) The premiums on any policy or policies of insurance obtained by the Association under this Declaration or the Governing Documents,
- (D) Operation, Maintenance, Repair, improvement, construction, and preservation (on a non-profit basis) the Common Areas owned of the Association for the benefit of its Members, their guests, tenants and invitees and Maintenance of berms even where located on an Owner's Lot,
- (E) The costs of administration for the Association, including retention of a management company or contractors to assist in the operation of the Association,
- (F) Any all expenses incurred by the Association in enforcing any of the covenants, restrictions, terms, and conditions of the Governing Documents or in curing any defaults, violation, or failure to perform or abide by the same,
- (G) The costs to establish, at the discretion of the Association, an adequate reserve fund for replacement or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Association, and/or
- (H) Any miscellaneous expenses not specifically enumerated and which is determined to be a Common Expense by the Association.

3.3 Share of Assessments, Regular, Special and Individual. The Owners of each Lot shall be liable for a (1/44th) share of the regular and special Assessments levied by the Association for Common Expenses of the Association. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense or charge of the Association attributable to or on behalf of an individual Owner pursuant to the Governing Documents, shall be an Individual Assessment and shall become a lien against such Owner's Lot, which may be foreclosed or otherwise collected as provided herein.

3.4 Lien. If there are unpaid past due Association Assessments for a Lot, the Association shall record a lien against the Lot for the unpaid Assessment together with interest, late payment penalties, costs, and reasonable attorney fees incurred by the Association in enforcing this lien. The lien will be in compliance with Section 720.3085 of the Florida Statutes, as may be amended from time to time. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid Assessments, fines and charges, interests, late fees, costs and attorney fees which are due and which may accrue or come due after the recording of the Claim of Lien and before the entry of a final judgment of foreclosure. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

3.5 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid Assessments or charges by the procedures and in the same manner as is provided in Section 720.3085 of the Florida Statutes, as amended from time to time, for the foreclosure of a lien upon a Lot for unpaid Assessments. All unpaid Assessments and charges also constitute a personal obligation of the Owners and the Association may, in addition to any other remedy herein provided, bring an action at law against any Owner liable for unpaid charges or Assessments. If final judgment is obtained, such judgment shall include interest on the Assessments as above provided and reasonable attorney fees to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney fees in connection with any appeal of such action.

3.6 Priority of Liens. The Association's lien for unpaid charges, Assessments and all other amounts shall be subordinate and inferior to any recorded institutional first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but shall relate back to the date the original Declaration was recorded in the Public Record and be superior to, and take priority over, any other mortgage, lien or interest recorded after that date. Any lease of a Lot shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed.

3.7 Application of Payments; Failure to Pay; Interest. Assessments, charges and installments thereon paid on or before fifteen (15) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. In addition to interest, the Association may also charge an administrative late payment fee in an amount not to exceed the maximum amount allowed by law. Assessments, charges and installments thereon shall become due, and the Lot Owner shall become liable for said Assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. Any restrictive endorsement on or accompanying a payment notwithstanding, all payments made to the Association by or on behalf of a Lot Owner shall be applied first to interest, then, to late fees, then to costs (including but not limited to collection charges imposed by the management company, attorney and court) then to attorney fees, then to fines (if allowed by law), then to other charges, and then to the oldest outstanding unpaid regular, special or individual Assessments. No payment by check is deemed received until the check has cleared. The Association shall also have the right to require any tenant occupying the Lot during any period in which assessments for the Lot are due but have not been paid to the Association to pay the rent to the Association as provided in Section 10.9 below

3.8 Acceleration. If any special Assessment or installment of a regular Assessment as to a Lot becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Lot's Assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice, postpaid.

3.9 Removal of Property. After the Association successfully performs a foreclosure on the property, if the Owner does not remove personal property from the foreclosed premise, such property will be deemed forfeited to the Association and the Association may authorize removal and may sell such forfeited property after ten (10) days written notice by certified mail addressed to the Owner at the last known address or at such address on record as provided to the Association by the Owner. Such remedy shall be in addition to all other remedies available to the Association under applicable laws, rules and regulations including the right to compel removal of the property and right to impose any and all fines.

3.10 Certificate as to Assessment, Mortgagee Questionnaires. Within ten (10) business days, or sooner pursuant to Florida law, as it may be amended from time to time, after request by an Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter" stating whether all Assessments and other monies owed to the Association by the Owner with respect to the Lot have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association may charge up to the amounts established by Florida law, as it may be amended from time to time. The Association may but is not obligated to respond to mortgagee questionnaires. If the Association chooses to respond to a mortgagee questionnaire the Association may charge up to \$150.00 (in addition to any charge for an estoppel letter) plus attorney's fees for doing so.

3.11 Mortgage Foreclosure. Unless otherwise provided by law, if the mortgagee of a first mortgage of an institutional mortgage of record acquires title to a Lot as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer or title shall be liable for the share of Common Expenses or Assessments attributable to the Lot, or to the former Owner of the Lot, which came due prior to the mortgagee's acquisition of title as required by Section 720.3085, Florida Statutes. Any unpaid share of Common Expenses for which such acquirer is exempt from liability becomes a Common Expense collectible from all Owners, including such acquirer and his successors and assigns. All other persons or entities acquiring title to a Lot as the result of a foreclosure or other Court ordered sale shall be obligated to pay all past due Assessments due and owing at the time of sale regardless of whether or not the Association has file a lien. No Owner or acquirer of title to a lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any Assessments coming due during the period of his ownership.

3.12 Collection by Association. The Master Declaration provides that where land has been submitted to a neighborhood association, said neighborhood association shall have the duty and responsibility for collecting and timely remitting to the Master Association any and all Master Association assessments and other charges; provided, however, that the Master Association may, in its sole discretion, elect to collect due and unpaid Master Association assessments and other charges directly from any Owner for the payment of such assessments and charges which are due and payable. The Association or its Members may also be liable for dues, maintenance, and assessments of other association established for maintenance repair and operation of recreation or other common property, which may be billed or collectable by the Association. The Association, through its Board of Directors, shall have the right to take such actions as are necessary to enforce

such provisions and the Owners shall each pay to the Associations such amounts as the Association is directed to charge and collect on behalf of the Master Association which shall be timely remitted to the Master Association or such other association as may be appropriate.

4. EASEMENTS.

4.1 Appurtenant Easements. Subject to the restrictions found elsewhere in this Section 4, the Owner of each Lot, their guests, lessees and invitees, shall have as an appurtenance to their Lot a perpetual nonexclusive easement for ingress and egress over, across and through the Common Areas, for the use and enjoyment of all recreational facilities, such use and enjoyment to be shared in common with the other Owners of Lots, their guests, lessees and invitees, subject to the provisions of this Declaration.

4.2 Utility Easements. A perpetual easement shall exist upon, over, under and across the Property for the purpose of maintaining, installing, repairing, altering and operating sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, valves, gates, pipelines, cable television and all machinery and apparatus appurtenant thereto as may be necessary for the installation and maintenance of utilities servicing all Owners of Lots and servicing the Common Areas, all such easements to be of a size, width and location so as to minimize and not unreasonably interfere with the use of any improvements which are now, or will be, located upon said property. The Association, through its Board of Directors, has the authority to grant additional such easements, and to modify, move or vacate such existing easements as may be necessary to efficiently and effectively provide utility and other services to the Lots, Common Elements, and Common Areas.

4.3 Subordination. Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate, and will be subordinate without the necessity of any other instrument, to any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines in the Common Areas.

4.4 Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(A) the right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the Common Areas and providing the services herein, and, to aid thereof, to mortgage said properties;

(B) the right of the Association to impose Rules and Regulations governing the use of the Common Areas and Association property as further provided in Section 7 of the Bylaws; and

(C) the right of the Association to a non-exclusive easement over, across and through each Lot as necessary to meet the Association's maintenance responsibilities.

4.5 Any Owner of a Lot in the Property which Lot contains a structure which encroaches upon another Lot or, the Common Areas shall have a valid easement for the encroachment and maintenance of same, as long as it stands and exists.

4.6 Notwithstanding anything to the contrary contained herein, the Association has the power, without the joinder of any Owner, to grant, modify or relocate easements in any portion of the Common Area or Association property, as the Board shall deem necessary or desirable for the Association. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may assign easements, in whole or in part, to any city, county, or state government or agency, or any duly licensed or franchised public utility.

4.7 Maintenance Easement. There shall be easements over and across any abutting Lots on the side lot lines for maintenance and repair of any Home or structure, constructed on the adjacent Lot, provided the easement does not extend beyond five (5) feet from the property line and the maintenance and repair is conducted in a reasonable, timely manner, with reasonable notice to the Owner of the Servient Lot, and during reasonable hours, and further provided that the Owner of the Dominant Lot is responsible for all costs for any and all damage or other liability arising from such maintenance and repair activities. The Owner of the Dominant Lot shall also have the right to ingress and egress over the non-improved portions of the Servient Lot as necessary to obtain access to the maintenance easement for Maintenance and Repair activities. In the event the Association shall exercise its rights to Maintain or Repair any Structure or improvements benefited by this easement, they shall possess and be entitled to exercise the same rights as the Owner of the Dominant Lot. This right of easement shall not affect the rights of the Owner of the Servient estate to contract and maintain such principal or accessory Structure upon the Servient Lot as are authorized by the Governing Documents and comply with the applicable setback requirements. Placement of landscape structure by the Association or the ARB shall accommodate access to this easement.

4.8 Easement for Owners within Lely Resort. An easement in favor of the Owners now or hereafter located upon any portion of Lely Resort for purposes of emergency ingress and egress, over and upon the Land and the private roadways located to and from publicly dedicated rights-of-way. This easement shall not prevent the Association from erecting a gate so as to maintain its private roads in non-emergency times.

5. MAINTENANCE.

5.1 Association Maintenance. The Association shall, in addition to other maintenance obligations contained elsewhere herein, have the Maintenance, Repair and Replacement responsibility for all Common Area property located within the Property including the landscaping, and electrical fixtures serving the Common Areas.

(A) The Association shall be responsible for the Maintenance of landscaping and in particular, lawn care, of each and every Lot within the Property and such Maintenance

shall be an Association expense. This shall also include fertilization and insect and disease treatment. The Association may include the planting and replacement of annuals or other decorative plants and shrubs as part of its Common Expenses, if deemed appropriate at the discretion of its Board of Directors.

(B) Owners with pools or additional landscaping shall be charged extra Individual Assessments as determined by the Association at the Association's sole discretion to cover the cost of Maintaining additional landscaping. Such Maintenance shall not extend to areas requiring unusual maintenance such as rose gardens or areas specifically designated by the Association as an "Area of High Maintenance".

5.2 Lot Owner Maintenance. The individual Lot Owners shall, in addition to other obligations contained elsewhere herein, have the Maintenance, Repair and Replacement responsibility of the following:

(A) The Home, Structure and all structural components, including, but not limited to the obligation to paint and Maintain the exterior portions of the Owner's Home, including, but not limited to, roof cleaning, painting, repairs, and replacement, all utility lines, ducts, conduits, pipes, wires, and other utility fixtures and appurtenances which are located upon or under his Lot and which service only his Home, entry doors, garage doors, windows, sliding glass doors, screens, screen doors and their hardware, frameworks, and locks serving the home. The roofs and exterior of the Structure shall be cleaned on a regular basis to remove and discourage mold growth.

(B) The complete interior of the Home including all interior walls, floors, ceilings, partitions, cabinets, plumbing and all other interior components.

(C) Interior and exterior electrical lines and hookups, all air conditioning components, appliances, TV cables and connections, telephone and other similar lines and connections and sewer pipes and septic systems serving the individual Lot.

(D) Any modifications, alteration, installation or addition to the lot or Common Areas made by the Lot Owner or his predecessors in title with Board approval including but not limited to, any decks or concrete pads. The Lot Owner shall be responsible for insurance, Maintenance, Repair and Replacement of such modifications, installations or additions and the cost of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to Maintain, Repair, Replace or protect other parts of the Property for which the Association is responsible.

(E) Areas of High Maintenance shall be maintained by the Owner of the Lot or by such special arrangement as may be approved by the Association. In the event the Owner makes special arrangements to have the Association perform Maintenance on the Owner's Areas of High Maintenance, the cost of said Maintenance shall be billed to the Owner as an Individual Assessments for which the Owner shall be solely liable and for the payment

of which the Association shall have a lien against the Owner's Lot as provided in Section 3 above.

(F) . Owner shall be responsible for the cost of replacing any dead, damaged, diseased, or unsightly landscaping which, at the Association's sole discretion, is ordered to be replaced by the Association.

(G) Each Owner shall promptly report to the Association any defect known to such Owner which requires repair of the property for which the Association or a party other than that Owner is responsible. Any Repairs, alterations, improvements, or Maintenance must be completed by the responsible party within thirty (30) days of notification.

5.3 Enforcement of Maintenance. If an Owner of a Lot fails to maintain his Lot as required in Section 5.2, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot and remedying the violation, with or without consent of the Lot Owner but only after ten (10) days' written notice of intent to do so. The Association may Repair, Replace or Maintain any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the Property. Any expenses so incurred by the Association shall be billed directly to the Owner of the Lot to which such services are provided, and shall be an Individual Assessment charged against the Lot, secured by a lien against the Lot as provided in Section 3 above. Issues will be identified per Management company process

5.4 Negligence; Damage Caused by Condition in Lot. Each Lot Owner shall be liable for the expenses of any Maintenance, Repair, or Replacement of Common Areas, other Lots, or personal property made necessary by his act or negligence or by that of any member of his family or his guests, employees, agents, or lessees.

6. ARCHITECTURAL CONTROL TO PRESERVE THE BEAUTY, QUALITY AND VALUE OF THE COMMUNITY.

6.1 Improvements Requiring Approval. No building, structure, enclosure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way alters the exterior appearance of any structure or Lot shall occur unless and until the plans, specifications and location of same shall have been submitted to, and approved in writing by, the Architectural Review Board (hereinafter "ARB"). All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography. The ARB shall have thirty (30) days after delivery of all required information, plans and materials to approve or deny any such plan, and if not denied within such period, said plans shall be deemed approved unless within the same period the Board of Directors denies the plan in which case regardless of any action or inaction by the ARB the plan shall be deemed denied. All changes, alterations or modifications to an approved plan must also be approved pursuant according to these same requirements.

6.2 The ARB. The architectural review and control functions of the Association shall be administered and performed by the Architectural Review Board (the ARB), which shall consist of at least three (3) persons, who shall be members of the Association. All members of the ARB shall be appointed by and shall serve at the pleasure of the Board of Directors of the Association. The members of the Board of Directors shall not serve on the ARB. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. The ARB may designate a member of the ARB to act on its behalf when a quorum of the ARB is unavailable. Approval or disapproval of the member designated by the ARB shall constitute official approval or disapproval of the ARB.

Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors. The members of the ARB shall receive no compensation for services other than reimbursement for actual expenses approved in advance by the Board of Directors incurred by them in the performance of their duties hereunder. The ARB shall, with the prior approval of the Board of Directors, have the power to engage the services of professionals for compensation for purposes of aiding the ARB in carrying out its functions. Notwithstanding anything to the contrary contained herein or elsewhere all decisions of the ARB are subject to review by the Board of Directors and the Board of Directors has the authority to overrule, void or otherwise modify in all respects any decision of the ARB within thirty (30) days from the date of the ARB decision.

6.3 Powers and Duties. The ARB shall have the following powers and duties:

(A) To recommend, from time to time, to the Board of Directors of the Association the creation or modification and/or amendments to the Architectural Planning Criteria. Any Architectural Planning Criteria or modifications or amendments thereto shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present. Notice of the adoption, modification or amendment to the Architectural Planning Criteria, including a verbatim copy of such adoption, change or modification, shall be delivered to each member of the Association. However, receipt of notice of a Board meeting concerning the Architectural Planning Criteria or a copy of any adoption of or modification or amendment to the Architectural Planning Criteria shall not affect the validity of such change or modification.

(B) To require submission to the ARB of one (1) complete set of all plans and specifications for any improvement, structure of any kind or any other work which in any way alters the exterior appearance of any structure, or Lot including without limitation, any building, fence, well, swimming pool, tennis court, enclosure, sewer, drain, disposal system, decorative building or landscape devise, object or other improvement, the construction or placement of which is proposed upon the Properties. The ARB may also require submission of samples of building materials proposed for use on or as part of any Home, and may require such additional information as may reasonably be necessary to completely evaluate the proposed

structure or improvement in accordance with this Declaration and the Architectural Planning Criteria.

(C) To approve or disapprove any improvement or structure of any kind, including, without limitation, any building, fence, wall, screen enclosure, drain or disposal system, or other improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon the Property, and which is visible from the outside of any Home. Evidence of approval by the ARB may be made by a certificate, in recordable form, executed by the Chairman of the ARB. In the event the ARB fails to approve or disapprove in writing any proposed plans within thirty (30) days after submission to the ARB, then said plans shall be deemed to have been approved by the ARB and the appropriate written approval delivered to the Owner. Any party aggrieved by a decision of the ARB or Board of Directors shall have the right to make written request to the Board of Directors of the Association within thirty (30) days of the decision, for a re-review thereof. The determination of the Board upon re-reviewing any such decision shall in all events be dispositive.

(D) To adopt a procedure for inspecting approved changes during and after construction to ensure conformity with approved plans. The ARB and the Board are empowered with the right of entry and inspection upon any Lot or other portion of the Property for the purpose of determining whether there exists any construction of any improvements which is in non-conformance with the ARB approval. If it is determined by the ARB or the Board that the improvement or work is not in compliance with the approved plans and specifications then upon written demand from the ARB the work shall be suspended until such time as the ARB authorizes the work to be recommenced.

(E) Notwithstanding anything to the contrary contained herein if an owner is delinquent in the payment of Assessments, fines or other charges or has failed to correct a violation of these covenants or the rules of the Association for which they have been given notice the approval of the ARB may be denied or withheld pending payment of the Assessments, fines or other charges or correction of the violation.

6.4 Variances. The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental exist, which variance must be signed by at least two (2) members of the ARB. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority. Site drainage may not be altered. The Board of Directors may overrule and void any variance granted by the ARB if such action is taken within twenty (20) days from the date the variance is granted.

6.5 Nonliability of ARB Members. Neither the ARB nor any member thereof, nor its duly authorized ARB representative, shall be liable to the Association or any Owner or any other person or entity for any loss, damage, or injury arising out of or in any way connected with the performance or nonperformance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member, and only that member shall be liable therefore. The ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property. The ARB shall take into consideration the aesthetic aspects of the architectural designs, placement or buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

7. USE RESTRICTIONS. The following rules and standards apply to all Lots and shall be enforced by the Association pursuant to Section 13 hereof.

7.1 Home. Each Home and Lot shall be occupied by only one Family at any time. Each Home shall be used as a home and for no other purpose except that home offices for personal use and working from home as an employee is allowed.

7.2 Pets. Pets of a normal domesticated household type (such as cats or dogs) are permitted. The maximum number allowed is three (3) pets.. No reptiles, monkeys, rodents, amphibians, poultry, swine, , ferrets or livestock may be kept on the properties. Pets may be kept subject to such rules and regulations as may be adopted by the Lely Master Property Owners Association so long as they are not kept, bred, or maintained for commercial purposes. No animals shall be allowed to run loose at any time. Pet owners and walkers shall immediately clean up pet waste.

7.3 “Offensive Activity” No noxious or offensive activity shall be carried out on a Lot of the Property, nor anything done thereon which may be or become a nuisance or annoyance.

7.4 Signs. No sign shall be placed on or allowed to be placed on or adjacent to a Lot or improvements made by an Owner without the prior written approval of the ARB and the Board of Directors with the exception of a security sign measuring no more than 11 inches high by 11 inches wide and/or a FOR SALE sign measuring no more than two feet high by two feet wide (not including legs or supporting posts).

7.5 Garages. Operable doors shall be provided for all garages. Garage doors shall be closed except when the garage is in use.

7.6 Minimum Dwelling Unit Size. No Home shall contain less than 1,400 square feet of air conditions enclosed living area. The method of determining the square footage of the enclosed living area of a Home, structure, or addition thereto, shall be to multiply together the horizontal

dimensions of the walls forming the outer boundaries of the Home, structure, or addition for each floor level. Open porches, atriiums, screen in patios, courtyards, garages, and other similar type space shall not be taken into account in calculating the minimum air conditions enclosed living area square footage as required herein.

7.7 Setback Lines. No part of a Home shall be located nearer then: twenty feet (20') to the front site line; five feet (5') to the side lot line of the Lot, as measured from any of the exterior finished surfaces and exclusive of roof over-hangs and other similar appurtenances; and ten feet (10') from the rear site line; except accessory structures – zero feet (0'). Accessory structures include swimming pools, pool enclosures and decking, privacy walls, and other structures so designated by the ARB.

7.8 Motor Vehicles and Boats. Maintenance or mechanical repairs of vehicles or boats should be done within garage if possible. Maintenance or repairs of vehicles or boats is permitted outside of garages – only when the activity cannot be safely or easily accomplished in the garage and the total activity can be accomplished under 4 hours within the same day or it is an emergency situation. All organic or toxic waste must be contained and cleaned-up, an disposed of per law. No boats, ATV's, swamp buggies, dune buggies, go carts, golf carts, wave runners, jet skis, motorcycles, mopeds, trailers, motor homes, travel trailers, campers, recreational vehicles or commercial vehicles shall be parked anywhere on the Property outside of garages for more than forty-eight (48) hours unless the vehicle is on the premises to provide services to an Owner or the Association. As used herein the term "commercial vehicle" means trucks and other vehicles which are used for business purposes including but not limited to, any vehicle which displays a company name or logo on its exterior, is adorned with signs, flags, advertisements or any type of lettering or graphic of a commercial nature or any vehicle with racks, ladders, staging, or other equipment or attachments of a commercial nature, including supplies used for commercial purposes, on or visible in the vehicle. Additionally, and notwithstanding the foregoing, any vehicle, by whatever name designated, which is used for transporting goods, equipment or paying customers shall be considered a commercial vehicle regardless of any definition found elsewhere to the contrary. Further, any vehicle, whether commercial or non-commercial, with body parts such as the hood, door, quarter panel, bumper or bed removed shall be placed in a garage so that it is not readily visible from any adjacent street or Lot. Parking at individual Homes shall be in enclosed garages or in the driveway of said Home. There shall be no overnight parking on any road or unpaved area within the Property, and the Owner of any Lot in the Property. "Overnight" is defined as remaining from dusk until dawn. The Association is authorized to tow or place a disabling "boot" on any vehicle violating this Section 7.9, the Rules or Regulations, a law or any other restriction contained in the Governing Documents and the cost of towing and/or booting shall be the obligation of the owner of the vehicle.

7.9 Landscaping. The landscape design for any Lot shall promote and preserve the appearance, character, and value of the surrounding areas. Upon development of the Lots, underground landscape irrigation systems which are designed to irrigate the entire landscape portion, including the right-of-way adjacent to any portion of the Lot, were installed. Where landscaping has been installed prior to the transfer of a Home to the Owner, the Owner shall not remove or add to the

existing landscaping without the prior written approval of the ARB. Once landscaping is installed, it shall be maintained by the Association at the Owner's expense, including right-of-way areas. It is understood that the Owner will pay for and supply water. Furthermore, the Owner will supply the Association with access to the power source and breaker for sprinkling system(s) located on Owner's Lot at all times and if access is blocked, the Association will contact the Owner and the Owner will provide access to the association within 14 days of being contacted. Each Owner shall supply and maintain an irrigation timer and will provide the Association with access to the same. Each Owner shall water his lawn to keep his lawn and landscaping in a healthy condition and, upon failure of any Owner to properly water, the Association shall have the right to enter upon his Lot, water the lawn and landscape and charge the Owner for the cost of watering the lawn and landscape. Such charges, until paid, shall be a lien against the Lot. Each Owner covenants that he shall at all times maintain the exterior portions of his Lot and any residence thereon in a neat, aesthetically pleasing and proper condition.

7.10 Utilities. Any transformer box placed on any Lot shall be concealed by landscaping, at the Association's expense. There must be at least three feet of clearance between the side of the transformer box that opens and the landscape to allow for safe access per the National Electric Code. Pumping station control panels located on any Lot shall be landscaped at the Association's expense to reduce the aesthetic impact, while, at the same time, not impeding the use by maintenance personnel.

7.11 Roofs. Roofs shall have a minimum of 4:12 slope and shall be constructed of cement tile and color to be in conformance with the Community. In event that some new, attractive material for roofing surfaces is discovered or invented, the ARB may allow its use.

7.12 General.

(A) No towels, garments, rugs, etc., may be hung from windows or other parts of the Homes. No clotheslines or drying yards shall be allowed.

(B) No weeds, underbrush (other than indigenous growth), or other unsightly growths shall be permitted to grow or remain upon any part of the Lots and no refuse pile or unsightly objects shall be allowed to be placed or remain anywhere thereon. Vacant Lots, if any, shall be cleaned, seeded and then maintained in a well-kept condition at all times.

(C) No outside storage or outbuilding of any kind will be permitted without the prior written approval of the ARB. There shall be no outside storage or permanent placement of recreational vehicles or equipment of any kind, including, but not limited to, canoes, kayaks, waverunners, jet skis, wind surfers, volleyball nets, basketball goals, swingsets, lawn care equipment, toys or place equipment. Play equipment may be approved on an individual basis by the ARB. Any such items will be removed at the Owner's expense. Storage or permanent placement shall exist if an item or vehicle remains outside for a period of more than twenty-four (24) consecutive hours.

(D) Trash, garbage and other waste shall be kept only in sanitary containers which shall be

kept in a clean and sanitary condition and screened from view from neighboring Homes and the interior roadways except when out for pick-up. Recycle bins and trash shall not be put on the curb, for pick-up, prior to the day before the scheduled pick-up and shall be removed from the curb no later than the end of the day of pick-up. All trash, garbage and other waste containers kept outside shall be equipped with a latch or other device to prevent animals from entering the container and owners shall regularly use and employ the device.

(E) No satellite antenna or dish of any kind shall be placed or erected upon any Lot or affixed in any manner to the exterior of any building other than a satellite antenna or dish less than one meter in diameter, an aerial designed to receive over-the-air television broadcast, or an antenna designed to receive multichannel, multi-point distribution service which may be installed only at a location on a lot approved by the ARB. If ground mounted, the satellite antenna or dish is to be properly screened with shrubs. In approving the installation and location of any antenna the ARC shall comply with all applicable laws, whether state or Federal.

(F) The establishment and placement of all fences, walls, hedges, or any aesthetic plantings creating a barrier or screen shall require the prior written approval of the ARB, which may set guidelines for the placement of the same.

(G) There shall be no exterior lighting lamp posts unless such exterior fixture is approved by the ARB, on an individual basis.

(J) Each Owner is required to conform to any storm precaution Rules and Regulations as promulgated by the Association.

(K) All screen enclosures shall be constructed of white or bonze or white or bronze painted, structural materials.

7.13 Mailbox and Meters. All mailboxes and irrigation meters shall be purchased from the Master Association or from such suppliers as are designated by the Master Association. All mailboxes shall be constructed of uniform style, design, and color as determined by the Association. No deviation from this requirement shall be permitted. Notwithstanding any provision contained in this Declaration, the Association may, without obligation, from time to time replace some or all of the mailboxes and the cost of such replacement shall be a common expense.

7.14 Reconstruction. Any repair, rebuilding or reconstruction of damaged Homes shall be substantially in accordance with the architectural plans and specification for: (i) the originally constructed Home; (ii) a previously reconstructed Home; or (iii) new plans and specification approved by the Association.

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

8.1 Association; Required Coverage. The Association shall maintain adequate property insurance covering all the Common Areas and all Association property. The Association shall also provide adequate general liability insurance. The amounts of coverage shall be determined annually by the Board of Directors, but not less than \$1M. All insurance policies and fidelity bonds obtained by the Association shall provide that they may not be canceled or substantially modified without at least ten (10) days prior notice to the Association. The insurance carried by the Association shall afford at least the following provisions:

(A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors but not less than \$1M, with cross liability endorsement to cover liabilities of the Lot Owners as a group to a Lot Owner.

(C) Compensation. The Association shall maintain Workers' compensation insurance if required by law.

(D) Directors and Officers Liability Coverage with an amount no less than \$1M with a \$1000 retention (deductible).

8.2 Duty to Insure. Each Owner must recognize that he bears financial responsibility for any damage to his property or liability including all risk, flood, liability, etc.

8.3 Duty to Reconstruct. If any Home or other improvements located on any Lot and Home are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner of such improvements shall:

1. Immediately submit a claim to the insurance company if the damage appears to be greater than the deductible. The owner needs to work with the adjuster to get an estimate and insurance disposition as quickly as possible
2. Schedule contractor estimates as quickly as possible
3. Be under contract within 120 days of the event that caused damage
4. Be complete with repairs within 9 months of the event that caused damage

. The Board of Directors shall extend the time periods above up to an additional 3 months provided that the owner submits verifiable evidence to the Board that the value of the work required is greater \$10,000 and the owner is diligent in working with their insurer and/or contractor to repair or replace in a timely fashion. This includes for a time to contract extension: insurance company name, policy number, claim number, adjuster, adjuster's phone number, and at least two written contractor estimates. This includes for a time to completion extension: Same as above (if not under contract within 120 days of damage causing event) plus contractor company name, contractor contact and phone number, the written contract, and signed Notice of

Commencement.

All such repairs or replacements must restore the improvements to substantially their original character, design and condition, shall utilize and conform with the original foundation and appearance of the original improvements except as otherwise approved by the Board of Directors. The Board of Directors may based on its sole and exclusive discretion extend the time periods additionally for reconstructions contained herein for situations such as total home replacement, storm surge causing major neighborhood flooding, and wind damage causing gable/roof structure failure.

8.4 Failure to Reconstruct. If the Owner of any Home fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 8.3 above, the Association shall give written notice to the Owner of his default. If after thirty (30) days the Owner has not made satisfactory arrangements to meet his obligations, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore improvements. If the Association exercises the rights afforded to it by this section, which shall be in the sole discretion of the Board of Directors, the Owner of the Home shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvement. The Association shall have the right to recover from the Owner any costs not paid by insurance, and shall have a lien on the Lot and Home to secure payment.

8.5 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under this Declaration, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

8.6 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and Lot Owners.

8.7 Description of Coverages. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by Lot Owners so their authorized representatives upon request.

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

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

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

(A) Common Areas. Proceeds on account of damage to Common Areas shall be held in as many undivided shares as there are Lots, the shares of each Owner being the same as his share in the Common Areas.

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

8.10 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Owners in the following manner: The proceeds shall be paid to defray the costs of reconstruction or repair by the Association. Any proceeds remaining after defraying cost shall be distributed to the beneficial owners, remittances to Home Owners and their mortgagees being paid jointly to them.

8.11 Association as Agent. The Association is hereby irrevocably appointed as agent for each Lot Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Homes, Lots or Common Areas.

8.12 Damage to Common Areas. Where loss or damage occurs to the Common Areas or Association property, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

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

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Common Areas, the Association shall promptly, upon determination of the deficiency, levy a special Assessment against all Lot Owners for the deficiency. Such special Assessments need not be approved by the Lot Owners. The special Assessment shall be added to the funds available for repair and restoration of the property.

9. CONDEMNATION.

9.1 Taking or Partial Taking. If at any time during the term of this Declaration the whole or

any portion of the Common Areas shall be taken (“Taken Area”) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of eminent domain or by agreement between those authorized to exercise such right of eminent domain (hereinafter for the purpose of this Paragraph called “Condemnation”), this Declaration and all obligations hereunder as the then Taken Area shall terminate and expire on the date of such taking, and expenses provided to be paid for such Taken Area shall be appointed and paid to the date of such taking. The Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and/or agreements with the condemning authority for acquisition of the Taken Area, or part thereof, by the condemning authority.

9.2 Repair and Replacement. If any improvements upon the Common Areas not included in the Taken Area shall be damaged or partially destroyed by such Condemnation, then the Association shall proceed with reasonable diligence to demolish, if necessary, and to construct, repair, replace, or rebuild such improvements so such improvements are complete and in good condition and repair. The Association shall hold that portion, if any, of the Taken Area Award which represents consequential damages to said improvements or replacements thereof in trust for application of the same to the cost and expense as herein provided. Repair of such improvements shall be conducted under the supervision of any architect or engineer licensed in the State of Florida selected by the Association, and such work shall be done in accordance with plans and specifications prepared and approved in writing by such architect or engineer and submitted to the Association for approval.

9.3 Temporary Use. If the temporary use of the whole or any part of the Common Areas shall be taken at any time during the term of this Declaration by the exercise of the right of Condemnation, the term of this Declaration shall not be reduced or affected in any way, and the Association Assessments herein provided to be paid shall continue to be due and payable and the various Owners shall be entitled to the entire award granted by reason of such taking.

9.4 Taking of Land. In the event of any Condemnation of Land, the award and interest thereon shall represent compensation for the value of the property taken and shall be payable jointly to the record Owner or Owners and Institutional Mortgagee or Institutional Mortgagees thereof as of the date of taking in accordance with respective interests in such property.

10. LEASING OF HOMES. In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of Homes by their Owners shall be restricted as provided in this section. All leases of Homes must be in writing. An Owner may lease only his entire Home, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc. The following also applies to any new Occupant of a Home that was not approved under the existing lease of the Home.

10.1 Procedures.

(A) Notice by the Owner. An Owner intending to Lease his Home shall give to the Board of

Directors or its designee written notice of such intention at least thirty (30) days prior to the first day of occupancy under the Lease together with the name and address of the proposed tenant, a fully executed copy of the proposed Lease, a background check on each tenant,, and such other information and reports as the Board may reasonably require including but not limited to proof of lawful residency. The Board may require a personal interview with any Tenant, proposed Occupant and his or her spouse, if any, as a pre-condition to approval. The applicant must sign for having received copies of the Rules and Regulations of the Association.

(B) Board Action. After the required notice and all information or interviews requested have been provided, the Board shall have seven (7) business days in which to approve or disapprove the proposed Lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the Tenant.

(C) Disapproval. A proposed Lease shall be disapproved only if a majority of the whole Board so votes, and in such case the Lease shall not be made. In determining reasonable grounds, the Board may consider mitigating factors such as - how recent the event occurred and circumstances surrounding an event. Reasonable grounds for disapproval shall include, but not be limited to, the following:

- (i) the Owner is delinquent in the payment of Assessments, fines or other charges at the time the application is considered;
- (ii) the Owner has a history of leasing his Home without obtaining approval, or leasing to troublesome tenants and/or refusing to control or accept responsibility for the occupancy of his Home;
- (iii) the real estate company or rental agent handling the leasing transaction on behalf of the Owner has a history of screening tenant applicants inadequately, recommending undesirable tenants, or entering into Leases without prior Association approval;
- (iv) the application on its face indicates that the person seeking approval or any of the proposed Occupants intend to conduct themselves in a manner inconsistent with the covenants and restrictions applicable to the Association;
- (v) the prospective tenant or any of the proposed Occupants have been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude, or a crime of a sexual nature;
- (vi) the prospective tenant or any of the proposed Occupants have a history of conduct which evidences disregard for the rights and property of others;

(vii) the prospective tenant or any of the proposed Occupants evidences a strong possibility of financial irresponsibility;

(viii) the tenant or any of the proposed Occupants, during previous occupancy, evidenced an attitude of disregard for the Association rules;

(ix) the prospective tenant or any of the proposed Occupants give false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid.

(x) the Owner fails to give proper notice of his intention to Lease his Home to the Board of Directors.

10.2 Term of Lease and Frequency of Leasing. No Home may be Leased more often than twelve (12) times in any calendar year. The minimum Lease term is thirty (30) days or one month. For purposes of this restriction, the first day of occupancy under the Lease shall conclusively determine in which year the Lease occurs. No Lease may be for a period of more than one (1) year, and the Lease shall have no option for the tenant to extend or renew the Lease for any additional period. No subleasing or assignment of Lease rights by the tenant is allowed unless prior written consent has been obtained by the Board of Directors.

10.3 Occupancy During Lease Term.

(A) When a Home has been Leased for a period of one (1) year, the Unit may be occupied by the tenant and his Family.

(B) When a Home has been Leased for a period of less than one (1) year, no one but the Tenant and that person's spouse, if any, and their natural or adopted children, if any, may Occupy the Home during the term of the Lease.

(C) Guests may occupy a Leased Home when the tenant is in residence.

10.4 Occupancy in Absence of Lessee. No one but the tenant, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the Unit, and there shall not be more than two (2) persons per bedroom in occupancy. A first degree relationship by blood includes only parents and children of the Tenant. The Board may allow for, and approve, a "hardship exception" to this provision, at its absolute and sole discretion.

10.5 Use of Common Area and Association Property. To prevent overtaxing the Property, an Owner whose Home is Leased may not use the recreation or parking facilities during the Lease term.

10.6 Regulation by Association. All of the provisions of the Governing Documents and the Rules and Regulations of the Association shall be applicable and enforceable against any person occupying a Home as a Tenant or Guest to the same extent as against the Owner. Copies of the

currently approved Declarations and Rules and regulations (or an Association approved abbreviated copy of said documents) shall be given to all tenants. A covenant on the part of each Occupant to abide by the Rules and Regulations of the Association and the provisions of the Governing Documents, designating the Association as the Owner's agent with the authority to terminate any Lease and evict the Tenants in the event of breach of such covenant, shall be deemed to be included in every Lease, whether oral or written, and whether specifically expressed in such Lease or not.

10.7 Fees and Deposits for the Lease of Homes. Whenever herein the Board's approval is required to allow the Lease of a Home, the Association will charge the Owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. A separate fee may be charged for each person intending to occupy the Home except only one fee may be charged for a married couple and minor children. No fee may be charged for approval of a renewal or extension of a Lease with the same Tenant. The Association may also require a security deposit to protect against damage to the Common Areas or Association property. For the purposes of this provision, a renewal of a lease is defined as a renewal of a lease between an Owner and a Tenant within two (2) months from the expiration of a lease. If a purported renewal is more than two (2) months from the expiration of a lease, it is no longer considered a renewal and the Tenant shall be subject to Association approval and the application process.

10.8 Unapproved Leases. Any Lease of a Home not approved pursuant to this Section shall be void and unenforceable unless subsequently approved by the Board.

10.9 Collateral Assignment of Rents. In the event an Owner is in default in payment of Assessments or any other monetary amounts owed to the Association, the Association shall have the authority to collect rents directly from the Owner's tenant. Upon demand by the Association the tenant shall pay said rent to the Association. Such rental payments shall be collected in accordance with the procedures established by the Board of Directors and applied in accordance with this Declaration until all past due amounts are paid in full. In the event such tenant fails to remit said rents directly to the Association within seven (7) days (but no later than the day the next rental payment is due) from the day the Association notified such tenant in writing that the rents must be remitted directly to the Association, the Association shall have the right to terminate the Lease and evict the tenant. For the purpose of such eviction, the Association shall be deemed to be an agent of the Owner. The authority granted in this Resolution is in addition to any authority granted by law.

11. This section is intentionally blank.

12. AMENDMENTS; TERMINATION.

12.1 Duration. The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of

twenty-five (25) years from the date of the recording of the original Declaration, after which time the Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if prior to one (1) year in advance of an effective date of a proposed termination, at least two-thirds (2/3rds) of all owners of Lots and two-thirds (2/3rds) of all Institutional Mortgagees on Lots affirmatively vote, in person or by proxy, at a duly held meeting of members of the Association in favor of terminating this Declaration. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, to be given at least ninety (90) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida at least one (1) year prior to the effective date of termination, and may be relied upon for the correctness of the facts contained therein as they relate to termination of this Declaration.

12.2 Amendments by Members. Except as otherwise provided herein or by law, this Declaration may be amended by the affirmative vote of at least a simple majority of lot owners voting in person or by proxy, at a duly called meeting of the members of the Association. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded, and shall be executed by the President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

13. ENFORCEMENT; GENERAL PROVISIONS.

13.1 Enforcement. Enforcement of these covenant, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or by any Owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against any lot to enforce any lien created by these covenants. Failure of the Association or any Owner to enforce any covenants, condition or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

13.2 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of the Governing Documents and the rules promulgated by the Association shall apply to members and all persons to whom a member has delegated his right of use in and to the

Common Areas, as well as to any other person occupying any home under lease from the Owner or by permission or invitation of the Owner or his tenants (express or implied), and their licensees, invitees or guests. Failure of any Owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each Lot Owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests and by the guests, licensees and invitees of his tenants, at any time.

13.3 Litigation. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of law, or of the Governing Documents or Association rules, may be brought by any Owner, or the Association against:

- (A) the Association;
- (B) the Lot Owner;
- (C) anyone who occupies or is a tenant or guest of a Lot; or
- (D) any officer or Director of the Association who willfully and knowingly fails to comply with these provisions.

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

13.6 Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed to the last known address of the Owner appearing in the records of the Association, or to the address of the member's home. Notice to one of two or more co-Owners of a Lot shall constitute notice to all co-Owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any change of address.

13.7 Severability. Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. Nothing contained in this Declaration is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then such provision will be deemed null and void but have no effect on the remaining provisions herein.

13.8 Interpretation; Disputes. The Board of Directors is responsible for interpreting the

provisions of this Declaration, its exhibits and rules promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, its exhibits or the rules promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.

13.9 Non-Profit Status. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.

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

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

14. DISCLAIMER OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:

14.1 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

14.2 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, & COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.

14.3 ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE 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.

14.4 EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECT WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.

14.5 AS USED HEREIN "ASSOCIATION" SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.