



CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION  
OF OAKWOOD VILLAS II PROPERTY OWNER'S ASSOCIATION, INC.

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

WHEREAS, the Articles of Incorporation of the Oakwood Villas II Property Owner's Association, Inc. ("ASSOCIATION"), were recorded in Official Record Book \_\_\_\_\_ Page \_\_\_\_\_, Public Records of Brevard County, Florida;

WHEREAS, the corporate statutes provide for amendment to the Articles of Incorporation by a majority of the entire membership of the Board of Directors and by a majority of the voting interests of those owners present in person and by proxy at a meeting of the owners of the Oakwood Villas II Property Owner's Association, Inc. ("ASSOCIATION");

WHEREAS a meeting of the Board of Directors of the ASSOCIATION was held on SEPTEMBER 14, 1991 at which there was duly noticed and at which there was a quorum and at which a majority of the entire membership of the Board of Directors did vote to amend the Articles in the particulars as set forth in Exhibit "1" attached to this Certificate;

WHEREAS, a meeting of the Members of the ASSOCIATION was held on NOVEMBER 25, 1991, which was duly noticed and at which there was a quorum, and at which the required number of the voting interests present in person and by proxy of the ASSOCIATION, did vote to amend the Articles of Incorporation in the various particulars as set forth in Exhibit "1" attached to this Certificate;

WHEREAS, the Amendment and this Certificate shall be filed with the Secretary of State in Tallahassee, Florida and then recorded in the Public Records of Brevard County, Florida.

NOW, THEREFORE, the Articles of Incorporation be and is hereby amended in the particulars as stated in Exhibit "1" attached hereto; this Amendment shall run with the real property subject to that Declaration of Covenants and Restrictions for Oakwood Villas II as recorded in Official Record Book 2516, Page 1405, Public Records of Brevard County, Florida and shall be binding on all parties having any right, title, or interest in the said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner and occupant thereof; and except as otherwise amended hereby, the Articles of Incorporation shall remain unchanged and in full force and effect.

CERTIFICATE OF ADOPTION OF AMENDMENT

WE HEREBY CERTIFY that the attached Amendment was duly adopted as Amendment to the above-referenced Articles of Incorporation; and the required percentage of Board and Owners votes at a meeting with quorum present, did approve same.

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PREPARED BY:  
JAY STEVEN LEVINE, ESQUIRE  
LEVINE AND FRANK, P.A.  
3426 Ocean Drive  
Vero Beach, FL 32963  
(407)569-2405

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DATED this 3rd day of JANUARY, 1992.

WITNESSES:

OAKWOOD VILLAS II PROPERTY  
OWNER'S ASSOCIATION, INC.

Wayne W. White

by: Donald E. Riley  
DONALD E. RILEY, PRESIDENT

Anne Kozel

attest: Nancy Carbonari  
NANCY CARBONARI, SECRETARY

STATE OF FLORIDA        )  
                                  ) ==  
COUNTY OF BREVARD     )

I HEREBY CERTIFY that on this 3rd day of JANUARY, 1992, before me personally appeared DONALD E. RILEY, PRESIDENT and NANCY CARBONARI, SECRETARY of OAKWOOD VILLAS II PROPERTY OWNER'S ASSOCIATION, INC., a Florida not-for-profit Corporation, to me known to be the individuals and officers described in and who executed the aforesaid Certification as their free acts and deeds as such duly authorized officers; and that the official seal of the Corporation is duly affixed and the instrument is the act and deed of the Corporation.

WITNESS my signature and official seal at PALM BAY, in the County of Brevard, State of Florida, the day and year last aforesaid.

Phyllis S. McDonald  
NOTARY PUBLIC, State of Florida at Large  
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. JUNE 14, 1992  
BONDED THRU GENERAL REG. (IND.)

EXHIBIT "1"

As used herein the following shall apply:

A. Words in the text are lined through with (----) indicate deletions from the present text.

B. Words in the text which are underlined indicate additions to the present text.

1. A new Article XX shall be added to the Articles of Incorporation, which shall provide as follows:

ARTICLE XX

AMENDMENTS TO THE ARTICLES OF INCORPORATION

Amendments to these Articles shall be proposed and adopted in the following manner:

A. Proposal. Amendments to these Articles may be proposed by resolution of the Board of Directors or by written petition signed by the owners of one-fourth (1/4) of the Lots. If any amendment is proposed by written petition, the Board of Directors shall adopt a resolution approving the amendment.

B. Procedures Notice and Format. Upon any amendment or amendments to these Articles being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting, unless insufficient time to give proper notice remains before that meeting. The full text of any amendment to the Articles shall be included in the notice of the Owners' meeting of which a proposed amendment is considered by the Owners. New words shall be inserted in the text by underlining and words to be deleted shall be lined through with hyphens; however, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Articles. See provision \_\_\_\_\_ for present text."

C. Vote Required. Except as otherwise provided by Florida Law, these Articles may be amended by concurrence of a majority of the entire Board of Directors and a majority of the voting interests of the entire membership of the Association.

D. Proviso. Notwithstanding any provision contained in the Articles of Incorporation to the contrary:

1. No amendment shall operate to unlawfully discriminate against any Lot or class or group of Lots.

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2. An Amendment to these Articles that adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.
3. The registered agent and registered office may be amended by the vote of a majority of the entire Board of Directors, without the need for membership approval, if a statement of change of registered agent and/or office is on file with the Department of State.

**E. Recording and Effective Date.** A copy of each adopted amendment shall be filed with the Department of State pursuant to the provisions of applicable Florida law, and a copy certified by the Department of State shall be recorded in the Public Records of Brevard County, Florida. The Amendment shall be effective upon recording in the Public Records of Brevard County, Florida. **Exception.** As to any amendment changing the registered agent or registered office, this Article XX.E shall not apply.

**NOTICE REGARDING EFFECTIVE DATE:** The Amendment is effective when recorded in the Public Records of Brevard County, Florida.

Except as otherwise amended hereby, the Articles shall remain unchanged and in full force and effect.

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SUBSTANTIAL REWORDING OF DECLARATION. SEE ENTIRE DECLARATION OF COVENANTS AND RESTRICTIONS FOR PRESENT TEXT.

AMENDED AND RESTATED DECLARATION OF COVENANTS

AND RESTRICTIONS

FOR

MALIBU VILLAS

*Redwinstead* Clerk Circuit Court  
 Recorded and Verified Brevard County, FL  
 # Pgs. 75 # Names 2  
 Trust Fund 38.00 Rec Fee 301.00  
 Stamp-Dced \_\_\_\_\_ Excise Tx \_\_\_\_\_  
 Stamp-Mtg \_\_\_\_\_ Int Tx \_\_\_\_\_  
 Service Chg \_\_\_\_\_ Refund \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

The original Declaration of Covenants and Restrictions for Malibu Villas f/k/a Oakwood Villas II was recorded on June 7, 1984, in Official Record Book 2516, at Page 1405, et seq., Public Records of Brevard County, Florida; and was amended thereafter. The Declaration of Covenants and Restrictions, with amendments, is hereby amended in part and restated in its entirety.

Section 1. DEFINITIONS. The following definitions shall apply in this Declaration and in the Articles of Incorporation and By-Laws, unless the context otherwise requires:

1.1 "Articles" means the Restated Articles of Incorporation, as amended from time to time.

1.2 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against all of the Units, with the exception that a fine against one or more Owners shall be considered a special assessment.

1.3 "Association" means MALIBU VILLAS PROPERTY OWNERS ASSOCIATION, INC., a Florida corporation not for profit, its successors, assigns and legal representatives.

1.4 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs.

1.5 "By-Laws" mean the Amended and Restated By-Laws, as amended from time to time.

1.6 "Common Area" or "Common Areas" means and refers to all real and personal property, including improvements, owned by or dedicated to the Association for the common use and enjoyment of the Owners, including Tracts "B" and "D" of the Subdivision Plat.

1.7 "Community" means the real estate development comprising the Properties.

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THIS INSTRUMENT PREPARED BY:

LEVINE AND FRANK, P.A.  
3426 Ocean Drive  
Vero Beach, FL 32963  
(407)569-2405

→ Levine and Frank, P.A.  
3300 PGA Blvd., Suite 800  
Palm Beach Gardens, FL 33410

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1.8 "County" means the County of Brevard.

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

1.10 "Developer" means GENERAL DEVELOPMENT CORPORATION, a Delaware Corporation, its successors, assigns and legal representatives.

1.11 "General Plan of Development" means that plan as approved by appropriate governmental agencies which shall represent the total general scheme and general uses of land comprising the Properties, as it may be amended from time to time.

1.12 "Governing Documents" mean and include this Declaration and all Exhibits, including the Restated Articles of Incorporation and Amended and Restated By-Laws, as amended from time to time.

1.13 "Guest" means any person who is not a member of the family occupying a Unit, and who is physically present in, or occupies the Unit at the invitation of the Owner or other legally permitted occupant, without requirement to contribute money, perform any services or provide any other consideration to the Owner or Lessee in connection with occupancy of the Unit. A permanent occupant of a Unit shall not be considered as a Guest. Furthermore, an Owner of a Unit shall never be considered a Guest in the Unit he owns, unless the Owner is visiting his Lessee in his Unit.

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

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

1.16 "Member" or "Member of the Association" means a record Owner of a Unit.

1.17 "Occupy" shall mean and refer to the act of being physically present in a Unit for two (2) or more consecutive days, including staying overnight. "Occupant" is a person who occupies a Unit. A "permanent occupant" means a person who is occupying a Unit other than as a Guest or for a vacation.

1.18 "Owner" or "Unit Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Unit, but excluding those having such interests merely as security for the performance of an obligation.

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

1.20 "Properties" means all real property, including improvements thereon, which are now or hereafter made subject to this Declaration.

1.21 "Rules and Regulations" means those rules and regulations promulgated from time to time by the Board of Directors, governing the use of the Properties, including the Units, and the operation of the Association. The foregoing shall also include Architectural Guidelines adopted from time to time by the Architectural Control Committee or Board of Directors, unless the context requires otherwise.

1.22 "Subdivision Plat" or "Plat" means the Second Replat of Malabar Country Club Unit 7, a subdivision according to the plat thereof as recorded in Plat Book 30, Page 85-88, Public Records of the County.

1.23 "Unit" means and refers to each lot shown on the Subdivision Plat on which a single family, residential dwelling/home is constructed. Reference in the Governing Documents to "Unit" shall include the dwelling structure, courtyard, as well as all other portions of the lot, unless the context requires otherwise.

1.24 "Voting Interest" means and refers to the arrangement established in the Governing Documents by which the Owners of each Unit collectively are entitled to one vote in Association matters. There are 188 Units, so the total number of voting interests is 188 votes.

Section 2. PROPERTY SUBJECT TO THIS DECLARATION. The real property which is and shall be transferred, sold, conveyed and occupied subject to this Declaration, is as follows: Second Replat of Malabar Country Club Unit 7, a subdivision according to the plat thereof as recorded in Plat Book 30, Page 85-88, Public Records of the County, less Tracts "A", "C" and "E" thereof.

Section 3. EASEMENTS; COMMON AREA; PARTY WALLS.

3.1 Easements. Each of the easements and easement rights referred to in this Section 3, is reserved through the Properties and is a covenant running with the land in the Community, and notwithstanding any other provisions of this Declaration, shall survive the removal of any of the Properties from the Community. None of the easements specified in this Section may be encumbered by any leasehold or lien other than those on the Units. Any lien encumbering these easements shall automatically be subordinate to the rights of the Owners with respect to such easements.

A. Utility Service and Drainage Easements.

1. Utility Service Easements. An easement exists for utility service. The Association has the power, without the joinder of any Owner, to grant easements such as electric, gas, cable television, or other



utility service easements or with respect to security, surveillance or communication, or relocate any existing easements, in any portion of the Common Area, and to grant access easements or relocate any existing access easements in any portion of the Common Area, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Community. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred. Utility as referred to herein means a public or private utility.

2. Drainage Easements. An easement exists in favor of the Association for drainage and temporary retention of storm water runoff. The Association shall have the power, without the joinder of any Owner, to grant easements consistent with the foregoing. The Association shall maintain the Common Area for drainage purposes unless and until the Properties become subject to a governmental special assessment district for maintenance and control of drainage and storm water runoff, at which time the Association shall transfer title to the governmental entity involved and shall be divested of such responsibility; the happening of the foregoing shall not preclude the Association from establishing a higher level of maintenance over the drainage system than required by the governmental entity, in which case the Association shall be permitted to effect such higher level of maintenance.
  3. All Such Easements. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Units. No Owner shall do anything within or outside his/its Unit that interferes with or impairs or may interfere with or impair, the provision and use of these easements. The Board of Directors of the Association or its designee shall have a right to remove any improvements interfering with or impairing such facilities or easements herein reserved.
- B. Maintenance. There is hereby reserved to the Association an easement over the Common Area for the Association's maintenance obligations pursuant to this Declaration. This easement shall also apply over, on, across, under and through each Unit for the Association's maintenance obligations under Section 6 of this Declaration.
- C. Encroachments. If any Unit encroaches upon any of the Common Area for any reason other than the intentional act of an Owner, or if any Common Area encroaches upon any Unit,

then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

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

1. Speed bumps shall be permitted and shall be deemed not to violate any rights of any person in whose favor the easement for ingress and egress lies.

- E. Easements in Favor of Oakwood Villas II Master Association, Inc. Pursuant to paragraph 2 of the Master Declaration for Oakwood Villas II, the Oakwood Villas II Master Association, Inc. is obligated to maintain any common wall and the surface water management system for certain property, and accordingly, easements for such maintenance are hereby created in favor of Oakwood Villas II Master Association, Inc., which easement shall survive the termination of the Association.

### 3.2 Common Area.

- A. Purposes Intended. Common Area shall be available to Owners, lessees, and invited guests for the use intended. So long as so provided by statute, subject to the Governing Documents and reasonable Rules and Regulations of the Association, the Association shall not unreasonably restrict any Owner's right to peaceably assemble, or right to invite public officers or candidates for public office to appear and speak in the Common Area.
- B. Use Fees. The Association, through its Board of Directors, is empowered to charge fees for the use of the Common Area, unless and to the extent prohibited by the Governing Documents.

### 3.3 Party Walls.

- A. Party Walls. The common walls shared by the Units and located on an imaginary line as shown on the Subdivision Plat shall be Party Walls for the perpetual benefit of and use by the Owner, including his heirs, assigns, successors and trustees, of each such Unit.
- B. Maintenance, Repair. In the event of damage or destruction of the party walls from any cause whatsoever, other than the negligence or willful misconduct of an Owner, the Owners

shall, at their joint expense, repair and rebuild said wall(s) and each Owner shall have the right to full use as herein contained of said wall(s) repaired or rebuilt. In the event it shall become necessary or desirable to perform maintenance on the whole or any part of the party walls, such expense shall be shared equally by the Owners of adjoining Units or their successors in title. Whenever any such wall or any part thereof, shall be rebuilt, it shall be erected in the same manner and at the same location where it shall initially be constructed, and shall be of the same size and of the same or similar materials and of like quality. Provided, that if such maintenance, repair or construction is brought about solely by the neglect or the willful misconduct of one (1) Owner, any expense incidental thereto shall be borne solely by such wrongdoer. If an Owner shall refuse to pay his share, all or part of such cost, in the case of necessary maintenance or negligence or willful misconduct, any other Owner may have such wall repaired or reconstructed and shall be entitled to a lien on the Unit of the Owner so failing to pay for the amount of such defaulting owner's share of the repair or replacement. If an Owner shall give, or shall have given, a mortgage or mortgages upon his Unit, then the mortgagee shall have the full right at his option to exercise the rights of his mortgagor as an Owner hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the mortgagee for repairs hereunder and not reimbursed to said mortgagee by the Owners. Any Owner removing his improvements from the party wall or making use of the party wall shall do so in such manner as to preserve all right of the adjacent Owner in the wall, and shall save the adjacent Owner harmless from any damage caused thereby to improvements then existing. In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent Units shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a workmanlike manner. Consent is hereby given to enter on the adjacent Unit to effect necessary repairs and reconstruction.

- C. Windows, Structural Changes. The Owner of any Unit sharing a party wall with the adjoining Unit shall not possess the right to cut windows or other openings in the party wall, nor make any alterations, additions or structural changes in the party wall.
- D. Extent of Use. The Owner of any such Unit shall have the right to a full use of said party walls for whatever purposes he chooses to employ subject to the limitation that such use shall not infringe on the rights of the Owner of an adjoining Unit or his enjoyment of said walls or in any manner impair the value of said walls.

- E. Covenant. Each common wall to be constructed on the lots on the Subdivision Plat is to be and remain a party wall for the perpetual use and benefit of the respective Owners thereof, their heirs, assigns, successors and grantees, said Units being conveyed subject to this condition, and this condition shall be construed to be a covenant running with the land.
- F. Encroachment Provision. The Owners agree that if any portion of a Unit, including the Party Wall, encroaches upon another, a valid easement for the encroachments and maintenance of same, so long as it stands, shall and does exist. In the event a Unit or Units is/are partially or totally destroyed and then rebuilt, the Owners of the Units agree that the encroachments, due to construction, shall be permitted.
- G. Mortgages. So long as there shall be a mortgage or mortgages upon any of the Units, this Section 3.3 shall not be modified, abandoned or extinguished without the consent of such mortgagee, and acquisition of one Owner's property by any of the other Owners shall not operate to render these provisions void, useless or extinguished, without the written approval of the holder of any mortgages on such affected Units.

SECTION 4. ASSOCIATIONS.

4.1 MALIBU VILLAS PROPERTY OWNERS ASSOCIATION, INC. f/k/a OAKWOOD VILLAS II PROPERTY OWNERS' ASSOCIATION, INC. The operation of the Community is by MALIBU VILLAS PROPERTY OWNERS ASSOCIATION, INC. , a Florida corporation not for profit, which shall perform its functions pursuant to this Declaration and to the following:

- A. Articles of Incorporation. The Articles of Incorporation of the Association shall be the Amended and Restated Articles of Incorporation attached as Exhibit "A", as amended from time to time.
- B. By-Laws. The By-Laws of the Association shall be the Amended and Restated By-Laws attached as Exhibit "B", as amended from time to time.
- C. Membership. The membership of the Association shall be comprised of Owners of the Units, as further provided in the By-Laws.
- D. Limitation on Liability. Notwithstanding its duty to maintain and repair the Common Area and certain portions of the Units, the Association shall not be liable to Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements.

4.2 OAKWOOD VILLAS II MASTER ASSOCIATION, INC. The Association is a member of the OAKWOOD VILLAS II MASTER ASSOCIATION, INC. in accordance with the Master Declaration for Oakwood Villas II as recorded in Official Record Book 2516, Page 1392, Public Records of the County and the articles of incorporation and by-laws of the OAKWOOD VILLAS II MASTER ASSOCIATION, INC. ("Master Association"). The Master Association was created for the purpose of maintaining such common facilities as the common private road within the entrance way, surface water drainage and a common wall around the perimeter of the entrance way. The Association shall be responsible for paying to the Master Association, assessments for maintaining those common facilities of the Master Association. In the event that the Association fails to pay an assessment to the Master Association, then the Master Association shall have a lien against all of the Units to secure that payment. An Owner may secure individual release of such lien.

Section 5. ASSESSMENTS, CHARGES AND LIENS. The Association has the power to levy and collect assessments against each Unit and Owner in order to provide the necessary funds for proper operation and management of the Community and for the operation of the Association, including both annual assessments for each Unit's share of the common expenses as set forth in the annual budget, and special assessments for any proper common expenses; and for fines against Owner(s). The Association may also levy Charges against individual Unit(s) and Owner(s) for any amounts, other than for common expenses, which are properly chargeable against such Unit and Owner under the Governing Documents.

5.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement or insurance of the Common Area, the expenses of operating the Association, fines levied by governmental authority, and any other expenses properly incurred by the Association for the Community, including any amounts budgeted for the purpose of funding reserve accounts; and assessments levied by the Oakwood Villas II Master Association, Inc.

5.2 Share of Common Expenses. All Owners and Units shall be assessed equally.

5.3 Ownership. Assessments collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Unit. No Owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided in the Governing Documents or by law.

5.4 Who is Liable for Assessments. The Owner of each Unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as otherwise provided in Section 5.8.A below, whenever title to a Unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments 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.

5.5 No Waiver or Excuse From Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Area, by abandonment of the Unit on which the assessments are made, by interruption in the availability of the Unit or the Common Area for any reason whatsoever, or by dissatisfaction with the Association and/or its operation and policies. No Owner may be excused from payment of his share of the common expenses unless all Unit Owners are likewise proportionately excused from payment, except as otherwise provided in Section 5.8.A as to certain mortgages.

5.6 Application of Payments; Failure to Pay; Interest; Late Fees; Acceleration. Assessments 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 on open accounts at the particular time, calculated from the date due until paid. In addition, any assessments or installments not paid on or before fifteen (15) days after the date due shall result in the imposition of a late fee equal to the greater of five (5%) percent of the late assessment installment or \$25.00, per late installment. Assessments and installments thereon shall become due, and the Owner shall become liable for the assessments or installments, on the date established in the By-Laws or otherwise set by the Board of Directors of the Association for payment. All payments on account shall be applied in the following order: First to interest, then to late fees, then to costs and attorneys' fees, and finally to annual and/or special assessments first due and owing, notwithstanding any contrary direction from the Owner or his agent. The Association may refuse to accept a partial or insufficient payment, without prejudice to the Association.

- A. No payment by check is deemed paid until the check has cleared. However, interest and late fees shall be calculated as accruing from the date of the Association's actual receipt of payment. If any special assessment or annual assessment installment as to a Unit becomes more than fifteen (15) days past due, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Unit's annual assessment for that fiscal year and/or special assessment, as applicable. 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. The accelerated assessments shall be due and payable within ten (10) days after the Association mails notice to the Owner.

5.7 Lien. The Association has a lien on each Unit securing payment of past due assessments, including late fees, interest and paralegal and attorneys' fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit or other lawsuit. The lien is perfected upon recording a Claim of Lien in the Public Records of the County, stating the legal description of the Unit, the name of the record Owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person

making the payment is entitled to a satisfaction of the lien.

#### 5.8 Priority of Lien.

A. Rights of Certain Mortgagees. The Association's lien for unpaid assessments shall be subordinate and inferior to any recorded first mortgage or any institutional mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when the mortgage was recorded.

1. With respect to any such mortgage which has superiority over the Association's Claim of Lien: When the mortgagee or other purchaser obtains title to the Unit as a result of foreclosure of the mortgage, or a deed in lieu of foreclosure, the acquirer of title, its successors and assigns, shall not be liable for any delinquent assessments due and owing to the Association pertaining to the Unit or chargeable to the former Owner of the Unit which became due prior to the acquisition of title as a result of foreclosure or a deed in lieu of foreclosure. These unpaid assessments shall be deemed to be a common expense collectible from all of the Owners, including such acquirer of title, and his successors and assigns.

B. Leases. Any lease of a Unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

5.9 Foreclosure of Lien; Action at Law. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the same manner in which mortgages are foreclosed in the State of Florida and may also bring an action to recover a money judgment for unpaid assessments without waiving any lien rights. In addition to any assessments due, the Association shall be entitled to recover interest, late fees, and all costs of collection, including Court costs and paralegal and attorneys' fees. Whenever the Association shall bring a lien foreclosure action, the Association shall be entitled to receive a reasonable rental from the Owner, pending litigation, for that time period during which the Owner is in possession of the Unit either by himself, or tenants, guests or other occupants; the Association is entitled to an appointment of a Receiver, which may be the Association, to collect the rent. If some person other than the Association acts as Receiver, then the cost of the Receiver shall be borne by the party which did not prevail in the lawsuit.

5.10 Certificate As To Assessments. The Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the Unit Owner with respect to the Unit have been paid, within fifteen (15) days after request by an Owner or mortgagee. Any person other than the Owner who relies upon such certificate shall be protected thereby.

5.11 Charges.

- A. Defined. Each Unit and Owner shall be liable for Charges levied by the Association against the Unit and Owner. Charges shall be deemed to include but not be limited to: maintenance or other services furnished by the Association for the benefit of an Owner; damages; attorneys' fees and paralegal fees incurred by the Association incident to enforcement of the Governing Documents and/or Rules and Regulations of the Association; and any other sums other than assessments which are referred to as Charges in the Governing Documents. Fines imposed against Owner(s) shall be considered a special assessment and not a charge.
- B. Who is Liable for Charges. The Owner of each Unit, regardless of how title was acquired, is liable for all Charges coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as provided in Section 5.11.E below, whenever title to a Unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid 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.
- C. Application of Payments; Failure to Pay; Late Fees; Interest. Any Charges paid on or before fifteen (15) days after the date due as specified in the notice of Charge from the Association shall not bear interest, but all Charges not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. In addition, any Charges or installments not paid on or before fifteen (15) days after the date due shall result in the imposition of a late fee equal to the greater of five (5%) percent of the late installment or \$25.00, per late installment. All payments on account shall be applied in the following order: First to interest, then to late fees, then to costs and attorneys' fees, and finally to Charges first due and owing, notwithstanding any contrary direction from the Owner or his agent. The Association may refuse to accept a partial or insufficient payment, without prejudice to the Association. No payment by check is deemed paid until the check has cleared. However, interest and late fees shall be calculated as accrued from the date of the Association's actual receipt of payment.
- D. Lien. The Association has a lien on each Unit securing payment of past due Charges, including interest, late fees and attorneys' and paralegal fees and costs incurred by the Association incident to the collection of the Charges or enforcement of the lien, whether before, during or after a lien foreclosure suit or other lawsuit. The lien is perfected upon recording a Claim of Lien in the Public Records of the County, stating the legal description of the Unit, the name of the record Owner, the Charges past due and



the due dates. The lien is in effect until barred by law. Upon full payment of all sums secured by the Claim of Lien, the person making the payment is entitled to a satisfaction of the lien.

E. Priority of Lien.

1. Rights of Certain Mortgagees. The Association's lien for Charges shall be subordinate and inferior to any recorded first mortgage or any institutional mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when the mortgage was recorded.

(a) With respect to any such mortgage which has superiority over the Association's Claim of Lien; When the mortgagee or other purchaser obtains title to the Unit as a result of foreclosure of the mortgage, or a deed in lieu of foreclosure, the acquirer of title, its successors and assigns, shall not be liable for any delinquent Charges due and owing to the Association pertaining to the Unit or chargeable to the former Owner of the Unit which became due prior to the acquisition of title as a result of foreclosure or a deed in lieu of foreclosure. These unpaid Charges shall be deemed to be a common expense collectible from all of the Owners, including such acquirer of title, and his successors and assigns.

2. Leases. Any lease of a Unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

F. Foreclosure of Lien; Action at Law. The Association may bring an action in its name to foreclose its lien for unpaid Charges in the same manner that mortgages are foreclosed in the State of Florida, and may also bring an action to recover a money judgment for the unpaid Charges without waiving any lien rights, and shall be entitled to recover interest, late fees, and all costs of collection, including Court costs and paralegal and attorneys' fees.

5.12 Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, Charges and Liens created under this Declaration:

A. All Properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

- B. All Common Area exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption.

Section 6. MAINTENANCE, REPAIR AND REPLACEMENT; MAINTENANCE STANDARDS. Responsibility for the protection, maintenance, repair and replacement of the Properties, and maintenance standards shall be as follows. However, in the event of a casualty, the provisions of Sections 9 and 10 of this Declaration shall control rather than this Section 6:

6.1 Association Maintenance. In addition to other provisions contained elsewhere in this Declaration, the following Properties and other real property shall be protected, maintained, repaired and replaced by the Association at the expense of the Association, as an item of common expense:

- A. Common Area. All Common Area, except for those portions described to be the responsibility of the individual Owner in Section 6.2.A below.
- B. The Unit. All maintenance, repair and replacement of the exteriors of the Units, except for those portions described to be the responsibility of the individual Owner in Section 6.2.B below.
- C. Non-Common Area. Where applicable, the following shall apply: Where reasonably possible, the Association shall also maintain the vegetation, landscaping and irrigation system upon areas which are not within the Properties but abut same and are owned by a utility or governmental authority, so as to enhance the appearance of the Properties. This area includes swale areas or median areas within the right of way of abutting public streets, roads and areas within drainage canal rights of way or other abutting waterways.
- D. Incidental Damage. All incidental damage caused to a Unit by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage. Proviso. The Association shall in no event be responsible for any reason should damage occur to an Owner's plantings and plantings bordering referred to under Section 7.12.A below.

6.2 Owners Maintenance. Each Owner is responsible, at his own expense, for the maintenance, repair, and replacement of the following Properties:

- A. Common Area. The Owner shall be responsible for the maintenance, repair and replacement of any plantings and plantings bordering approved by the Association under Section 7.12.A below.

B. Unit. The Owner shall be responsible for the maintenance, repair and replacement of all portions of the interior of the Unit, and only the following portions of the exterior of the Unit:

1. Screens, windows, shutters and doors, including all hardware and apparatus thereto.
2. Light fixtures on the building.
3. Gutters and downspouts, except that the Association shall be responsible to clean same.
4. All portions of the courtyards, except for any walls and stucco surfaces.
5. The exterior wooden beams and support posts.
6. Any gates installed as provided for in section 7.12.I below.
7. All portions of the electrical, plumbing, air conditioning and utility lines, fixtures, conduits and installations, which service only the one Unit.

C. Special Provisions for Termite Control. Notwithstanding any provision contained in this Section 6.2 to the contrary, the following shall apply in the event that an entire building requires termite treatment for termite infestation only:

1. Circumstances may arise where:
  - (a) There is termite infestation in one or more (but not all) Units in a building; and
  - (b) In order to treat such infestation, the entire building must be treated (such as, tenting of the building).
2. In the event of the foregoing circumstances (both (1)(a) and (b)), upon written certification from a licensed termite company or concern, the entire building shall be so treated - without the necessity of agreement of all Owners (and occupants) of Units in the building. The cost of the termite treatment shall be shared equally by the Owners of Units in the building, whether or not a particular Unit involved was experiencing termite infestation. If necessary to accomplish the termite treatment, all occupants in the building (whether Owners, lessees or otherwise) must vacate the building for the time period required. Each occupant shall vacate by the date and for the time period requested provided that at least seven (7) days written notice is received by the particular occupant. Notice will be deemed received by all

occupants in a Unit if a notice is received by any occupant over the age of seventeen (17) years. Failure or refusal of any occupant to vacate as requested shall entitle the requesting Owner(s) to a temporary injunction ordering removal. The Owner(s) in such an action shall be entitled to costs and reasonable attorneys' and paralegal fees. Each vacating occupant shall bear responsibility for damages and injuries caused to him/her or to his/her Unit/property by the termite treatment, without any action against any other Owner or occupant. (This shall not preclude any action where an Owner's or occupant's negligence or intentional wrongdoing causes damage or injury to another and shall not preclude an action against the termite control company or concern). Each vacating occupant shall also be responsible for his/her own lodging, meals and other expenses in connection with vacating of the Unit, without any contribution from any other Owner or occupant. Notice shall also be provided to the Owner of any unoccupied Unit prior to the start of the treatment.

3. Arbitration. In the event of any dispute arising under the provisions of Section 6.2.C.1 and 6.2.C.2 above, including disagreement with exterminations made or validity of costs incurred by Owner(s) authorizing termite treatment, any party may request the Board of Directors to settle the dispute. In such case, the Board's decision shall be binding; provided, however, that the Board may elect not to act in this capacity, in which case each party shall choose an arbitrator; such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators and shall be binding. Each party shall bear the cost of his arbitrator. .  
Notwithstanding the foregoing to the contrary, any sums to be paid (whether through arbitration or otherwise) may be collected through Court action.

6.3 Maintenance Standards for Owners and Residents. The maintenance obligations of the Owners and residents under this Declaration shall be performed to ensure a first class and high quality appearance of the Community at all times. Each Owner must perform promptly all maintenance, repairs and replacement for which the Owner is responsible, which are necessary to ensure such first class and high quality appearance. Each Owner shall promptly report to the Association or its agents any defect or need for repair on the Properties for which the Association is responsible to maintain, repair and replace under this Declaration. No Owner or resident shall impede or otherwise perform or interfere with the maintenance responsibilities of the Association under this Declaration. No Owner or resident shall do anything which shall adversely affect the safety or soundness of the Properties; the opinion of the Board of Directors shall control in determining whether the safety or soundness of the Properties is adversely affected. Unless otherwise specifically permitted by this Declaration, no Owner shall make any alteration or improvement to the Common Area. Each Owner and resident shall be

governed by maintenance standards which may be adopted from time to time by the Association. The following constitutes maintenance standards for the Owners and residents, which the Board of Directors of the Association is empowered to supplement from time to time without having to amend this Declaration:

- A. Glass. Broken or cracked window glass shall be immediately replaced for safety concerns as well as cosmetic reasons.
- B. Windows and Doors. Windows, doors and frames shall be kept free of dents and rotten/rusted materials.
- C. Screens and Screen Frames. Torn, cut or otherwise damaged screening and screen frames shall be replaced with new materials as reasonably soon as possible after the damage occurs.
- D. Shutters. Shutters shall be kept as new in appearance as is possible.
- E. Painted Surfaces. Painted surfaces that show fading, peeling or blistered paint must be repainted so as to ensure a high quality and freshly painted appearance. Surfaces that are to be painted shall be kept free of stains and discolorations of any kind.
- F. Exterior Light Fixtures. Exterior light fixtures shall be kept clean and in working appearance and working order, free from dents, chips and rust.
- G. Landscaping in Front of Unit. Owners' planting and planting bordering as permitted by Section 7.12.A below, shall be subject to the following landscape maintenance standards:
  - 1. The landscaping shall be replaced as immediately as it becomes diseased or dies. Replacement shall be governed by the provisions of Section 7.12.A below.
  - 2. The Association shall have the right, at its expense, to remove any tree whose roots extend to the surface of the ground or which threaten other Units or any Common Area, and shall have the right to remove any limbs or branches of any landscaping which impede ingress or egress or which threaten other Units or any Common Area.
  - 3. Planted areas shall be kept free of weeds, debris, and foreign materials.
  - 4. Planted areas shall be fertilized in such a manner as to promote the best color, health, and condition for the plants.
  - 5. Plants and bushes shall be kept trimmed in such a manner as to provide a neat, clean and attractive appearance.
  - 6. All areas shall be kept free of chinch bugs, army worms and other harmful insects that may cause injury or harm to people or lawns and/or plant materials.

7. No landscaping shall impede ingress and egress on sidewalks.

Section 7. CONSTRUCTION, ALTERATIONS AND IMPROVEMENTS: ARCHITECTURAL CONTROL COMMITTEE.

7.1 Scope; Review by Committee; Exception. The Developer established a uniform scheme and appearance of the buildings and other improvements in the Community, and the Association desires to uphold this uniform scheme and appearance. Therefore, no Owner shall modify, alter, decorate or change the exterior appearance of the Unit, to include any modification, alteration, decoration or change made on the interior of the Unit which can be viewed from the outside of the Unit, to include the addition of landscaping or replacement of landscaping with a different kind of plant species, unless same is specifically allowed in this Section 7 or elsewhere in this Declaration, and only if the Owner first obtains the prior written approval of the Architectural Control Committee and fully and strictly complies with this Section 7. Furthermore, no Owner shall modify, alter, decorate or change the Common Area unless specifically allowed in this Section 7 or elsewhere in this Declaration, and only if the Owner first obtains the prior written approval of the Architectural Control Committee and fully and strictly complies with this Section 7.

A. Exceptions to Requiring Committee Approval. The following alterations and improvements may be made to a Unit by an Owner without the approval of the Committee, so long as the alteration or improvement meets all of the architectural standards of Section 7.12 below:

1. The placement of window treatment (shades, blinds, curtains, and the like) on the interior of the windows.
2. In the courtyards, so long as the color of the building inside the courtyard is not changed; however, no trees may be planted or permitted to grow within the courtyard without the prior written approval of the Architectural Control Committee as provided for in this Section 7.
3. Sunshades or non-storm roll-ups over the sliding glass doors in the courtyards.
4. The signs referred to in Sections 8.6.E and F below.

7.2 Submission of Plans and Architectural Applications. Prior to any modification, alteration or improvement referred to in Section 7.1 above, the Owner must submit one (1) complete set of plans and specifications and plot plans as set forth in Section 7.5.A below, together with architectural application. The plans and specification and plot plans must show to the extent applicable, the exterior design, height, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, with front, side and rear elevation and floor plans, with reference to the street side and rear lines of the Unit; in a form which would be acceptable to obtain a building permit or in the event a permit is not

required, then in a form that would be required if a permit was in fact required. The plans must specify the anticipated time for completion of the modification, alteration or improvement.

7.3 Function of the Architectural Control Committee. The Architectural Control Committee shall be a permanent committee of the Association and shall administer and perform the architectural review and control functions of the Association. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations conform to and harmonize with existing surroundings and structures.

7.4 Composition of the Architectural Control Committee. The Architectural Control Committee shall be composed of all members of the Board of Directors, sitting as the Architectural Control Committee. A majority of the Architectural Control Committee shall constitute a quorum to transact business at any meeting, and the action of a majority of Committee Members present at a meeting at which a quorum is present shall constitute the action of the Architectural Control Committee. Any vacancy occurring on the Architectural Control Committee due to the death, resignation or removal of any member thereof shall be filled by the Board of Directors. Even though the Architectural Control Committee is composed of all Directors, provisions in the Governing Documents relating to Directors (other than indemnification in the Articles) shall not apply to the Architectural Control Committee.

7.5 Powers of the Architectural Control Committee. The Architectural Control Committee shall have the following powers:

- A. To require the submission of samples of building materials and colors proposed to be used, and the provision of such additional information as may be reasonably necessary to evaluate the proposed construction, alteration or improvement.
- B. To institute and require a reasonable filing fee to accompany the submission of plans and specifications, as a means of defraying its expenses.
- C. To approve or disapprove all plans and specifications within thirty (30) days after the Owner submits all fees, and information which is reasonably necessary for the Architectural Control Committee to render its decision under this Section 7. In the event that the Architectural Control Committee fails to take any action within the thirty (30) day period, approval will not be required, and this Section 7 will be deemed to have been fully complied with.
  1. In the event that the Architectural Control Committee disapproves any plans and specifications submitted to it, the Committee shall so notify the applicant in writing, stating the grounds upon which the disapproval was based. The Committee may alternatively approve plans and specifications subject to modifications required in writing by the Committee.

- D. To promulgate rules and regulations of general application, governing the procedures to be followed by the Architectural Control Committee, including the form and content of applications, plans and specifications to be submitted for approval, and the length of time within which an alteration, improvement or construction must be completed. The Architectural Control Committee may from time to time adopt architectural guidelines, imposing restrictions in furtherance of the General Plan of Development of the Community, that are not inconsistent with this Declaration. These guidelines shall be supplemental to that contained in this Declaration and need not be approved as an amendment to this Declaration.
- E. By any of its members or appointed agents upon reasonable notice and at any reasonable time, to enter and inspect any Unit for compliance with this Section 7 of this Declaration or any other provision in the Declaration under which the Architectural Control Committee has jurisdiction.
- F. To exercise any other powers delegated to it by other provisions of this Declaration.

7.6 Review Criteria. The Architectural Control Committee may disapprove any plans submitted to it or require modifications to same, for any one or more of the following reasons:

- A. Failure of such plans to comply with any of the protective covenants, conditions and restrictions contained in this Declaration;
- B. Failure to include information in such plans and/or as requested by the Committee;
- C. Objection to the site plan, exterior design, appearance or materials of any proposed alteration or improvements, including without limitation, color or color scheme, finish, proportion, style or architecture, height, bulk or appropriateness of any proposed alteration or improvement;
- D. Incompatibility of the proposed alteration or improvement with existing improvements.
- E. Failure of the proposed alteration or improvement to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules or regulations;
- F. Any other matter which in the judgment and sole discretion of the Committee would render the proposed alteration or improvement inharmonious or incompatible with the General Plan of Development of the Community.



7.7 Permits and Certificates of Occupancy; Compliance.

- A. No person shall have issued a building permit from any governmental authority unless and until the approval of the proposed improvements has been obtained from the Architectural Control Committee.
- B. After the plans and specifications and plot plans and other data submitted have been approved by the Architectural Control Committee, no alteration, improvement or structure shall be erected, constructed, placed or maintained upon the Unit unless same shall be erected, constructed, placed or maintained in conformity with the plans and specifications and plot plans approved by the Architectural Control Committee. Any alteration, construction or structure which shall be erected, constructed, placed or maintained which is not in conformity with the plans and specifications and plot plans approved by the Architectural Control Committee shall be deemed to have been undertaken without such approval and to be in violation of this Declaration.
- C. Furthermore, no certificate of occupancy (if applicable) shall be issued unless the Owner(s) have complied with this Section 7.

7.8 Records of Meetings. The Architectural Control Committee shall keep minutes and maintain records of all votes taken at Architectural Control Committee meetings. The Architectural Control Committee may also take action without a meeting by unanimous written consent of all members of the Architectural Control Committee.

7.9 No Waiver. The approval of the Architectural Control Committee of plans and specifications submitted for approval, as herein specified, shall not be deemed to be a waiver by the Architectural Control Committee of the right to object to any of the features or elements embodied in such plans and specifications, if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Units, even if submitted by the same Owner(s) and/or contractor(s).

7.10 Liability for Actions of the Architectural Control Committee. Neither the Board of Directors or Officers of the Association, the members of the Architectural Control Committee, nor any person acting on behalf of any of them, shall be liable for any costs or damages incurred by anyone submitting plans for approval, or any other party, due to any mistakes in judgment, negligence or nonfeasance of the Architectural Control Committee in connection with the approval or disapproval of plans. Neither the Board of Directors or Officers of the Association, the members of the Architectural Control Committee, nor any person acting on behalf of any of them, shall be responsible for any defects in any plans or specifications, nor for any defects in any alterations or improvements constructed pursuant to same. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant to same.

7.11 Advisory Committee. Nothing in this Section 7 shall prohibit the Architectural Control Committee from appointing an advisory committee to assist in the various functions of the Architectural Control Committee; however, the final decision making of the Architectural Control Committee cannot be delegated to such a committee.

7.12 Permissible Alterations and Improvements; Architectural Standards. The Developer established a uniform scheme and appearance of the buildings. The Association desires to uphold this uniform scheme and appearance. Therefore, the rights of Owners and residents to make alterations and improvements to the exteriors of the Units; and outside of the Units; and alterations, improvements, decorations and changes on the interiors of the Units which can be viewed from the outside of the Units; is very limited. The following constitute architectural standards for the Community applicable to Owners and residents only, which the Board of Directors is empowered to supplement from time to time without having to amend the Declaration:

- A. Landscaping. An Owner may place bushes and ornamentals in the area immediately in front of and not to exceed a distance of four (4) feet from the base of the building, only upon the prior approval of the Architectural Control Committee. However, the replacement of landscaping with the same plant species (for instance, bush with bush or ornamentals with ornamentals) does not require the approval of the Architectural Control Committee under this Section 7. Any placement of landscaping with different plant species, or the addition of landscaping which did not exist before, requires the prior approval of the Architectural Control Committee under this Section 7. Furthermore, as may be permitted by the Architectural Control Committee, the Owner may install bordering material within the four (4) foot permitted area. No Owner shall be permitted to plant any landscaping material or remove same on the Common Area other than that referred to in this Section 7.12.A.
- B. Shutters.
  1. Non-Storm Shutters. The existing white decorative shutters are the only style allowed.
  2. Storm/Hurricane Shutters. Storm/hurricane shutters are permitted but are limited to the aluminum roll-up type, which rolls up into a box, which must be white in color. Storm/hurricane shutters may be placed into a closed position only beginning with the issuance of a hurricane watch or storm warning and must be opened within forty-eight (48) hours after the hurricane/storm danger has passed.
- C. Awnings. No awnings are permitted.
- D. Enclosures. No enclosures (screen or otherwise) shall be permitted in the courtyards, or elsewhere, except that the wooden beams over the entrance door, where applicable, may be covered in the manner prevailing in the Community. The

covering color shall be the same as the color of the beams and exterior doors and trim.

- E. Screening. Window screens and screen doors are permitted. The frame must be white in color, and the screening, charcoal in color.
- F. Windows. Reflective material/window tinting is/are permitted on the windows so long as the color of the material/tinting is gray or bronze in color. At no time shall aluminum foil be permitted on the inside or outside of the windows. The backing of window treatment on the interior of the window shall be of such color that it blends harmoniously with the exterior color(s) of the home. No sheets or similar material shall be used as window coverings. No jalousie windows are allowed. Sunshades and non-storm roll-ups shall be permitted but only on the sliding glass doors in the courtyards.
- G. Exterior Color Change. Other than the window reflective material/tinting allowed under Section 7.12.F next above, no Unit exterior color change is permitted.
- H. Walls and Fences. No walls or fences shall be permitted other than the ones originally constructed by the Developer.
- I. Gates. An entry gate into the courtyard is permitted provided that the gate is the color of the building and meets the following criteria:
1. If short wall by the entry: The gate must be the same height as the wall, and may be wood or wrought iron.
  2. If full wall by entry: The gate must be 6 to 7 feet in height and may be wrought iron only.
  3. If a gate will be attached to an adjoining Unit, that Unit's owner must grant permission, in writing, or the gate shall not be allowed.
- J. Room Additions. No room additions are allowed.
- K. Solar Panels. Solar panels/devices are absolutely prohibited.
- L. Antennae; Roof Ventilators; Satellite Dishes; Air Conditioning/Heating Units; Roofs. There shall be no television or radio masts, towers, poles, antennae or aeriels affixed, installed or maintained on any of the properties. No wind driven or electronic roof ventilators shall be permitted. No satellite dishes shall be installed anywhere in the Community. No windows/air conditioning/heating units may be installed on any Unit, it being the intention that only a central air conditioning/heating system is allowed. No cutting into the

roof for any reason shall be permitted.

- M. Exterior Wiring. No exterior wiring may be done or altered unless done or altered by a utility provider.
- N. General. Unless this Declaration provides otherwise: Even though an alteration or improvement to exteriors of the Units or to the interiors of the Units which can be viewed from the exteriors of the Units is specifically referred to in this Section 7.12 or in other Architectural Guidelines of the Architectural Control Committee or Board of Directors, in every instance the alteration or improvement requires the prior written approval from the Architectural Control Committee.

Section 8. USE RESTRICTIONS. The use of the Properties shall be in accordance with the following provisions as long as the Community exists:

8.1 Occupancy of Units; Subdivision.

- A. Occupancy. Each Unit shall be occupied by Owners and tenants and their family members, guests and invitees, as a residence and for no other purpose.
- B. Limitation on Occupancy - Number. Notwithstanding any provisions in this Declaration to the contrary, no Unit shall be occupied by more than two (2) persons per bedroom. This calculation shall not include any guest which may occupy a Unit for less than seven (7) days consecutively.
- C. Subdivision. No Unit may be subdivided into more than one Unit. Only the sale or other transfer of title to entire Units is permitted.

8.2 Pets and Animals. Pets and animals shall be permitted, only as provided for in this Section 8.2:

- A. Animals and pets shall be restricted to cats, dogs, fish, domestic birds, hamsters, lizards, gerbils, turtles, guinea pigs and rabbits.
- B. All dogs and cats must be inoculated against rabies by a duly qualified and licensed veterinarian and shall also be inoculated in like manner in such cases of emergency whenever ordered by a governmental entity.
- C. When outside of the Unit, all dogs and cats must be accompanied by an attendant who shall have such dog/cat firmly held by collar and leash, which leash shall not exceed eight (8) feet in length. No cats or dogs shall be permitted to run at large outside of the Unit; this shall not prohibit a cat or dog from being maintained without a leash or other restraint within the courtyard of the Unit in which the dog or cat resides and/or is maintained.

- D. The owner/custodian of each animal and pet and/or the individual walking same, shall be required to clean up after the pet/animal.
- E. The owner/custodian of the animal or pet shall remove his or her animal or pet from the Community when such animal or pet emits excessive noise such that same may be heard outside of the Unit.
- F. The pet/animal owner and the Unit Owner of the Unit involved shall be strictly liable for damages caused to the Common Area by the pet/animal.
- G. Any pet/animal owner's right to have a pet/animal reside in or visit the Community shall have such right revoked if the pet/animal shall create a nuisance or shall become a nuisance or a danger to the general public, as may be determined by the Board of Directors of the Association.

8.3 Vehicles and Parking.

- A. Prohibited Vehicles or Items. THIS SECTION A CONTAINS PROHIBITED VEHICLES OR ITEMS ("PROHIBITED VEHICLES"), WHICH ARE PROHIBITED AND SHALL NOT BE ENTITLED TO PARK ANYWHERE ON THE PROPERTIES. HOWEVER, IF A VEHICLE OR ITEM IS LISTED IN SECTION B RIGHT BELOW, THEN IT IS ALLOWED NO MATTER WHAT IS STATED IN THIS SECTION A.
  - 1. Motorcycles, dirt bikes or other two-wheeled motorized vehicles;
  - 2. Mopeds and other self-powered bicycles;
  - 3. C-J type Jeeps or other similarly designed vehicles;
  - 4. Trucks, including pick-up trucks or any vehicle with a passenger cab and cargo bed, whether covered or uncovered, whether with a bed top or without;
  - 5. Agriculture vehicles;
  - 6. Dune buggies, swamp buggies and all terrain and off-road vehicles;
  - 7. Any trailer or other device transportable by vehicular towing;
  - 8. Semis, tractors or tractor trailers;
  - 9. Buses;
  - 10. Limousines;
  - 11. Travel trailers;

12. Commercial vehicles as defined below;
13. Vehicles which are an eyesore;
14. Motorcycle delivery wagons;
15. Campers;
16. Recreational vehicles;
17. Mobile homes or mobile houses;
18. Truck mounted campers attached or detached from the truck chassis;
19. Motor homes or motor houses;
20. Motor vehicles not having any bodies whatsoever, or incomplete bodies;
21. Passenger automobiles that have been converted to a different type of motor vehicle by replacing the original body or by modifying the exterior and/or interior of the vehicle;
22. Vehicles that are noisy, unsightly or junkers, or which have flat or missing tires.
23. Vans, unless permitted by Section B.5 below; and
24. Boats and boat trailers.

B. Exceptions to A. above. The following are NOT considered PROHIBITED VEHICLES, and shall be entitled to park without the restrictions in Section A above, subject to other provisions in this Declaration or in the Rules and Regulations of the ASSOCIATION not inconsistent with this Section B.3:

1. Moving vans shall be permitted to park, but not on the grass for the purpose of loading and unloading and at no time shall same park as such during the hours of 9:00 p.m. to 6:00 a.m.
2. Vehicles, regardless of classification, necessary for the maintenance, care or protection of the Property, during regular business hours, and only for the time period during which the maintenance, care or protection is being provided.
3. Service and delivery vehicles, regardless of classification, during regular business hours and only for that period of time to render the service or delivery in question.
4. Vehicles for handicapped persons, "handicapped" being defined by any fair housing law.
5. Certain vans which are permitted. Subject to that provided above,

a two-axle van as defined below which is not a commercial vehicle as defined below; which contains windows on the rear of the vehicle, on both sides of the vehicle adjacent to the first row of seating, and also at least one set of windows on each side of the vehicle beyond the windows adjacent to the first row of seating.

6. Certain pick-up trucks which are permitted. Subject to that provided above, a two-axle pick-up truck, as truck is defined below; which is not a commercial vehicle as defined below; which does not have dual wheels; and which is not longer than 216 inches measured from bumper to bumper and which is not higher or wider than the standard manufacturer's specifications.
7. Motorcycles and mopeds. Motorcycles and mopeds are permitted so long as not parked within the courtyards.

C. Classifications and Definitions.

1. The most current edition of the N.A.D.A. Official Used Car Guide ("Guide") shall determine the classification of whether a vehicle is in fact a truck or van. If the Guide does not contain reference to a particular vehicle, then the manufacturer's classification shall control. If publication of the Guide shall be discontinued, an equivalent publication shall be selected by the Board of Directors to be used to determine vehicle classifications hereunder. Except as otherwise provided as to certain vans under Section B.5 above, a State registration or title classification shall have no bearing on determination of the classifications under this Section 8.3.
  2. A "commercial vehicle" shall mean any motor vehicle which has an outward appearance of being used in connection with business, such as: the vehicle displays work equipment to view and/or is commercially lettered or contains a commercial or business logo. Actual use of the vehicle shall not be considered; only its outward appearance shall be. A vehicle with a covered sign or logo shall still be considered to be a commercial vehicle. A vehicle with a removable sign or logo shall not, with the sign/logo removed, be considered to be a commercial vehicle unless it meets the definition of "commercial vehicle" even without the sign or logo.
  3. A "truck" shall mean any motor vehicle which is classified as a truck in accordance with C.1 above.
  4. A "van" shall mean any motor vehicle which is classified as a truck in accordance with Section C.1 above and which is recognized by the manufacturer to be a type of a van, and which has two (2) axles. Notwithstanding the foregoing to the contrary, a pick-up truck shall not be considered to be a van by the addition of a camper top or similar covering.
- D. Grandfather Provision. Any vehicle which was allowed by the Declaration prior to the recording of this amendment which is now prohibited by this amendment is grandfathered-in and shall not be considered a "PROHIBITED

VEHICLE" under this Section 8.3. However, no such vehicle may be replaced with a vehicle which fails to comply with this Section 8.3.

E. The following additional restrictions apply:

1. No repair (excluding changing of oil) of a vehicle shall be made within the Community except for minor repairs necessary to permit removal of a vehicle. However, washing, waxing, or the changing of tires of a vehicle are permitted.
2. No motor vehicle which is of the type of vehicle which is unregistrable shall be driven or operated on any of the Properties at any time for any reason.
3. No vehicle may be parked with an expired license plate or registration.
4. No motor vehicle, including moving vans, shall be parked at any time on the grass/swales within the Community (except for landscaping equipment at the direction of the Board of Directors).
5. Except where safety dictates otherwise, horns shall not be used or blown while a vehicle is parked, standing in or driving through parking areas and/or streets. Racing engines and loud exhausts shall be prohibited.
6. No vehicles may be parked such that it blocks any sidewalk, except where otherwise necessary by moving vans and only for loading and unloading.
7. There will be times where vehicles must be removed from the parking areas to accommodate maintenance, repairs or replacement of the parking areas in the Community. Upon reasonable notice from the Association that the foregoing will occur, each Owner, resident, Guest and invitee shall remove his/her vehicle for the time period requested, or the Owners shall become in violation of this Section 8.3.
8. All vehicles must appear in working order; no vehicles on blocks, jacks or ramps, shall be permitted; no flat or missing tires.

- F. Remedy of Towing. If upon the Association's provision of that notice required by Section 715.07, Florida Statutes, as amended from time to time, an offending vehicle owner does not remove a prohibited or improperly parked vehicle from the Community, the Association shall have the option and right to have the vehicle towed away at the vehicle owner's expense. By this provision, each Owner and vehicle owner provides the Association with the necessary consent to effect the tow. In the event that the Association incurs an expense with the tow and the vehicle owner fails to pay such costs upon demand, the Association shall have the right to levy a Charge for the costs against the Unit and Owner in question, that is, the Owner for himself/ herself as the owner of the vehicle or for his/her family, lessees, guests, employees, visitors, etc. as owner(s) of the vehicle (as such, the Unit Owner is liable for the vehicle violations of his/her family, lessees, guests, visitors,



etc.); thereupon, the Charge shall be collected as is provided for in this Declaration.

- G. Alternative/Concurrent Remedies. Whether or not the Association exercises its right to have the vehicle so towed, the Association shall nonetheless have the right to seek compliance with this Section 8.3 by injunctive and other relief through the Courts; and/or any other remedy conferred upon the Association by law or the Governing Documents. The Association's right to tow shall in no way be a condition precedent to any other remedies available to the Association incident to the enforcement of this Section 8.3.

8.4 Nuisances, Ordinances and Laws. No Owner shall use his Unit or Common Area or permit it to be used, in any manner which is unreasonably disturbing, detrimental or a nuisance to the occupant(s) of other Unit(s), or which would not be consistent with the maintenance of the highest standards for a first class residential development, nor permit the Unit or Common Area to be used in a disorderly or unlawful way, nor which will produce an insurance risk for the Association or other Owners or occupants. The use of each Unit shall be consistent with existing ordinances and laws and the Governing Documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

8.5 Clothing and Similar Articles; Clotheslines. No clothes or similar articles shall be allowed on the exterior portions of the Units, including courtyards. Nothing shall be hung, displayed or placed on the exterior walls, doors or windows of the Unit, except as may be permitted by Section 7 above and approved by the Architectural Control Committee under Section 7 above. No clotheslines are permitted anywhere on the Properties. The courtyards shall be maintained in an uncluttered appearance at all times. No Owner shall allow the Common Area to be cluttered and personal belongings of the Owner shall not remain outside of the courtyard overnight.

8.6 Signs. No signs of any type shall be maintained, kept or permitted on any of the Properties, including Unit (interior or exterior) such that they may be viewed from the Common Area or other Units. Exceptions: The following shall not be considered in violation of this Section 8.6:

- A. Official notices of the Association.
- B. One name and/or one address plate, as are approved by the Architectural Control Committee.
- C. Signs on permitted vehicles under Sections 8.3.B.3 and 4.
- D. Bumper stickers and parking decals which do not indicate any Unit or the vehicle is for sale or for rent.
- E. One small interior window sign stating that the Unit is protected by a security system may be installed.
- F. One small interior window sign denoting a handicapped or senior resident may be installed.

8.7 No Business Activity. No business of any kind whatsoever shall be erected, maintained, operated, carried on, permitted or conducted on the Properties. Also prohibited are garage sales, yard sales and the like. Proviso. Notwithstanding the foregoing to the contrary:

- A. Any business which qualifies as a home occupation under the applicable zoning code shall be permitted, however, a day care facility or operation (for any age) shall still be prohibited.
- B. The practice of leasing Units shall not be considered as a business activity under this Section 8.7.
- C. The business of operating the Association shall not be considered as business activity under this Section 8.7.
- D. Yard sales sponsored by the Association shall be permitted, but yard sales sponsored or held by anyone other than the Association are prohibited.
- E. There are satellite dishes and an enclosed area in the southeast portion of the Properties which is operated by a company providing cable television service to the Properties. Said satellite dishes and their operation shall not comprise a violation of this Section 8.7 or any other provision in this Declaration.

**8.8 Leasing and Occupancy of Units.**

- A. In General. Except as is otherwise provided in this Section 8.8, Units may be leased without approval by the Association. The provisions of this Section 8.8 shall be strictly followed.
- B. Notice. Each Owner shall provide notice to the Association of any lease or any other change in occupancy. The foregoing is referred to as a "Transfer" in this Section 8.8.
- C. Form Notice and Application. The Board of Directors of the Association is empowered to adopt a form to be used in connection with and as proper notification under this Section 8.8 and shall be entitled to require as part of proper notification, the beginning and ending of the lease term; the names of all occupants with ages; home and work telephone numbers, vehicle and pet information and such other information as is necessary to demonstrate to the Association that the occupants can meet the use requirements under this Declaration. The form shall include a requirement that all adult occupants must sign an acknowledgement that they have received a copy of, have read, and agree to abide by all of the Governing Documents and Rules and Regulations of the Association. A copy of the Lease shall accompany the notification form; however, the Owner may "block-out" the lease price and any information concerning deposits received. A reasonable fee as set by the Board of Directors may be charged in connection with this process.
- D. Subleasing. Subleasing of Units is permitted.
- E. Contents in Lease Agreement. Every Lease executed as of the Effective Date of this Declaration, whether oral or written shall contain, and if it does not contain, shall automatically be deemed to contain, the following:

1. That the lessee(s) and all occupants shall abide by all provision of the Governing Documents and reasonable Rules and Regulations, as amended from time to time.
2. That the parties recognize that the Association, as agent for the landlord/Owner, has the power to evict the tenants and occupants under Chapter 83, Florida Statutes, for violations of the Governing Documents and reasonable Rules and Regulations, as amended from time to time. The parties recognize that this remedy is in addition to any other remedies provided for in this Declaration.
3. That the parties recognize that rent shall be assigned to and paid to the Association to pay delinquent assessments and Charges, interest, costs and attorneys' and paralegal fees, incident to collection.

8.9 Trash and Garbage. No Unit shall be used or maintained as a dumping ground for rubbish, trash or other waste. Trash and garbage shall be placed only in containers as mandated by governmental authority or any Rules and Regulations adopted by the Board of Directors of the Association from time to time. The foregoing is subject to any regulations and policies of the collection authorities.

8.10 No Security. The Association provides no security in the Community.

8.11 No Solicitation. Business solicitation is absolutely prohibited; solicitation in connection with the business of the Association shall not violate this Section 8.11.

8.12 Water Retention Ponds. No fishing or boating is permitted in the water retention ponds, and no one is to enter same for any reason, except for Association or governmental authorized personnel for maintenance purposes.

Section 9. INSURANCE. In order to adequately protect the Association and the Properties required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

9.1 Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry under the Governing Documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Owners without naming them, and their mortgagees, as their interests shall appear.

- A. The cost of insurance premiums and other incidental expenses incurred by the Association in administering and carrying out the provisions of this Section 9 shall be a common expense of the Association; notwithstanding the foregoing, any increase in the premium occasioned by misuse, occupancy or abandonment of any Unit or of the Common Area by particular Owner(s) shall be levied against a Unit and Owner and paid by such Owner(s) as a Charge and collectible as Charges are collected pursuant to the Declaration.
- B. Premiums upon insurance policies may be financed in the manner as the Board of Directors deems appropriate.

- C. The Association is hereby permitted to purchase insurance policies which contain deductibles, which deductibles shall not exceed the maximum permitted (if applicable) under the insurance guidelines as published from time to time by FNMA.
- D. The Board of Directors of the Association is empowered to adjust claims under any policies of insurance carried by the Association.
- E. Each Owner shall provide insurance with respect to improvements made by the Owner, notwithstanding any provision to the contrary in this Section 9.

9.2 Required Coverage. The Association shall maintain adequate insurance covering the Common Area in an amount determined annually by the Board of Directors, and covering all structural portions of the Units in an amount equal to the maximum insurance replacement value, excluding foundation and excavation costs, as determined by the Board of Directors from time to time. "Structural portions" of the Units shall specifically EXCLUDE wall, floor and ceiling coverings and any electrical, plumbing, air conditioning and utility items referred to in Section 6.2.B.7 to be the maintenance responsibility of the Owner. Such insurance shall afford the following protection:

- A. Property and Casualty. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract. The coverage must include the following:
  - 1. Agreed Amount and Inflation Guard Endorsement, when it can be obtained; and
  - 2. Demolition Costs Endorsement Contingent Liability from Operation of Building Loss Endorsement, and Increased Costs of Construction Endorsement.
  - 3. The policy shall provide that cancellation or substantial reduction in coverage shall not occur without at least fifteen (15) days prior notice to all Institutional First Mortgagees.
- B. Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as required by the Board of Directors of the Association, with cross liability endorsement to cover liabilities of the Owners as a group, to an Owner.
- C. Automobile. Automobile liability for bodily injury and property damage for all hired and/or non-owned motor vehicles in such limits and protection and with such coverage as may be required by the Board of Directors of the Association.
- D. Directors, Officers and Agents Liability Insurance. The Association, to the extent available, shall maintain liability insurance to protect the persons referred to in Article VII of the Articles of Incorporation.
- E. Fidelity Bond. A minimum of three months of assessments, including reserves, per person having access to Association funds.

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

- A. Broad Form Comprehensive General Liability Endorsement.
- B. Medical Payments.
- C. Leakage, seepage and wind-driven rain.
- D. Flood Insurance. In the event that the Association purchases flood insurance at the request of an individual Owner, and not for the entire Community as a whole, then notwithstanding any provisions contained in this Declaration to the contrary, the cost of same shall be levied against the Owner as a Charge and collectible as Charges are collected under this Declaration.

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

9.5 Share of Insurance Proceeds. All insurance policies obtained by the Association relating to the Common Area shall provide that all proceeds covering property losses shall be paid to the Association.

9.6 Owners Covenants.

- A. Owners may, but shall not be required to, procure title insurance and insurance upon their personal property and for their personal liability and living expense, and for any other risks not otherwise insured by the Association in accordance with this section 9, and not otherwise required of the Owners by this section 9.6.
- B. All insurance purchased by Owners under this Section 9.6 shall be so purchased at their own expense.

9.7 Requires of FNMA, FHA or VA. The Association agrees to purchase such further and additional policies of insurance, and the amounts of coverage as may be required by the insurance requirements published by the Federal National Mortgage Association ("FNMA") or FHA or VA from time to time. This section 9.7 shall prevail notwithstanding any provisions contained in this Declaration to the contrary.

Section 10. RECONSTRUCTION AFTER CASUALTY.

10.1 General. Unless the vote of the Owners referred to in Section 10.4 below is obtained, any damage or destruction to the Common Area and Units resulting from a casualty shall be repaired or reconstructed and shall be substantially in accordance with the plans and specifications for the original improvements; or if such plans and specifications are lost or unavailable, then in accordance with plans and specifications approved by the Board of Directors of the Association. All insurance proceeds received by the Association (less costs) shall be distributed for the benefit of the Association and to the Owners (and their mortgagees) involved, proportionately as the Board of Directors reasonably determines, based on the proportionate amount of the total damage attributable to the

Common Area (if any) and to the Units involved.

10.2 Common Area. In the event of damage or destruction to the Common Area, and unless the vote of the Owners as referred to in Section 10.4 below is obtained, the following shall apply: If the proceeds of insurance (over and above costs) are not sufficient to defray the estimated costs of reconstruction and repair of the damaged Common Area, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, the Association shall levy a Special Assessment against all Owners in sufficient amounts to provide funds for the payment of such costs.

10.3 Units. In the event of damage or destruction of one or more of the Units, the following shall apply: Unless the vote of the Owners as referred to in Section 10.4 below is obtained, the insurance proceeds (over and above costs) allocated for the benefit of the Unit shall be used for reconstruction and repair. The Owner shall be responsible for the cost of any reconstruction or repair of building components for which the Owner is responsible to maintain under Section 6.2.8 above, for which the insurance proceeds are not adequate. Any proceeds remaining after reconstruction and repair shall be distributed to the Owner in question, the remittances to the Owner and his mortgagee to be paid jointly to them. This is a covenant for the benefit of any mortgagee of the Unit and may be enforced by the mortgagee. A remittance shall be made solely to an Institutional First Mortgagee when requested by same whose mortgage provides that the Mortgagee has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt.

10.4 Vote Not to Reconstruct or Repair. The following shall apply in the event that two-thirds (2/3) of the voting interests of the members vote not to reconstruct or repair after casualty: Any damage to the Common Area shall not be repaired or reconstructed, with the proceeds to be paid to and retained by the Association. With respect to the Units damaged by casualty, the proceeds applicable to each Unit after defraying costs, shall be distributed to the beneficial Owners with remittances to be made to the Owners and their mortgagees jointly. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by the mortgagee. Said remittance shall be made solely to an Institutional First Mortgagee when requested by same whose mortgage provides that the Mortgagee has the right to require application of the insurance proceeds to the benefit or reduction of its mortgage debt.

Section 11. CONDEMNATION OR EMINENT DOMAIN. The circumstances of a taking of Common Area by the power of eminent domain and/or of any taking of Common Area or other Properties by way of condemnation, eminent domain or inverse condemnation, shall be dealt with in such reasonable manner as determined to be appropriate under the circumstances by two-thirds of the entire Board of Directors of the Association. Each Owner appoints the Association as his attorney-in-fact for this purpose. In the event of taking or acquisition of part or all of the Common Area by the condemning authority, the award of proceeds of settlement shall be payable to the Association to be held in trust for Owners and their Institutional First Mortgagees as their interest may appear. For the purposes of this section 11, each Owner shall also be considered as having sufficient property rights in and to the Common Area so as to be able to institute a claim directly against the taking authority.

Section 12. COMPLIANCE AND DEFAULT; REMEDIES.

12.1 Duty to Comply; Right to Sue.

- A. Each Owner, his tenants, guests, servants and agents, and the Association, shall be governed by and shall comply with the provisions of the Corporate Acts, the Governing Documents, and the Rules and Regulations. Actions for damages, for injunctive relief, and/or for declaratory relief, for failure to comply may be brought by the Association or by an Owner against:
1. The Association;
  2. An Owner;
  3. Anyone who occupies (including tenant) or is a guest in a Unit; or
  4. Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.
- B. The Association shall also have any other remedies provided for in the Governing Documents and law.

12.2 Association Notice to Correct. In the event that any Owner shall fail to properly discharge his/her maintenance, repair and replacement obligations as provided for in Section 6 above; or shall fail to make and pay for maintenance, repair or replacement as provided for in Section 6 above; and in the judgment of the Board of Directors, same shall result in a condition of unsightliness tending to adversely affect the value or enjoyment of other Owners and residents; or should any Owner violate Section 7 above; or should the neglect or the willful misconduct of Owner(s) cause damage which then requires maintenance, repair or replacement by the Association; then the following shall apply:

- A. The Board may (but shall not be required to) provide notice of such condition(s) to the proper Owner(s), demanding that the condition(s) be corrected within thirty (30) days from the date the notice was sent. In the event that the Owner does not rectify the condition at the end of this period, then the Association shall be entitled to contract to have the necessary work performed (and entry onto the Unit), whereupon the cost of this work shall become a Charge against the Owner and Unit concerned (solely or proportionately as the Board shall determine) and collectible as Charges are collected under this Declaration.
- B. This Section 12.2 is in addition to the rights of entry as provided for in Sections 12.3 and 12.4 below.
- C. Provisos. Notwithstanding any provision to the contrary in this Section 12.2, the following shall apply:
1. The thirty (30) day notice period may be shortened or eliminated if the Board determines that an emergency exists to effect correction.
  2. The thirty (30) day notice shall not apply to Section 12.3 below.

12.3 Negligence; Damage Caused by Condition on Unit. Each Owner shall be liable to the Association for the expenses of any maintenance, repair or replacement of Common Area made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or lessees. If any condition, defect or malfunction existing on a Unit, whether caused by the Owner's negligence or otherwise, shall cause damage to the Common Area or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas, for all costs of repair or replacement not paid by insurance. If the Association effects correction, the cost shall be levied as a Charge against the Owner and Unit and collectible as Charges are collected under this Declaration; the Association may, but is not required to, provide notice to the Owner prior to effecting correction.

12.4 Association's Access into Units. The Association, by and through the Board of Directors, officers, or the agents or employees of the Association, has an irrevocable right of access to the Unit:

- A. For the purposes of protection, maintenance, repair, replacement, alteration and improvement of those Properties for which the Association is obligated to protect, maintain, repair and replace, and for which the Association is permitted to alter and improve, under the Governing Documents.
- B. In the event that an unsanitary or other condition exists which threatens the health or safety of other resident(s) or any condition exists which will cause disrepair or damage to the Properties.

12.5 Owners Responsible. Owners are strictly responsible to ensure that their family members, guests, agents, lessees, servants, etc. or any occupants of their Units comply with the Governing Documents and Rules and Regulations; as amended from time to time; and the Statutes which apply; and as such, are responsible and liable to the Association for violations of same by their family members, guests, agents, lessees, servants, etc. or any occupants of their Units.

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

12.7 Costs and Attorneys' and Paralegal Fees.

- A. In the event of a Lawsuit. In any legal proceeding arising out of an alleged failure of an Owner (for himself/herself or for his/her family members, guests, agents, lessees, servants, etc. or any occupants of the Unit), or the Association to comply with the Governing Documents, or the Rules and Regulations, as amended from time to time, or Law, the prevailing party shall be entitled to recover the costs of the proceedings and attorneys' and paralegal fees (including appellate attorneys' and paralegal fees).
- B. Enforcement Without Suit. If an Owner fails to comply with any provision of the Governing Documents or Rules and Regulations, as amended from time to time, or law, and as a result of such failure it becomes necessary for the Association to employ the services of an attorney in order to ensure that the Owner complies with same, the Owner shall be liable for such attorneys' fees and paralegal fees incurred by



the Association, regardless of whether or not a lawsuit may be instituted. Such attorneys' and paralegal fees shall become a Charge against the Owner and Unit and collectible as Charges are collected under this Declaration.

12.8 No Election of Remedies. All rights, remedies and privileges granted to the Association or Owners under any terms, provisions, covenants, or conditions of the Governing Documents or Rules and Regulations of the Association, or Law, shall be deemed to 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 such other additional rights, remedies, or privileges as may be granted by the Governing Documents, rules and Regulations, or at Law or in equity.

12.9 Special Additional Remedy of the Association - Eviction of Tenants and Occupants. The Association possesses all rights and remedies of the lessor/Owner under Chapter 83 of the Florida Statutes for the purposes of enforcing against violations of the Governing Documents and Rules and Regulations, as amended from time to time. If lessees and/or permanent occupants shall be in non-compliance with any of the Governing Documents and Rules and Regulations, the following may occur: Such a non-compliance shall be a breach of the Governing Documents and therefore a breach of the lease. The Association on behalf of the lessor/Owner may terminate the lease, and re-enter and re-take possession of the premises for and on behalf of the lessor/Owner, after providing the notices required by Chapter 83 of the Florida Statutes. The Association has the right to serve such notices, terminate the lease and seek possession of the Unit for and on behalf of the lessor/Owner, upon the expiration of thirty (30) days after the Association mails notice of such intent to the lessor/Owner, without the need for further notification nor the need to obtain specific permission from the lessor/Owner. The Association then has the right to institute eviction proceedings in Court against the lessees as agent for and on behalf of the lessor/Owner, based on the non-compliances mentioned above, after providing the required statutory notices to the lessee. The Association may exercise its rights and remedies under this Section 12.9 without any liability to the lessor/Owner or lessees/occupants (including, but not limited to, the loss of rent to the lessor/Owner and loss of possession by the lessees/ permanent occupants), except as may be provided for in Chapter 83, Florida Statutes. The lessees/Owner shall be jointly and severally responsible for the costs and paralegal and attorneys' fees incurred by the Association in connection with this matter only if the Association prevails in the eviction action.

Section 13. RIGHTS OF MORTGAGEES. The following rights shall apply to certain or all mortgagees, in addition to those rights contained elsewhere in the Governing Documents:

13.1 Amendments to the Declaration. Written consent of the Institutional Mortgagee of a Unit shall be required for any amendment to this Declaration referred to in Section 15.5 below.

13.2 Association Lien Foreclosure. Certain named mortgagees have certain rights in connection with Association lien foreclosure actions, as provided for in Sections 5.8.A and 5.11.E.1 above.

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

foreclose its mortgage in accordance with its terms, and to bid upon the Unit at the foreclosure sale. If the Association or any of its members redeem the mortgage or cure the default, it or they shall have a lien against the Unit for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of a past due assessment.

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

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

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

- A. Any proposed amendment to the Governing Documents effecting any change in any Unit's liability for common expenses, voting interests, or any change in the purposes to which any Unit or Common Area are restricted.
- B. Any proposed termination of the Declaration.
- C. Any 60-day or longer delinquency in the payment of assessments or charges owed by the Owner of any Unit on which the mortgagee holds a mortgage.
- D. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- E. Any condemnation or casualty loss that affects a material portion of the Community or the Unit securing its mortgage.
- F. Any proposed action that requires the consent of a specified percentage of mortgage holders.

13.7 Insurance. One copy of each insurance policy obtained by the Association or a certificate evidencing such policy and all endorsements shall be furnished by the Association upon timely written notice by and to each Institutional First Mortgagee. Copies of certificates shall also be furnished to an Institutional First Mortgagee, upon written request, not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is renewed or replaced as appropriate.

13.8 Access. All mortgagees shall specifically have a complete right of access to all of the Common Area, for the purpose of ingress and egress to any Unit upon which they have a mortgage loan.

13.9 Priority. All provisions of a real property mortgage in favor of an Institutional Mortgagee shall take precedence over the provisions of this Declaration, including the provisions of this Section 13. No breach of any of the provisions contained in the Declaration shall defeat or adversely affect the lien of any Institutional Mortgagee.

at any time made in good faith and for a valuable consideration upon any Unit.

13.10 Presumption. Where an institutional first mortgage, by some circumstance fails to be a first mortgage but it is evident that it is intended to be a first mortgage, it shall nevertheless, for the purpose of the Governing Documents be deemed to be an institutional first mortgage.

Section 14. TERMINATION OF DECLARATION. This Declaration may be terminated at any time within a six (6) month period of time prior to the end of any ten (10) year renewal date as referred to in Section 16.8.A below by a written instrument signed by the Owners of not less than less than seventy-five (75%) percent of the Units, and by the record owners of all mortgages upon the Units, indicating intention to terminate this declaration. Such instrument together with all signatures and consents must be recorded in the Public Records of the County to be effective and binding. In the event of any conflict between this Section 14 and any provisions contained in this Declaration regarding amendment of same, the procedures contained in this Section 14 with regard to termination of this Declaration shall control and govern.

Section 15. AMENDMENT OF DECLARATION.

15.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by the Owners of one-fourth (1/4) of the Units. If any amendment is proposed by written petition, the Board of Directors shall adopt a resolution approving the amendment.

15.2 Procedure; Notice and Format. Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting, unless insufficient time to give proper notice remains before that meeting. The full text of any amendment to the Declaration shall be included in the notice of the Owners' meeting of which a proposed amendment is considered by the Owners. New words shall be inserted in the text by underlining and words to be deleted shall be lined through with hyphens; however, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision \_\_\_\_\_ for present text."

15.3 Vote Required. Except as otherwise provided by Florida law, or by specific provision of the Declaration, this Declaration may be amended by concurrence of not less than a majority of the entire Board of Directors and not less than a majority of the voting interests of the entire membership of the Association.

15.4 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by any officer 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 the County.

15.5 Provisos. Notwithstanding any provision in this Declaration to the contrary, the following shall apply:

- A. No amendment shall operate to unlawfully discriminate against any Unit or class or group of Units.

- B. No amendment shall diminish or impair any of the rights, privileges, powers and/or options provided in this Declaration in favor of or reserved to record owners of any institutional mortgages unless the Institutional Mortgagee shall join in the execution of the amendment.
- C. No amendment shall affect the surface water management system, including the water management portions of the common areas, unless the St. John's River Water Management District shall join in the execution of the amendment.

Section 16. MISCELLANEOUS PROVISIONS:

16.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not affect the remaining portions thereof.

16.2 Priorities in Case of Conflict. In the event of conflict between or among the provisions of any of the following, the order of priorities shall be from highest priority to lowest:

- A. The Corporate Acts.
- B. Other Florida Statutes which apply.
- C. The declaration of restrictions, articles of incorporation and by-laws of Oakwood Villas II Master Association, Inc.
- D. This Declaration.
- E. The Articles of Incorporation.
- F. The By-Laws.
- G. The Rules and Regulations promulgated by the Board of Directors and Architectural Guidelines published by the Architectural Control Committee.
- H. That Declaration of Restrictions recorded in Official Record Book 2004, Pages 365-371, Public Records of the County.

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

16.4 Invalidity. In the event any Court shall hereafter determine that any provisions of this Declaration as originally drafted, or as amended, violates the rule against perpetuities or any other rules of law because of the duration of the period involved, the period specified in the Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law, and for such purpose measuring lives shall be that of the (original) incorporators of the Association.

16.5 Captions. The captions in the Governing Documents are inserted only as a matter of convenience and for ease of reference and in no way define or limit any provision in the Governing Documents.

16.6 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

16.7 Owners' Affirmative Duty. All Owners are charged with the affirmative duty to keep the Association advised, in writing, of any changes and mailing addresses. The Association shall be permitted to rely on the information supplied by Owners in writing.

16.8 Covenant Running with the Properties; Duration. All provisions of the Governing Documents and Rules and Regulations shall, to the extent applicable unless otherwise expressly provided in the Governing Documents to the contrary, be perpetual and be construed to be covenants running with the Properties in the Community, and all of the provisions of the Governing Documents and Rules and Regulations shall be binding upon and inure to the benefit of the Owners and the Association and their respective heirs, personal representatives, successors and assigns, and shall be binding on all residents, occupants, guests and invitees to the Properties. None of the provisions contained in the Governing Documents or in the Rules and Regulations of the Association are intended to create, nor shall be construed as creating, any rights in and for the benefit of the general public.

A. Duration. This Declaration, as amended from time to time shall run with and bind the properties until June 4, 2004, at which time the Declaration, as amended, shall automatically be renewed for successive periods of ten (10) years, unless and until terminated as provided in Section 14 above, subject to any amendments pursuant to Section 15 above.

Section 17. EFFECTIVE DATES. The Effective Date of the provisions of the Governing Documents shall be the date on which the particular previous declaration, articles of incorporation or by-laws, as amended, are recorded in the Public Records of the County. Provided however, that to the extent that any provision in the previous declaration, articles of incorporation or by-laws, as amended, contained a use restriction which is in effect the same or similar to that contained in any previous declaration, articles of incorporation or by-laws, as amended, then the effective date of such use restriction is the date of recording of any previous declaration, articles of incorporation, by-laws or amendment, as applicable.

CERTIFICATE OF ADOPTION OF AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS

THE UNDERSIGNED, being the duly elected and acting President and Secretary of OAKWOOD VILLAS II PROPERTY OWNERS' ASSOCIATION, INC. to be known as MALIBU VILLAS PROPERTY OWNERS ASSOCIATION, INC. hereby certify that the foregoing was approved by a majority of the entire Board of Directors on August 20, 1992 at a special Board Meeting called for the purpose, with quorum present; and by the affirmative vote of a majority of the voting interests of the entire membership of the Association which vote was held at a special members meeting on Sept 15, 1992 called for such purpose and with quorum present.

WHEREFORE, the Association has caused these presents to be executed in its name and its corporate seal to be affixed by its proper officers on the 15th day of



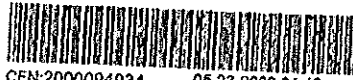
**Sandy Crawford**

Clerk Of Courts, Brevard County

#Pgs: 2 #Names: 2  
Trust: 1.50 Rec: 9.00 Serv: 0.00  
Dead: 0.00 Excise: 0.00  
Mtg: 0.00 Int Tax: 0.00

Prepared by, record and return to:

John L. Soileau, Esq.  
1970 Michigan Avenue, Building C  
P.O. Box 236007  
Cocoa, FL 32923-6007  
(321) 631-1550



CFN:2000094934 05-23-2000 04:46 pm  
OR Book/Page: 4167 / 1941

AMENDMENT TO AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR MALIBU VILLAS ("DECLARATION")

Pursuant to Section 15 of the Amended and Restated Declaration of Covenants and Restrictions for Malibu Villas ("Declaration") as recorded September 28, 1992, in Official Records Book 3232, Page 2505, Public Records of Brevard County, Florida, the undersigned hereby file this Amendment to evidence the consent and approval of not less than a majority of the Board and not less than a majority of the entire membership of Malibu Villas Property Owners' Association, Inc.

The following amendment was duly approved on March 2, 2000 and is and shall be effective upon the recording of this Amendment:

1. Paragraph 7.12(D) of the Declaration is amended to provide as follows:

Enclosures. Screened Enclosures that conform to Association standards and are approved by the Architectural Control Committee, shall be permitted in the courtyards. The wooden beams over the entrance door, where applicable, may be covered in the manner prevailing in the community. The covering color shall be the same as the color of the beams and exterior doors and trim.

2. Paragraph 8.8(A) of the Declaration is amended to provide as follows:

In General. Except as is otherwise provided in this Section 8.8, units may be leased only with the approval of the Association. The provisions of this Section 8.8 shall be strictly followed.

CERTIFICATE

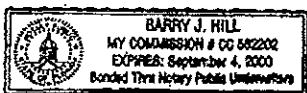
The undersigned hereby certifies that the foregoing amendments were duly adopted by not less than a majority of the members and not less than a majority of the Board.

MALIBU VILLAS PROPERTY OWNERS' ASSOCIATION, INC.

By: Gerard Cassidy  
Print Name: Gerard Cassidy  
Title: President  
Address: 1445 MALIBU CIR NE, # 101  
Palm Bay, FL

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 18 day of MAY, 2000 by Gerard CASSIDY, as PRESIDENT of Malibu Villas Property Owners' Association, Inc. who is personally known to me or who has produced \_\_\_\_\_ as identification and who did not take an oath.



Notary Public:

Barry J. Hill  
Name: \_\_\_\_\_  
State of Florida at Large (SEAL)  
My Commission Expires:



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