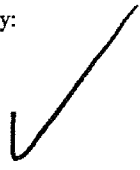


RETURN TO:

This Instrument Was Prepared By:
Christopher J. Thornton, Esq.
Treiser, Collins & Vernon
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Naples, FL 34112
Telephone (239)649-4900



INSTR # 6155759
OR BK 04205 Pgs 3815 - 3863; (49pgs)
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CHARLIE GREEN, CLERK OF COURT
LEE COUNTY, FLORIDA
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ESTERO PALMS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ESTERO PALMS is made this 20 day of February, 2004, by ESTERO PALMS DEVELOPMENT COMPANY, LLC, a Florida Limited Liability Company (hereinafter referred to as the "Developer" or "Declarant") for itself and its successors, grantees and assigns.

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Land"), and intends to develop or has developed or has caused to be developed on all or portions of the Land a planned residential community known as "Estero Palms" (hereinafter the "Neighborhood"); and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in the Neighborhood, and to subject the Land to the land use covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth; and

WHEREAS, Declarant has deemed it desirable for the effective preservation of the values and amenities established as aforesaid to create a corporation known as Estero Palms Homeowner's Association, Inc., a Florida not-for-profit corporation, to which there has been or will be delegated and assigned certain powers and duties of ownership, operation, administration, maintenance and repair of the Neighborhood and improvements, and the enforcement of this Declaration of Covenants, Conditions and Restrictions, and the collection and disbursement of the assessments and charges hereinafter more particularly set forth; and

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Declarant declares that the Land as described on Exhibit "A" to this Declaration shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth. The covenants and restrictions contained in this Declaration shall run with the Land and be binding upon and inure to the benefit of all present and future Owners of the Land or any part thereof. The acquisition of fee simple title or

Estero Palms -- DECLARATION

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any other ownership interest in or to any part of the Land, or any Lot, or the lease, occupancy, or use of any portion of a Dwelling Unit, any part of which is located upon the Land, shall constitute an acceptance and ratification of all provisions of this Declaration and an agreement to be bound by its terms. The Declarant reserves the right to add property, real or personal, to this Declaration.

1. DEFINITIONS. All terms and words in this Declaration and its recorded exhibits shall have the definitions and the meanings stated below unless the context clearly requires otherwise.

1.1 "Articles" means the Articles of Incorporation of Estero Palms Homeowner's Association, Inc., a Florida not-for-profit corporation.

1.2 "Association" shall mean and refer to Estero Palms Homeowner's Association, Inc., a Florida corporation not-for-profit and such other associations created by the Developer for the purpose of carrying out the provisions of this Declaration, whose Articles of Incorporation are attached hereto as Exhibit "B" and Bylaws are attached hereto as Exhibit "C".

1.3 "Association Expenses" means the expenses for which the Owners are or may be liable to the Association in accordance with the method of allocation described herein and includes the following:

1.3.1 Common Area Expenses which mean and include expenses incurred or to be incurred by the Association with regard to ownership, operation, administration, maintenance and repair of the Common Area or any part thereof; and

1.3.2 Lot and Dwelling Unit Expenses which means and includes those expenses incurred or to be incurred by the Association with regard to the operation, administration, maintenance and repair of Lots and Dwelling Units as set forth in the provisions of this Declaration.

1.4 "Board of Directors" or "Board" means and refers to the Board of Directors of the Estero Palms Homeowner's Association, Inc.

1.5 "Bylaws" means the Bylaws of the Estero Palms Homeowner's Association, Inc.

1.6 "Common Area" means all real and personal property (including the improvements thereto) now or hereafter owned, dedicated to, and/or maintained by the Association for the common use and enjoyment of the Owners. The Common Area includes, without limitation, tracts for rights-of-way or access easements and corresponding roads and streets, utility easements or tracts for corresponding sewer and potable water, the Roadways, and all other areas of the Land intended for the common use and enjoyment of the Owners. The Declarant and the Board have the power to designate which areas of the Land are Common Areas from time to time. The Common Areas shall be owned and maintained by the Association, for the common use and enjoyment of the Owners, in accordance with the purposes for which they are intended, but no such use and enjoyment shall unreasonably hinder, diminish, destroy or encroach upon the lawful rights of the Owners.

1.7 "County" means Lee County, Florida.

1.8 "Declarant" or "Developer" means and refers to Estero Palms Development Company, LLC, its successors and assigns, provided that an Owner shall not, solely by purchase of a Dwelling Unit, be deemed a successor or assign of Developer or of the rights of Developer under this Declaration unless such Owner is specifically so designated as a successor or assignee of such rights in the respective instrument of conveyance or any other instrument executed by the Developer. The Developer shall have the right to designate any other party or entity as a successor Developer, and if such designation occurs, the designated party or entity shall succeed to all of the Developer's rights and powers as set forth in these documents.

1.9 "Declaration" means and refers to this Declaration of Covenants, Conditions and Restrictions for Estero Palms, as it may be amended from time to time.

1.10 "Dwelling Unit" or "Unit" means and refers to the improvements on the Lot or Parcel comprising the residential unit and the amenities appurtenant thereto.

1.11 "Family" shall refer to any one of the following:

- A. One natural person.
- B. Two or more natural persons, each of whom is related by blood, marriage or adoption to each of the others.
- C. Two or more natural persons meeting the requirements of B above, except that there is among them one person who is not related to some or all of the others.

Should any Owner employ an individual(s) as a companion, nanny or maid, and such individual(s) resides in the Unit, then that individual(s) shall be deemed a Family member for purposes of this Declaration and its exhibits.

1.12 "Governing Documents" or "Neighborhood Documents" means and refers to this Declaration and all exhibits hereto, and the Articles of Incorporation, Bylaws, the Rules and Regulations and the Resolutions of the Association, all as they may be amended from time to time. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority stated above.

1.13 "Guest" means any person who is physically present in, or occupies a Unit on a temporary basis at the invitation of the Owner, without the payment of consideration.

1.14 "Institutional Mortgagee" shall mean the holder of any mortgage encumbering the Land, any Lot, or Dwelling Unit or any part thereof, which holder is the Declarant, Estero Palms Development Company, LLC, a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust; or the Federal Housing

Administration, the Veterans Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, any agency of the United States of America or the Government of the State of Florida, or the holder of a first mortgage which 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. The term also includes any and all individuals, corporations, lending institutions, or other entities, or the successors and assigns of same which have loaned money to Declarant, Estero Palms Development Company, LLC, or any entity or person which succeeds to Declarant's position as Declarant with respect to part or all of the Land and which hold a mortgage upon any portion of the Properties securing such a loan.

1.15 "Land" means the land more particularly described on Exhibit "A", which is subject to this Declaration, including Common Areas, if any, and any additional real estate which may hereafter be declared to be subject to this Declaration and all improvements made thereto including Dwelling Units.

1.16 "Lease" means the grant by a Unit Owner of a temporary right of use of a Dwelling Unit for valuable consideration.

1.17 "Lot" means one or more of the platted parcels into which the Land has been or may be subdivided, on which a single Dwelling Unit has been or is intended to be constructed, the legal description of which is set forth in the deed of conveyance. Wherever herein the term "Lot" is used, it shall be interpreted as if followed by the words "and Dwelling Unit constructed thereon," except where the context clearly requires otherwise. The Developer may subject additional Lots to this Declaration.

1.18 "Member" means and refers to all persons who are members of the Association as provided in this Declaration, and the Articles of Incorporation and Bylaws of the Association.

1.19 "Neighborhood" means the residential community which is to be developed upon the Land and all improvements now or hereafter located thereon and includes the Land and all improvements on any Land submitted to the provisions of this Declaration, and any lands added hereafter pursuant to the right to add additional lands.

1.20 "Occupant", when used in connection with a Dwelling Unit means any person who is physically present in the unit on two (2) or more consecutive days, including staying overnight.

1.21 "Owner" means and refers to any person or persons, entity or entities, who are the record owner of the fee simple title to any Lot or Dwelling Unit located within the Land.

1.22 "Permit" means one or more of the zoning, land use, development, water management, wetlands, and other approvals, permits, consents, and the like issued by Lee County, the U.S. Army Corps of Engineers, the State of Florida or any agency thereof or any other governmental authority relating in any manner to the Land and the use, development and

occupancy thereof. Permits include, without limitation, the following to the extent the same are applicable to the Project: 1) Zoning approvals issued by Lee County, Florida; and 2) Lee County, Florida Development Orders.

1.23 "Plat" means and refers to any and all plats of all or a portion of the Land from time to time, including without limitation, the plat for Estero Palms, a subdivision as recorded in Plat Book 76, Page 94-95, of the Public Records of Lee County, Florida.

1.24 "Primary Occupant" means the natural person approved for occupancy, together with his family, when title to a Dwelling Unit is held in the name of more than two (2) persons, or by a trustee or a corporation or other entity which is not a natural person.

1.25 "Roadways" means and refers to the roadways serving the Land from time to time and includes, without limitation, Tracts A and B as shown on the Plat.

1.26 "Rules and Regulations" means and refers to the administrative rules and regulations governing the procedures for administering the Association and the use of the Land as adopted by resolution of the Board of Directors.

1.27 "Surface Water Management Systems" means and refers to the surface water management system serving the Land, including without limitation all berms, drainage easements, lakes, wetland and other preserve areas and all water management, drainage and related facilities located on, over, under and across the same or otherwise comprising a portion of the surface water management system serving the Land.

1.28 "Tract" means one or more of the areas designated as a "Tract" on any Plat of all or a portion of the Land. Tracts may be for the purpose of future residential development, for Common Areas, or other purposes, as designated by the Declarant from time to time.

2. CONTINUATION OF DEVELOPMENT. The Land is being developed by the Declarant into Lots intended for the construction of single-family residences. The Owners recognize that the Land may be under development for an extended time. Incident to that development, the Owners acknowledge that the quiet enjoyment of the Land may be unavoidably interfered with to some extent by construction and sales operations. From time to time, Declarant and others may or may have presented to the public certain renderings, plans, and models showing possible future development of the Neighborhood. Declarant does not warrant in any way the schemes in these renderings, plans or models. They are primarily schematic and in no way represent a final development plan for the Neighborhood.

3. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS. The administration and management of the Neighborhood shall be by the Association and such other associations created for the specific purposes of carrying out the provisions of this Declaration, which shall perform their functions pursuant to the following:

3.1 Articles of Incorporation. Copies of the Articles of Incorporation of the Association are attached as Exhibit "B".

3.2 Bylaws. The Bylaws of the Association shall be the Bylaws attached as Exhibit "C", and as may be amended from time to time.

3.3 Delegation of Management. The Association may contract with a third party for the management and maintenance of the Neighborhood and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, and the maintenance, repair and replacement of any Common Areas, with funds made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties provided in the Neighborhood Documents.

3.4 Members. Every person or entity who is a record Owner of legal title to any Lot, including Developer, at all times so long as Developer owns all or any part of the property subject to this Declaration, shall be a Member, provided however, that no such person or entity who holds such interest merely as security for the performance of an obligation shall be deemed the Owner for purposes of determining membership and use rights. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which Membership is based.

3.4.1 Class A. Class A Members shall be all Owners, as defined in Section 1, with the exception of the Class B Member. Class A Membership as to a Lot shall become effective automatically, without the necessity of approval by the Association, upon the occurrence of the last to occur of the following events:

- A. Recording in the Public Records of a Deed or other instrument evidencing legal title to the Lot vested in the Member.
- B. Delivery to the Association of a copy of the recorded Deed or other instrument evidencing title.
- C. Delivery to the respective Association, if required, of a written designation of a Primary Occupant.

3.4.2 Class B. The Class B Member shall be the Declarant or any assignee, in whole or in part, of the Declarant's development rights.

3.5 Voting Interests. The Class A Members of the Association are entitled to one (1) vote for each Lot owned by them. The total number of Class A votes shall not exceed the total number of Lots in the Neighborhood. The vote of a Lot is not divisible. If a Lot is owned by one natural person, his right to vote shall be established by the record title. If a Lot is owned jointly by two or more natural persons who are not acting as Trustees, that Lot's vote may be cast by any one of the record Owners. If two or more Owners of a Lot do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the Owner of a Lot is not a natural person or is a trustee, the vote of that Lot shall be cast by the Dwelling Unit's primary occupant designated as set forth in Section 11 of this Declaration. The Class B Member

shall be entitled to one (1) vote for each Lot which the Class B Member owns, or has an option to acquire. Class B Membership shall cease to exist at the turnover date as specified in Section 13 herein or at such earlier time as Developer actually turns over control of the Association, whereupon the Developer shall become a Class A Member as to all Lots owned by it. At all times prior to the termination of Class B Membership, the Class B Member shall have the same number of votes at any meeting in which votes are to be taken as are held by all Class A Members, plus one.

3.6 Approval or Disapproval of Matters. Whenever the decision or approval of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision or approval shall be expressed by the same person who would cast the vote of such Owner's Lot if in an Association meeting, unless the joinder of all record Owners is specifically required.

3.7 Vote Required for Initiation of Legal Action. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of the Owners of two-thirds (2/3) of all Lots within the Neighborhood (at a duly called meeting of the Association, at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

3.7.1 The collection of assessments or fees;

3.7.2 The collection of other charges which Owners are obligated to pay pursuant to the Declaration;

3.7.3 The enforcement of the use and occupancy restrictions contained in the Declaration; or,

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

This Section 3.7 shall not impair or effect the right of the Developer to initiate a suit or other legal action on behalf of the Association without the consent of the Owners, as determined by the Developer to be in the best interest of the Association and Owners.

3.8 Notice Required for Initiation of Legal Action. Further, the Board of Directors shall not institute any significant legal proceeding, including any arbitration or judicial reference proceeding, against any person without providing the Members of the Association with at least thirty (30) days prior written notice of the Association's intention to institute legal proceedings. The notice shall describe the purpose of the proceedings, the parties to the proceeding, the anticipated costs to the Association (including attorneys' fees) in processing the proceeding, the source of funds to process the proceeding (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the proceeding is being prosecuted. For purposes of this Subparagraph 3.8,

"significant legal proceedings" shall mean any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

3.8.1 The levy of a special assessment to fund all or any portion of the costs of the proceeding;

3.8.2 The expenditure of funds from the Association reserves in connection with the proceeding in an amount in excess of five percent (5%) of the then current reserves;

3.8.3 The amount of the claim is in excess of Twenty Five Thousand Dollars (\$25,000.00); or

3.8.4 The action could have a material adverse effect on the ability to sell and/or refinance a Lot or Dwelling Unit within the Development during the period the proceeding is being prosecuted.

Notwithstanding the foregoing, the notice shall not be required to commence and pursue any action to collect delinquent assessments as described in Section 4. Furthermore, if the Board of Directors in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations or prior to the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than thirty (30) days following the commencement of the proceeding, the Board of Directors shall provide the Members with notice as required herein.

3.9 Developer Approvals. As long as Developer holds Lots, or the option to acquire additional Lots within Estero Palms for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

3.9.1 Assessment of Developer as an Owner for capital improvements; or

3.9.2 Any action by the Association that would be detrimental to the sale of Lots or Dwelling Units by Developer. The determination as to what actions would be detrimental to sales shall be in the sole discretion of Developer.

3.10 Change of Members. A change of membership in the Association shall be established by the new Owners' membership becoming effective as provided in Section 3.4 above; and the membership of the prior Owner shall thereby be automatically terminated.

3.11 Termination of Membership. The termination of membership in the Association does not relieve or release any former Member from liability or obligation incurred under or in anyway connected with the Association during the period of this membership, nor does it impair any rights or remedies which are in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3.12 Association as Owner of Lots. The Association has the power to purchase Lots and Dwelling Units, and to acquire and hold, lease, mortgage, and convey them, subject to the approval of a majority of the Board of Directors.

3.13 Membership Roster. The Association shall maintain a current roster of names and mailing addresses of Owners and Primary Occupants. A copy of the up-to-date roster shall be available to any Owner upon request.

3.14 Limitation on Liability. Notwithstanding the duty of the Association to maintain and repair any Common Areas, the Association shall not be liable to Owners for property 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 or Owners or other persons.

3.15 Board of Directors. Except as otherwise provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the Members shall be required. The officers and directors of the Association have a fiduciary relationship to the Members.

3.16 Powers and Duties. The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapters 607, 617, and 720, Florida Statutes, as applicable, to the extent not inconsistent with the foregoing documents, and shall without limitation specifically include the following:

(A) The Association shall have the power to own and convey property, including without limitation the Common Areas.

(B) The Association shall have the power and responsibility to operate, repair and maintain the Common Areas, including without limitation, the Surface Water Management Systems, as the same are permitted pursuant to the Permits, and by the governmental authorities that have issued the Permits, from time to time. The Association shall pay the cost of discharging the above responsibilities.

(C) The Association shall have the power and authority to establish Rules and Regulations from time to time, as more particularly set forth herein or in the Articles of Incorporation or the Bylaws.

(D) The Association shall have the power and authority to assess Members as hereinafter described and to enforce such assessments as hereinafter described.

(E) The Association shall have the power to contract for services to provide for the operation and maintenance responsibilities of the Association and the other duties and obligations of the Association.

(F) The Association shall have the power to contract and to sue and be sued.

(G) The Association shall have all other powers necessary to effectuate the purposes for which it is formed and to perform its duties and obligations, as such purposes, duties, and obligations are defined and described in this Declaration and the other Neighborhood Documents.

(H) The Association shall be responsible for paying the cost of performing its duties and obligations under this Declaration and shall have the power to assess the Owners therefore.

(I) If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which that Association could bring a class action. Nothing herein limits any statutory or common law right of an individual Owner or class of Owners to bring any action which may otherwise be available.

(J) The Association shall have the power and authority to improve and maintain such Roadways or portions of Roadways as may be necessary or convenient to provide adequate vehicular and pedestrian ingress and egress to the Land and the Lots, including but not limited to Block Lane or portions of Block Lane, whether or not said Roadways are located within the Land, and to contribute to, contract for, or share in the responsibility for the improvement and maintenance of such Roadways.

4. COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS.

4.1 Creation of Lien and Personal Obligation for Assessments. Each Owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- A. the Lot's prorata share of annual assessments based on the annual budget adopted by the Association;
- B. the Lot's prorata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments;
and
- C. any charges against less than all of the Lots ("Individual Lot Assessment") specifically authorized by the Neighborhood Documents.

Assessments shall be established and collected as provided herein and in the Bylaws. The annual and special assessments and charges, including any Individual Lot Assessment, together with interest, costs, and reasonable attorney's fees shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without

prejudice to the rights of the transferee to recover from the transferor the amounts paid by the transferee therefor.

4.3 Share of Assessments. Except as otherwise provided herein, each Lot and the Owner thereof shall be liable for an equal share of all annual and special assessments of the Association, such share being a fraction of the whole, the numerator being "one" (1) and the denominator being the total number of Lots within the Neighborhood.

4.4 Developer's Guarantee of Assessments and Share for Lots Owned By It. During the period that Developer is in control of the Association, the Developer guarantees payment of any operating expenses incurred that exceed the assessments receivable from other Lot Owners and other income of the Association. During this period, Developer shall be excused from the payment of assessments for Lots owned by it, and instead shall pay that portion of all Association expenses actually incurred which exceeds the amounts assessed against other Lot Owners and other income of the Association. After this guarantee period, the Developer shall have the same responsibility for assessments as to Dwelling Units for which a Certificate of Occupancy has been issued as any other Owner, provided however, that under no circumstances shall the Developer have any obligation to pay assessments for any Lot held by the Developer as long as the Lot shall be unimproved.

4.5 Establishment of Liens. Any and all assessments and charges levied by the Association in accordance with the provisions of this Declaration or any of the Neighborhood Documents, together with interest at the highest rate allowed by law, and costs of collection (including, but not limited to, reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Lot and Dwelling Unit against which each such assessment or charge is made, and shall also be the personal obligation of the Owner of each Lot and Dwelling Unit assessed. This lien shall relate back to the date of recording of this Declaration and shall be superior to all rights and interests of others acquired after that date, except to the extent expressly provided herein. This lien is superior to any homestead rights the Owner or Owner's spouse, other family members or heirs may acquire. No Owner may exempt himself from personal liability for assessments, or release the Dwelling Unit owned by him from the liens and charges hereof, by waiver of the use and enjoyment of any Common Areas, or by abandonment of his Unit. Said lien shall be perfected from and after the recording of a Claim of Lien in the Public Records of Lee County by the Association setting forth the amount and due date of each unpaid assessment as of the date the Claim of Lien is recorded. A Claim of Lien shall secure payment of all assessments and charges due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments and charges coming due subsequently, until the Claim or Lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by the Claim of Lien, the party making payment is entitled to a satisfaction in recordable form. The Developer shall be exempt from an Association's lien, rights, interest, and any late fees as to any assessments or guaranteed amounts owed by the Developer.

4.6 Priority of Liens. The Association's lien for unpaid assessments and charges shall be superior to all rights and interest in a Lot acquired subsequent to the recording of this Declaration; however, such lien shall be subordinate and inferior to the lien of any recorded

mortgage of an Institutional Mortgagee, and any mortgage of the Developer unless the Association's Claim of Lien was recorded prior to the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when recorded. Any Lease of a Dwelling Unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the Lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser, or mortgagee shall hold title subject to the liability and lien of any assessment or charge coming due after taking title. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be treated as a special assessment divided equally among, payable by, and assessed against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

4.7 Collection of Assessments. If any Owner fails to pay any assessment, charge, or installment thereof, within ten (10) days after the same becomes due, then the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

A. To charge interest on such assessment or charge, from the date it becomes due until paid, at the highest rate allowed by law, as well as to impose a late payment penalty of Twenty-Five Dollars (\$25).

B. To deny Association approval of any proposed Lease of the Owner's Lot and Dwelling Unit

C. To accelerate the due date for the entire remaining unpaid amount of the annual assessment against the Owner's Lot for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

D. To file an action to foreclose its lien. The lien may be foreclosed by an action in the name of the Association in the same manner as provided by Florida Statutes, as amended from time to time, for the foreclosure of liens for unpaid assessments.

E. To bring an action at law for a money judgment against the Owner without waiving any foreclosure rights of the Association.

If any Owner fails to pay any regular annual assessment, or installment thereof, within ninety (90) days after the same becomes due, then the Association may suspend the voting rights of the Owner in the Association.

4.8 Certificate. The Association shall, within fifteen (15) days of request for same, furnish to any Owner liable for assessments, purchaser of a Lot, or actual or proposed mortgagee of a Lot, a certificate in writing signed by an officer of the Association, setting forth whether all assessments and charges have been paid. Except with respect to an Owner of the Lot holding title to the Lot when a certificate is furnished, such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

4.9 Initial Capital Contribution. In addition to the annual assessment, there shall be a one time capital contribution assessment in the amount of Five Hundred Dollars (\$500.00) collected from each Unit Owner at the time of closing. This initial capital contribution shall be placed in an interest-bearing escrow account and shall not be used prior to the turnover of the Association from the Developer to the Owners.

4.10 Commencement and Collection of Assessments. The assessments provided for herein shall commence as to each Lot as of the date of conveyance of the Lot to an Owner other than Developer; provided, however, that at Developer's option in any case the commencement of assessments on any Lot may be delayed until such time as it has been conveyed to an end buyer at retail. No Lot shall be or become subject to or required to pay the assessments provided for hereunder until such time as it has been conveyed by the Declarant to the first Owner other than Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of any annual or special assessment against each Lot at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. Annual assessments shall be due and payable quarterly (unless the Board establishes otherwise) in advance. Written notice of the annual and any special assessment shall be sent to every Owner subject thereto. The Association may in its discretion cause to be recorded in the Public Records of Lee County, Florida a list of delinquent assessments as of that date.

5. ARCHITECTURAL AND AESTHETIC CONTROL.

5.1 Except for the initial construction of Dwelling Units and related improvements by the Developer and interior modifications that do not alter the exterior appearance of the Lot or Dwelling Unit, no improvement, addition or deletion, or structure of any kind, including but not limited to, any building, fence, wall, screen or other enclosure, drain, sewer, well, disposal system, swimming pool, tennis court, decorative building or landscape device, grading, excavation or change of exterior color, or other improvement, shall be erected, placed, maintained or altered upon any Lot or elsewhere on the Land, nor shall any addition, change, alteration, repair or replacement therein or thereof be made, unless and until the plans, specifications and location of the same shall have been submitted to, and approved in writing by the Board. In obtaining said written approval, the Owner or any other person applying shall comply with all applicable requirements and procedures of this Declaration and the Neighborhood Documents. All plans and specifications shall be evaluated as to harmony of external design, location in relation to surrounding structures and topography, and consistency with the Neighborhood. Neither the Association, the Board, nor any member of the Board shall have any liability to anyone by reason of any acts or action taken in good faith pursuant to this Section 5.

5.2 The architectural review and control functions of the Association shall be administered and performed by the Board. In performing this function, the Board shall have the following powers and duties:

a) To create, and to amend from time to time as appropriate, the "Architectural Planning Criteria", which shall be consistent with the provisions of this Declaration. Notice of any modification or amendment of the Architectural Planning Criteria, including a verbatim copy of the original or amended text of such criteria, shall be delivered to each Member of the Association; provided, that the delivery to each Member of notice and a copy of any adoption or amendment to the Architectural Planning Criteria shall not constitute a condition precedent to the effectiveness or validity of such change or modification.

b) To require submission to the Board of two (2) complete sets of all plans and specifications for any improvement or structure for which approval is requested together with copies of any required governmental approvals and permits, and also samples of building materials proposed for use on any Lot; and to require such additional information as may reasonably be necessary for the Board to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Planning Criteria. The Board shall have thirty (30) days to approve or disapprove once a complete set of plans and specifications has been submitted. In the event the Board has not in writing approved or disapproved such plans and specifications within such thirty (30) day period, Board approval of such plans and specifications shall not be required. However, in the event the Board receives a submission that is not complete, and requests additional information reasonably necessary for the Board to completely evaluate the proposed structure or improvement, the thirty (30) day period shall not begin until the requested additional information is submitted.

c) To approve or disapprove any improvement or structure described in Section 5.1 above for which approval is requested. All decisions of the Board shall be submitted in writing to the applicant, and reasons for denial, if applicable, shall be stated. Denial may be for any reason, including purely aesthetic reasons. If any improvement or structure as aforesaid shall be added, changed, altered, repaired or replaced without prior written approval of the Board, then the Owner shall, upon demand, cause the improvement or structure to be restored as originally constructed by Declarant or subsequently approved by the Board and shall bear all costs and expenses of such restoration, including costs and reasonable attorney's fees.

d) To adopt a schedule of reasonable fees for processing requests for Board approval of proposed improvements. Such fees, if any, shall be payable to the Association, in cash, at the time that plans and specifications are submitted to the Board.

6. EASEMENTS.

6.1 Encroachments. There shall be reciprocal appurtenant easements of encroachment as between each Lot or Dwelling Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots or Dwelling Units due to the unintentional

placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Lot or Dwelling Unit and the adjacent portion of the Common Property or as between said adjacent Lot or Dwelling Unit, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, Occupant, or the Association.

6.2 Easements. The Developer (during any period in which the Developer has any ownership interest in the Land) and the Association shall have the right to grant such electric, telephone, gas, water, sewer, irrigation, drainage, cable television or other easements, and to relocate any existing easement in any portion of the Land and to grant access easements and to relocate any existing access easements in any portion of the Land as the Developer, or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Land, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the use of the Lots and Dwelling Units burdened thereby. Each Dwelling Unit and Lot shall be subject to an easement in favor of all other portions of the Land to locate utilities and provide drainage and support and to use, maintain, repair, alter and replace the party walls, structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving other portions of the Land. Each public or private utility company benefited by any utility easement created by any Plat or this Declaration shall own all utility facilities operated by it in the utility easement and be responsible for maintaining such facilities, including without limitation all cable, electric, sewer, potable water, and irrigation facilities. The Association shall be benefited by any utility easement located within the Land, whether or not so expressed in the Plat or other document creating such easement, and shall own any utility facilities owned by it within any such easement. The surface of all utility easements shall be maintained by the Association or other owner of the Land which owns the surface, in accordance with the terms of this Declaration.

6.3 Driveway. The Owner of each Lot shall have an exclusive easement over any portion of the Common Areas crossed by his driveway.

6.4 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 Areas 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 Areas as from time to time may be paved or intended for such purposes, or for purposes of ingress and egress to the public ways. This easement shall also exist over any portion of a sidewalk which is part of a Lot and not part of a common area if such sidewalk is intended for use by pedestrian traffic.

6.5 Maintenance Easement. An easement shall exist in favor of the Association as to the portions of each Owner's Lot for which the Association has the maintenance responsibility. In addition, an easement is hereby reserved to Declarant, and the Association and any member of

its Board of Directors, and its respective officers, agents, employees and assigns, upon, across, over, in and under the Land as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Neighborhood Documents, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of improvements to such Lot as may be permitted herein. Access for emergency repairs may be made at any time.

6.6 Easements for Cross-Drainage. Every Unit, the Common Area, and adjoining Lots shall be burdened with easements for natural drainage of storm water runoff and/or other drainage from other portions of the Land and of adjoining Lots; provided, no person shall alter the natural drainage on any Lot so as to materially increase the storm water onto adjacent portions of the Land without consent of the Owner of the affected property.

6.7 Easements of Support and Shelter. Each Lot has such easements of support and shelter as may be necessary for the quiet enjoyment and possession of the Lot and the improvements constructed upon the Lot. In addition to the easement of support and shelter, the Owner of an adjoining Lot has an easement for access for repair and maintenance over and through the other Lot, and an easement for fences, sidewalks, drives, pipes, ducts, utility ways and spaces, and any other improvements passing through the other Lot and serving the dominant, adjoining Lot exclusively. Physical structures and improvements within such easements and serving the dominant Lot exclusively will be the property of the dominant Lot or considered a part of the Common Areas where appropriate. Physical structures serving both Lots will be shared on a mutually nonexclusive basis for all purposes for which the improvements were intended. Access for non-emergency repairs and improvements to physical improvements serving adjoining Lots may be made by the Owner of the dominant Lot, through the Association upon appointment and at reasonable times. Access to servient easement areas for repairs and construction will be in such manner as to not unreasonably disturb the possession of the servient tenement and in such manner as to preserve the function of the improvements as necessary to perform its function and any damage will be reasonably restored.

6.8 Sales Activity. For as long as it holds any Lot for development or for sale in the ordinary course of business in the Neighborhood, the Declarant and its designees shall have the right to use, without charge, any Lot owned by it and the Common Areas in order to establish, modify, maintain and utilize, as it and they deem appropriate, model homes, sales offices and other offices. Without limiting the generality of the foregoing, the Declarant and its designees may show model homes or the Common Areas to prospective purchasers or tenants, erect on the Lot signs and other promotional material to advertise Lots and Units for sale or lease, and take all other action helpful for sales, leases and promotion of the Neighborhood. The foregoing does not exempt the Declarant from its obligation to pay assessments as otherwise provided for herein.

7. MAINTENANCE; IMPROVEMENTS.

7.1 Maintenance of Dwelling Units. The maintenance, repair and replacement of the Dwelling Units shall be the responsibility of the Owner thereof. The Owners' responsibility shall be to keep the appearance of the structure and all related improvements in a condition

comparable to when they were new, except normal wear. The Owner's responsibility includes, without limitation, air conditioning compressors, screens, garage doors, glass, exterior lights, patios, exterior painting and driveways that serve that individual Dwelling Unit.

7.2 Maintenance of Lots and Common Areas. The maintenance of all landscaping located on a Lot, including the trees, shrubs, lawn, flower beds and walkways located on a Lot shall be the responsibility of the Owner thereof. The maintenance of any sprinkler system located on a Lot shall be the responsibility of the Owner thereof. The maintenance of all Common Areas and all portions of all property not located on a Lot shall be the responsibility of the Association and each Owner shall be responsible for their prorata share of the maintenance expense. Any damage to a Unit caused by work performed or ordered 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.

7.3 Completion of Neighborhood. The Developer shall undertake the work of developing all Lots and Dwelling Units within the Neighborhood. The completion of that work, or the sale, lease, or other disposition of Dwelling Units is essential to the establishment and welfare of the Neighborhood as an ongoing residential community. In order that such work may be completed and the Neighborhood established as a full residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonable, necessary or advisable for the completion of the work and the establishment of the Neighborhood as a residential community. As used in this paragraph, the words, "its transferees" specifically excludes purchasers of Lots improved with completed residences.

7.4 Enforcement of Maintenance. If the Owner of a Lot or Dwelling Unit fails to maintain it as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot with or without consent of the Owner. The responsible Association may repair, replace, or maintain any item which constitutes a hazard to other property or residents, or which has a material adverse effect on the appearance of the Neighborhood. Any expenses so incurred by the Association shall be charged to the Owner, which charge shall be a lien on the Lot which may be foreclosed and shall include attorneys fees and other expenses associated with said foreclosure.

7.5 Negligence; Damage Caused By Condition in Unit. The Owner of each Dwelling Unit shall be liable for the expenses of any maintenance repair or replacement of Common Areas, other Units or personal property made necessary by his act of negligence, or by that of any member of his Family or his Guests, employees, agents, or lessees. Each Owner has a duty to maintain his Unit, except those items required to be maintained by the Association as provided herein and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, Association property, or the property of other Owners and residents. If any condition, defect or malfunction, resulting from the Owner's failure to perform this duty causes damage to other Units, Association property, or property within other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the

damaged property for all costs of repair or replacement not paid by insurance. If one or more of the Units involved is not occupied at the time the damage is discovered, the Association may enter the Unit without prior notice to the Owner and take reasonable actions to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the Owner.

8. INSURANCE OF LIVING UNITS

8.1 Duty to Insure and to Reconstruct. Each Owner shall at all times maintain casualty insurance on his Dwelling Unit and all other insurable improvements in an amount equal to the full replacement cost thereof. If any improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner of such improvements shall remove all debris within sixty (60) days from the date that such damage or destruction occurred, and complete the repair or replacement within one (1) year thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition, and shall utilize and conform with the original foundation and appearance of the original improvements except as otherwise approved by the Board.

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

8.3 Failure to Insure; Association as Co-Insured. For the purpose of this Section, each Owner of a Lot within the Neighborhood agrees that the Association shall be named as a co-insured as its interest may appear under any hazard and/or flood insurance policy relating to his Lot and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may from time to time exist. If an Owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the Owner allows the required insurance coverage to lapse, or for some other reason causes the same to become ineffective, the Association may (but is not obligated to) purchase whatever coverage it deems reasonably necessary for the Association's benefit. The Association has the right to require each Owner to produce proof of insurance. The costs incurred by the Association by reason of any Owner's failure or refusal to comply with this Section shall be immediately due and payable by the Owner in all respects,

together with interest, reasonable attorneys fees and costs of collection, upon the Association notifying the Owner, in writing, that it has procured such insurance.

8.4 Association's Right of Entry. For the purpose of performing the duties authorized by the Neighborhood Documents, the Association, through its duly authorized agents and employees, shall have an irrevocable right of access to Units during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Areas or of any portion of a Unit or Units to be maintained by the Association pursuant to the Neighborhood Documents or as may be necessary to prevent damage to the Common Areas or the property of the Association or to a Unit or Units.

9. GENERAL COVENANTS AND RESTRICTIONS.

9.1 Use Restrictions. This Neighborhood shall be limited to single family residences and no Dwelling Unit shall be used for any other purpose. No business buildings may be erected on a Lot and no business may be conducted on any part thereof, nor shall any building or portion thereof be used or maintained as a professional office. Notwithstanding the above provisions, the Declarant may cause Dwelling Units to be used or maintained as sales offices or as model homes.

9.2 Building Setback Lines, Size of Buildings, Site Restrictions and Building Height. All Dwelling Units shall contain at least 2000 square feet of air-conditioned space. Air-conditioned space means the total enclosed floor area within the horizontal dimensions of each level of a Dwelling Unit, excluding garages, terraces, decks and lanais. In addition, all structures shall conform to the requirements of the Neighborhood Documents, be properly permitted, and be constructed as approved and permitted by Lee County.

9.3 Leasing. In order to maintain a community of congenial, financially responsible Owners and occupants with the objectives of inhibiting transiency, protecting the value of the units and facilitating the development of a stable, quiet community and peace of mind for all Owners and occupants, the leasing (and subleasing) of a Dwelling Unit shall be subject to the following leasing restrictions and procedures, which each Owner and tenant covenants to observe:

A) Restrictions on Leasing. An Owner may lease his Dwelling Unit only in its entirety, no fraction or portion may be rented. A Dwelling Unit may only be leased to a natural person. Any Lease or assignment of a Lease shall require prior written approval of the Board of Directors following the procedure outlined below. Leases shall be for a term of not less than one (1) year. An Owner shall not lease his Dwelling Unit more than one (1) time in any twelve (12) month period, unless authorized in writing by the Board. Board approval of more than one (1) Lease in any twelve (12) month period shall not be granted except upon a showing that the prior Lease of the Unit was terminated within twelve (12) months of the beginning of its term due to default by the tenant or other circumstances which, in the Board's opinion, evidences that a term of less than twelve (12) months was not intended by the Owner. All Leases shall be in writing and shall state that the lessee is required to comply with the Neighborhood Documents, copies of which shall be provided to the lessee by the lessor. All of the provisions of

the Neighborhood Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Dwelling Unit. The Owner shall be liable for all losses and any violation of the Neighborhood Documents committed by such Owner's tenant, without prejudice to such Owner's right to collect any sums paid from the tenant. Any tenant's right to occupy the Unit shall be subject to the approval of the Association under the procedure outlined below. Subleasing of Units by tenants shall not be permitted.

B) Procedures for Leasing.

i) Notice to Association. An Owner intending to lease a Dwelling Unit shall give to the Board of Directors (or its designee) written notice of such intention at least fourteen (14) days prior to the beginning of the Lease term, together with a complete and fully executed copy of the proposed Lease and such information concerning the tenant as the Board may reasonably request. The tenant shall have no occupancy right unless approved by the Board following the procedures provided in this Declaration. If no notice is given, the Board, at its election, may approve or disapprove the Lease without prior notice.

ii) Approval. Within fourteen (14) days after receipt of the required notice, a copy of the Lease, and all information requested, whichever occurs last, but in no event later than thirty (30) days after receiving the notice specified above, the Board shall approve or disapprove the Lease. If a Lease is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the Owner. If the Board neither approves or disapproves within the time stated above, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a Certificate of Approval to the Owner.

iii) Disapproval. The Board may disapprove a proposed Lease only for good cause. Only the following shall be deemed to constitute good cause:

- (a) The tenant seeking approval has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;
- (b) The tenant seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures, bad debts or a history of late payments;
- (c) The Lease or other information provided on its face indicates that the tenant seeking approval intends to conduct himself in a manner inconsistent with the Neighborhood Documents;
- (d) The tenant seeking approval, or any proposed occupant, has a history of disruptive behavior or disregard for the rights

and property of others, as evidenced by his conduct in other social organizations or associations, or by his conduct as a tenant, owner or occupant of other residential property;

- (e) The Owner or his prior tenants have failed to comply with the provisions of the Neighborhood Documents regarding leasing;
- (f) The Owner failed to provide the Lease and information required to process the application in a timely manner; or
- (g) The tenant began occupying the Dwelling Unit without notice to the Association and approval as required above.

C. Unapproved Leases. Any Lease which is not approved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

9.4 Temporary Structures. No structure of a temporary character, including trailer, tent or shack shall be used on any Lot at any time as a living unit, either temporarily or permanently.

9.5 Signs. No sign, billboard or advertisement of any kind, including without limitation, those of realtors, politicians, contractors, and subcontractors, shall be erected within the Neighborhood or on any Lot without the written consent of the Board, except signs used or erected by Developer, entry and directional signs installed by Developer, and signs required for legal proceedings. If permission is granted to any Owner to erect a sign within the Neighborhood, the Board reserves the right to impose reasonable restrictions including but not limited to the size, color, lettering and placement of such sign. The Board or Declarant shall have the right to erect signs as they, in their discretion, deem appropriate.

9.6 Appearance; Refuse Disposal. After closing of title, each Owner shall keep his Lot free and clear of trash and debris and shall reasonably maintain his Dwelling Unit. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers suitably screened from the street and adjacent Lots. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

9.7 Maintenance. The Association shall have the right to repair any structure or improvement on any Lot which constitutes a danger or nuisance or is in unsightly disrepair, provided that the Owner of the Lot is given no less than five (5) days notice of the Association's intent to do so. Such notice shall reasonably specify the proposed action. The Association shall charge the expense of same against the Owner of said Lot, which charge shall be a lien on the Lot which may be foreclosed and shall include Declarant's attorney's fees and/or the Association's attorneys fees and other costs in connection with said foreclosure.

9.8 Awnings and Windows. No awnings, hurricane shutters, solar film or other window shading or decoration shall be installed without the prior approval of the Board.

9.9 Fences. No fence, wall, hedge or other similar structure shall be erected on any Lot or Common Area without the prior approval of the Board.

9.10 Landscaping. No landscaping shall be installed, cut down, destroyed or removed without the prior written consent of the Board. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot.

9.11 Commercial Activities. No business or commercial activity shall be conducted on the Land, except the Developer's construction of improvements and the maintenance of sales offices or models.

9.12 Pets and Animals. No more than two (2) varieties of commonly accepted household pets such as dogs, cats, fish or birds, in a reasonable number, may be kept by any Owner. All animals shall be contained within the Owner's Dwelling Unit. Pets or animals may not be kept outside or within a screened, fenced or similarly enclosed area. Any pet or animal taken outside a Dwelling Unit must be on a leash held by the Owner or be carried by the Owner. No pet or animal shall cause an annoyance or nuisance to any other Owner. Pets must be on a leash or carried when on Common Property. It shall be the Owner's obligation to dispose of waste material from pets. The Board shall have the right to order the removal of any pet which, in the Board's sole discretion, is considered a nuisance, and the same shall be done without compensation to the Owner. In such event, the Board shall give written notice thereof to the pet's Owner, and the pet shall immediately thereafter be permanently removed. A pet not on a leash shall be deemed a nuisance. Failure to clean the waste material from a pet shall be deemed a nuisance. Any pet which, in the opinion of the Board, creates an unreasonable annoyance to other Residents shall be deemed a nuisance.

9.13 Parking and Vehicular Restrictions. Parking on the Land or a Lot shall be restricted to private automobiles, and non-commercial vans and trucks. Vehicles shall be parked only in the garages or in the driveways serving the Lots or Dwelling Units. Vehicles shall not be parked, stored, or kept on lawns or landscaped areas. No on-street parking shall be permitted, except temporarily during daylight hours subject to any local ordinances or rules of the Association to the contrary. No Owner shall conduct or permit to be conducted repairs (except in an emergency) or restorations of any motor vehicle, or other vehicle upon any portions of the Land or a Lot, except in an enclosed area with the doors thereto closed at all times. "Commercial Vehicles" vehicles primarily used or designed for commercial purposes, utility trucks, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, motorcycles, mopeds, horse trailers, golf carts, boats and other watercraft, and boats or boat trailers shall be parked only in enclosed garages with the garage door kept closed at all times except when entering or exiting the garage. For purposes of this section, "Commercial Vehicles" shall mean those which are not designed and used for customary, personal/family purposes. It shall be within the sole and absolute discretion of the Board to determine whether a vehicle is a Commercial Vehicle and such conclusion may be based on a solely aesthetic basis; provided, however, the existence of limited commercial-type lettering or graphics on a vehicle

that is otherwise designed or used for customary personal/family purposes and is in good condition and repair shall not be necessarily dispositive as to whether it is a Commercial Vehicle. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Land or a Lot except within enclosed garages. Notwithstanding the foregoing, construction vehicles and service and delivery vehicles may be temporarily parked in the Neighborhood during daylight hours for such period of time as is reasonably necessary for construction purposes or to provide service or to make a delivery to a Dwelling Unit or the Common Area.

9.14 Garages, Carports and Storage Areas.

- A. No garage shall be erected which is separated from a Dwelling Unit. Each Dwelling Unit shall have a garage which shall accommodate no less than two, nor more than three, automobiles. Repair of vehicles shall be permitted only inside the garage. When ingress and egress to the garage is not desired, the garage doors shall remain closed.
- B. Carports shall not be permitted.
- C. No garage shall ever be permanently enclosed or converted to other uses without substitution of another enclosed garage and approval of the Board.

9.15 Garage Sales. No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot without prior written approval of the Board. The Association may, in its sole discretion, prohibit such events but if such events are permitted, under no circumstances may more than two (2) such events be held on any Lot in any twelve (12) month period.

9.16. Outside Lighting and Mailboxes. Except as may be initially installed by Developer, no spotlights, floodlights, or similar type high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon without the written authorization of the Board, or Developer, whichever is applicable. Other types of low intensity lighting which do not unreasonably disturb the Owners or other Occupants may be allowed. If the Developer installs a front yard lamp on each Lot then the Owner of each Lot shall maintain and keep operating that lamp during all hours of darkness; Owner's responsibility includes any replacement of the photoelectric cell and replacement of light bulbs. In the event that the front yard lamp is not functional for a one week period, the Association shall have the right to repair the lamp and the Owner shall reimburse the Association for the costs of such repairs. If the Developer installs a mailbox on each Lot then the Owner of the Lot shall maintain it in good condition. In the event that the mailbox must be replaced, the Owner shall replace it with a mailbox of the same type, size and color as the mailbox installed by the Developer, or as otherwise approved by the Board. If the Owner fails to replace it the Association may do so at the Owner's expense.

9.17 Television and Other Outdoor Antennae; Radio Equipment. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the

Properties, including any Dwelling Unit, without the prior written consent of the Board. Said antennas, aerials, dishes, or other apparatus shall not be visible from any street or neighboring Lot. Dishes, when permitted by the Board, shall be less than one meter in diameter. No ham or short wave radios, CB base stations, or other similar radio transmission equipment shall be operated or permitted to be operated in the Neighborhood without prior written consent of the Board.

10. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS. Every Owner shall at all times comply with all the covenants, conditions and restrictions of the Neighborhood Documents. Violations of the Neighborhood Documents should be reported immediately in writing to a member of the Board of Directors. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Neighborhood Documents, shall be presented to and determined by the Board, whose interpretation of the Neighborhood Documents and/or whose remedial action shall control. If any person, firm or entity subject to the Neighborhood Documents fails to abide by them, as they are interpreted by the Board of Directors of the Association, that person shall be liable to be fined by the Association for each such failure to comply or other violation as more particularly set forth in Section 10.3 below.

10.1 Legal Action. (A) Actions at law or in equity or both to redress an alleged failure or refusal to comply with the Neighborhood Documents or Chapter 720, Florida Statutes, may be brought by the Association or by any Member against (i) the Association, including without limitation, for the Association's failure to maintain the Common Areas as provided herein; (ii) a Member; (iii) any director or officer of the Association who willfully and knowingly fails to comply with the foregoing; and (iv) any tenants, guests or invitees using the Common Areas. The prevailing party in such litigation is entitled to recover reasonable attorney's fees and costs, including appellate fees and costs. This subsection (A) does not deprive any person or entity of any other available right or remedy and is in addition to, and not in lieu of, any other provision of the Governing Documents regarding the enforcement of the Governing Documents.

(B) Judicial enforcement of the covenants and restrictions of this Declaration may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or against any land to enforce any lien created by these covenants. Failure of an Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If such action is instituted, the Association shall, in addition, be entitled to recover its costs and attorney's fees incurred if it is the prevailing party.

10.2 Entry by Association. Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Neighborhood Documents shall also give the Declarant, its successors and assigns, and/or the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the Lot or Unit or other area where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the land, any construction or other violation that may be or exist thereon. The

Declarant, its successors and assigns and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

10.3 Fines. The Association may levy a fine or fines upon an Owner or his tenants, guests, or invitees, or both, for violation of any covenant, restriction, rule, or regulation contained herein or in the other Neighborhood Documents or promulgated pursuant to the Neighborhood Documents, as follows:

- A. Hearing Committee. The Board shall appoint a committee ("Hearing Committee") of three (3) Members who are not officers, directors, or employees of the Association, or the spouse, parent child, brother or sister of an officer, director or employee, which shall be charged with conducting the hearing and rendering a decision with regard to the levy of fines as herein provided.
- B. Notice. In the event that the Board determines that there is probable cause that any of the provisions of the Neighborhood Documents of the Association are being or have been violated, the Board shall provide written notice to the person alleged to be in violation, and the owner of the parcel which that person occupies if that person is not the owner, of the specific nature of the alleged violation to include a statement of the provision of the Neighborhood Documents which has been violated, a statement of the Association's position, and notice of the opportunity for a hearing upon request made within fourteen (14) days of the date of sending the notice. The notice shall also specify that each recurrence of the alleged violation and each day of a continuing violation shall be deemed to be a separate offense, subject to a separate fine, all fines not to exceed one hundred dollars (\$100.00) each and one thousand dollars (\$1,000.00) in the aggregate. The notice shall further specify that in lieu of requesting a hearing, the alleged violator or parcel owner may respond to the notice, within fourteen (14) days of its sending, acknowledging in writing that the violation occurred as alleged and promising that it will henceforth cease and will not recur. That acknowledgment and promise, and performance in accordance therewith, shall terminate further enforcement activity of the Association with regard to the violation to include the levying of any fine.
- C. Hearing. If a hearing is timely requested, the Hearing Committee shall hold same, after giving the alleged violator, and the owner of the parcel which that person occupies if that person is not the owner, at least fourteen (14) days written notice of the date, time and place of the hearing. The facts of the alleged infractions shall be presented to the Hearing Committee, and the Hearing Committee shall hear any defense to the charges, including any witnesses for the alleged violator and the parcel owner, and shall receive evidence and written or oral argument from the alleged violator on all issues involved or on any material considered by the

Board. Any party at the hearing may be represented by counsel, and the hearing may be audio or video recorded in the same manner and under the same rules that members are permitted to audio or video record meetings of the Board. Subsequent to any hearing, or if no hearing is timely requested and if no acknowledgment and promise is timely made, the Hearing Committee shall determine whether there is sufficient evidence of a violation or violations as provided herein. If the Hearing Committee determines, by majority vote, that there is sufficient evidence, it may request the Board to levy a fine for each violation in the amount provided herein. If the Hearing Committee determines, by majority vote, that there is insufficient evidence, it shall terminate the proceedings. Any decision of the Hearing Committee, including the amount of the requested fine, if any, shall be made a part of the minutes of that meeting.

- D. Levy. If the Hearing Committee has requested the Board to levy a fine, the Board shall then, at a duly called meeting, and by vote of a majority, either approve the levy, reduce the levy, or waive the fine, but may not increase the fine. The Board may or may not receive additional statements or arguments with regard to whether the fine should be levied, at its sole discretion.
- E. Collection of Fines. Any fine imposed against an Owner or his tenants, guests, or invitees shall be deemed an Individual Lot Assessment against the Owner's Lot. Fines shall be treated as an assessment and shall be due and payable within thirty (30) days from the date of written notice of the levy. The Association shall have a right of lien on a parcel for any unpaid fines in the same manner and to the same extent that it has a right of lien for unpaid assessments.
- F. Application. All monies received from fines shall become part of the common surplus.
- G. Failure to Pay Assessments. The requirements of this section 10.3 do not apply to the imposition of fines or suspension of use rights in the Common Areas upon a Member because of failure of the Member to pay annual or special assessments.
- H. Non-exclusive Remedy. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise recover at law from such Owner connected with the same offense.

10.4 Suspension of Voting Rights. The Board may suspend the voting rights of a Member for the non-payment of regular annual assessments that are delinquent in excess of ninety (90 days) in accordance with the Florida Statutes.

10.5 Enforcement by Owners and Beneficiaries. Each Owner and other beneficiaries of the dedicated Property and corresponding infrastructure shall have the legal right to enforce the maintenance covenants contained in the Declaration against the entity responsible therefore.

11. TRANSFER OF OWNERSHIP OF DWELLING UNITS. In order to maintain a community of congenial, financially responsible Owners with the objectives of inhibiting transiency, protecting the value of the units and facilitating the development of a stable, quiet community and peace of mind for all Owners, the transfer of ownership of a Dwelling Unit by an Owner shall be subject to the following restrictions, which each Owner covenants to observe:

11.1 Forms of Ownership:

- A. Ownership by an Individual. A Dwelling Unit may be owned by one natural person who has qualified as a Member as elsewhere provided herein.
- B. Co-Ownership. Co-Ownership of Dwelling Units is permitted. If the proposed co-Owners are other than husband and wife, Ownership and Membership shall be conditioned upon designation of one of the co-Owners as "Primary Occupant", and the use of the unit by other persons shall be as if the Primary Occupant was the only actual Owner. Any change in the Primary Occupant shall be treated as a transfer of ownership by sale or gift, subject to all of the provisions of this Section.
- C. Ownership by Corporations or Trusts. A Dwelling Unit may be owned in trust or by a corporation, partnership or other entity which is not a natural person. However, the intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Dwelling Unit may be used as short term transient accommodations for several individuals or families. Ownership and membership by a Trustee, corporation or other entity as an Owner shall be conditioned upon designation of one natural person to be the "Primary Occupant", and the use of the Dwelling Unit by other persons shall be as if the Primary Occupant was the only Owner. Any change in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to all of the provisions of this Section.
- D. Life Estate. A Dwelling Unit may be subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event the life tenant shall be the only Member from such Dwelling Unit, and occupancy of the Dwelling Unit shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder

interest shall have no occupancy right unless separately approved by the Association. The life tenant and holders of the remainder interest shall be jointly and severally liable for all assessments and charges against the Lot. The life tenant may, by signed agreement transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. Except in the case where such a transfer has been made, if the consent or approval of the Owner is required for any purpose, that consent or approval of the holders of the remainder interest shall not be required.

12. DEVELOPER'S RIGHTS AND DUTIES. So long as the Developer holds any Lots in the Neighborhood for sale in the ordinary course of business, the following shall apply, notwithstanding any other provisions to the contrary:

12.1 Developer's Use. Until the Developer has completed all of the contemplated improvements and has sold all of the Lots or Dwelling Units within the Neighborhood, neither the Owners nor the Association (nor their use of the Lots and Dwelling Units), shall unreasonably interfere with the completion of the contemplated improvements or sales of Lots or any other property within the Neighborhood. The Developer may make any use of the unsold Lots as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of construction and sales offices, display of signs, leasing of Dwelling Units, and showing the Units for sale to prospective purchasers.

12.2 Assignment of Development Rights. All or any portion of the rights, privileges, powers and duties of the Developer set forth in the Neighborhood Documents may be assigned in whole or in part by the Developer to any person or entity, without the consent of any other Owner or any holder of a mortgage secured by any Lot. Upon the acceptance of such assignment by the assignee, the assignor shall be relieved of all liabilities and responsibilities to the extent of the assignment. In the event of the foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer in and to such interest.

12.3 Amendment of Declaration. In addition to any other right of amendment or modification provided for in this Declaration and its Exhibits, the Declarant, or any entity which succeeds to its position as the Developer of the Land may, in its sole discretion, by an instrument filed of record, unilaterally modify, enlarge, amend, waive or add to the covenants, conditions, restrictions and other provisions of this Declaration or any of its Exhibits. This right specifically includes the right to amend and/or supplement this Declaration and its Exhibits to bring additional property and Lots within the Land, to withdraw property previously submitted to this Declaration, and to change the size or dimension of any Lot without the approval of any Owner or mortgagee so long as that Lot has not been conveyed to an Owner other than the Developer. Any such addition or reduction of the Land may result in the increase or reduction of Owners entitled to vote on Association matters, Owners subject to Assessment, Owners entitled to use the Common Areas, and the amount of assessments levied against Units. The right to amend set forth in this paragraph shall expire when the Declarant no longer holds any Lots or Dwelling

Units within the Neighborhood for sale in the ordinary course of business, or upon turnover of control of the Association to the members, whichever is earlier. Any amendment made pursuant to this paragraph may be made without notice to the Members or to any other entity.

12.4 Sales or Leases of Units. The Developer shall have the right to sell, lease or transfer any Dwelling Unit owned by it on such terms and conditions as it deems in its own best interest, and no Association approval shall be required.

12.5 Non-Enforcement of Covenants. The Developer shall have no liability with regard to the enforcement or non-enforcement of the covenants, conditions and restrictions in the Neighborhood Documents.

12.6 Easements. The Developer shall have the right to create any and all easements over across and through the Land or Lots as may be necessary or convenient to the development process.

13. TURNOVER.

13.1 Time of Turnover. Notwithstanding anything set forth in the Governing Documents to the contrary, the Declarant has the right to elect all of the members of the Board of Directors until three (3) months after ninety percent (90%) of all Lots in all phases of the Neighborhood that will ultimately be operated by the Association have been conveyed to Members other than the Developer ("Turnover Date"). From and after the Turnover Date, Members other than the Developer shall be entitled to elect at least a majority of the members of the Board of Directors. The Declarant, however, shall be entitled to elect at least one (1) member of the Board of Directors as long as the Declarant holds for sale in the ordinary course of business at least 5% of the Lots in all phases in the Neighborhood. At or prior to the Turnover Date, all Directors appointed by the Declarant (except for one, to the extent the preceeding sentence is applicable) shall resign and an election for new directors shall occur at a meeting of the Members ("Turnover Meeting").

13.2 Procedure for Calling Turnover Meeting. No more than forty-five (45) days and no less than thirty (30) days prior to the Turnover Meeting, the Association shall notify in writing all Class "A" Members of the date, time and place of the turnover meeting.

13.3 Early Turnover. The Developer may turn over control of an Association to Owners other than the Developer prior to the Turnover Date set forth above by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days notice of Developers decision to cause its appointees to resign is provided to the Owners, the Developer shall not be liable in any manner in connection with such resignations, even if Owners other than the Developer refuse or fail to assume control.

14. DURATION OF COVENANTS; AMENDMENT OF DECLARATION:

14.1 Duration of Covenants. This Declaration and the terms, provisions, conditions, restrictions, regulations, burdens, covenants, and liens contained herein shall run with and bind the Land and Lots, and shall inure to the benefit of and be enforceable by the Association, the Developer and any Owner, their respective legal representative, heirs, successors and assigns, for an initial period to expire on the thirtieth (30th) anniversary of the date of recordation of the Declaration. Upon the expiration of said initial period, the Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of all voting interests, in person or by proxy, at a duly held meeting of Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the Members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Lee County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

In the event this Declaration is terminated or the Association ceases to exist for any reason, the dedicated property and corresponding infrastructure described herein shall be conveyed or dedicated to a similar not for profit corporation as the Association. The Owners shall be jointly and severally responsible for the costs to maintain and shall maintain the Common Areas and all association property in the manner described herein. This provision shall survive the termination of this Declaration and shall run with the Land and Lots in perpetuity.

14.2 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by one-fourth (1/4) of the voting interests. If by petition, the proposed amendments must be submitted to a vote of the Owners not later than the next annual meeting.

14.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Neighborhood Documents, this Declaration may be amended at any time by concurrence of two-thirds (2/3) of the voting interests present in person or by proxy and voting at any annual or special meeting called for the purpose. However, the full text of any proposed amendments shall be included in the notice of such Annual or Special Meeting and no amendment shall be effective which is in contravention of the duties, responsibilities or obligations of the Association or Members as provided in this Declaration and its Exhibits. No Amendment shall change the Owner's share of liability for assessments or voting rights unless the Owner consents to the amendment.

14.4 Certificate; Record. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate

shall identify the Official Record Book and Page of the Public Records where the Declaration is recorded, and shall be executed by Officers of the Association with the formalities of a deed. The amendment shall be effective when recorded in the Public Records of Lee County, Florida.

14.5 Exceptions. Wherever in this Declaration the consent, approval, or affirmative vote of more than two-thirds (2/3) of the voting interests, is required in order to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action.

14.6 Amendment of Provision Relating to Developer. As long as the Developer holds any Lot for sale in the ordinary course of business, no amendment shall have the effect of changing any provision relating specifically to the Developer without the Developer's written consent.

14.7 Surface Water Management Systems. Notwithstanding anything herein to the contrary, any amendment to this Declaration which affects the Surface Water Management System, including without limitation any water management portions of common areas, dedicated lake tracts, lake maintenance or drainage easements and corresponding infrastructure, must have the prior approval of the South Florida Water Management District.

15. GENERAL PROVISIONS:

15.1 Waiver. Any waiver by Developer of any provisions of this Declaration of breach hereof must be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach.

15.2 Severability. If any section, subsection, sentence, clause, phrase or portion of this Declaration is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.

15.3 Headings. The headings of any sections herein are for convenience only and shall not affect the meanings or interpretation of the contents thereof.

15.4 Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. The Member or Owner bears the responsibility for notifying the Association of any change of address.

15.5 Interpretation. The Board of Directors of the Association is responsible for interpreting the provisions of this Declaration and its Exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable as determined by a court of law with appropriate jurisdiction.

15.6 Attorney's Fees and Costs. In the event of any litigation or arbitration between the Developer, Association, and/or any Member or Owner, the prevailing party shall have the right to recover from the non-prevailing party all reasonable attorney's fees and costs incurred by the prevailing party, including appellate fees and costs. Any amounts so owed to the Association shall be deemed secured by a lien on the Owner's or Member's Unit and/or Lot.

IN WITNESS WHEREOF, Randy Wilkerson, Managing Member of Estero Palms Development Company, LLC does hereby execute this Declaration of Covenants, Conditions and Restrictions for and on behalf of Estero Palms Development Company, LLC this 20 day of February, 2004.

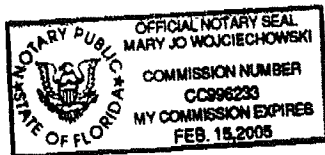
**ESTERO PALMS DEVELOPMENT
COMPANY, LLC**

By: [Signature]
RANDY WILKERSON
Its: Managing Member

[Signature]
Witness #1, Signature
Mary Jo Wojciechowski
Witness #1/Printed Name
[Signature]
Witness #2, Signature
Christopher J. Thornton
Witness #2/Printed Name

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 20th of February, 2004, by **RANDY WILKERSON**, as Managing Member of **ESTERO PALMS DEVELOPMENT COMPANY, LLC**, a Florida Limited Liability Company, who is personally known to me (~~or has produced~~ _____ as identification).



[Signature]
Notary Public
Mary Jo Wojciechowski
Printed Name

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

A parcel of land being the south one-half of Lot 24 and the south one-half of Lot 25, Block "C", Florida Gulf Land Company's Subdivision as recorded in Plat Book 1, Page 59, of the Public Records of Lee County, Florida; all lying in Section 34, Township 46 South, Range 25 East, Lee County, Florida and being more particularly described as follows:

Commencing at the West quarter corner of said Section 34, Township 46 South, Range 25 East, Lee County, Florida; thence South 89°37'15" East, along the East-West quarter line of said section 34, 2650.11 feet to the center of said Section 34 and the Northwest corner of said Lot 25, Block "C", Florida Gulf Land Company's Subdivision; thence South 00°39'12" East, along the West line of said Lot 25, Block "C", 660.91 feet to the North line of the South ½ of said Lot 25, Block "C" and the point of beginning of the lands herein described; thence South 89°39'32" East, along the North line of said South ½ of Lot 25, Block "C"; 332.13 feet to the East line of said Lot 25, Block "C"; thence South 00°36'22" East, along said East line of Lot 25, Block "C", 660.81 feet to the Southeast corner of said Lot 25, Block "C"; thence North 89°41'00" West, along the South line of said Lots 24 and 25, Block "C", 661.50 feet to the Southwest corner of said Lot 24, Block "C"; thence North 00°43'28" West, along the West line of said Lot 24, Block "C", 660.45 feet to the North line of the South ½ of said Lot 24, Block "C"; thence South 89°46'22" East along said North line of the South ½ of Lot 24, Block "C", 330.72 feet to the point of beginning.

Containing 10.044 acres of land more or less.

Subject to any easements, restrictions or reservations of record.

EXHIBIT "A"

Estero Palms – LEGAL DESCRIPTION OF THE LAND

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of ESTERO PALMS HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on October 6, 2003, as shown by the records of this office.

The document number of this corporation is N03000008635.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Sixth day of October, 2003



CR2EO22 (2-03)

Glenda E. Hood

Glenda E. Hood
Secretary of State

Exhibit "B"

COPY

**ARTICLES OF INCORPORATION
OF
ESTERO PALMS HOMEOWNER'S ASSOCIATION, INC.
(a Florida Not-For-Profit Corporation)**

Pursuant to Chapter 617, Florida Statutes, these Articles of Incorporation are created by Randy Wilkerson, as the incorporator, for the purposes set forth below.

ARTICLE I

NAME

The name of the corporation shall be: Estero Palms Homeowner's Association, Inc., sometimes hereinafter referred to as the "Association".

ARTICLE II

PRINCIPAL OFFICE

The initial principal place of business and mailing address of this corporation shall be: 373 Egret Avenue, Naples, FL 34108.

ARTICLE III

PURPOSE AND POWERS

This Association will not permit pecuniary gain or profit nor distribution of its income to its Members, officers or directors. It is a non-profit corporation formed for the purpose of establishing a corporate, residential neighborhood Homeowner's Association which will, subject to a Declaration of Covenants, Conditions and Restrictions to be recorded in the Public Records of Lee County, Florida, (the "Declaration") have the specific purposes and powers below:

(A) Purposes:

(1) To provide for the operation and maintenance of the common property under the jurisdiction of the Association (the "Common Areas"), private property and structures placed on the Land described in the Declaration or otherwise under the jurisdiction of the Association.

(2) To promote the health, safety and welfare of the residents of the residential community located on the Land.

(3) To fulfill all of the purposes listed above and to exercise all of the powers listed below with respect to the Land and all additional properties which may be brought under the jurisdiction of this Association through recorded amendment or amendments to the Declaration.

Exhibit "B"
Estero Palms - ARTICLES OF INCORPORATION
Page 1 of 5

(B) Powers: The Association shall have all of the common law and statutory powers of Florida corporation not for profit consistent with these Articles and with the Declaration and shall have all of the powers and the authority reasonably or appropriate to the operation and regulation of a residential neighborhood subject to the Declaration, as it may from time to time be amended, including but not limited to the power to:

(1) Fix, levy, collect and enforce payment by any lawful means of all charges, assessments or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property of the corporation;

(2) Enforce any and all covenants, condition, restrictions and agreements applicable to the Land and residential neighborhood known as Estero Palms in Lee County, Florida;

(3) Pay taxes, if any, on the Common Areas;

(4) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation;

(5) Borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(6) Dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes;

(7) Purchase policies of insurance upon the Properties and use the proceeds from policies to effectuate its purposes;

(8) Participate in mergers and consolidations with other non-profit corporations organized for the same or similar purposes, or to annex additional property and common areas; and

(9) Exercise any and all powers, rights and privileges which a corporation organized under Chapter 617 of Florida Statutes may now have or hereafter have subject always to the Declaration as amended from time to time, the Bylaws of the Association and any limitations imposed by applicable law.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Membership and Voting Rights shall be as set forth in the Declaration to which a copy of these Articles shall be attached as an Exhibit "B", and/or the Bylaws of the Association.

ARTICLE V

TERM

The term of the Association shall be perpetual.

ARTICLE VI

BYLAWS

The Bylaws of the association may be altered, amended or rescinded in the manner provided therein.

ARTICLE VII

AMENDMENTS

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

(A) Proposal: Amendments to these Articles may be proposed by a majority of the Board or upon petition of one-fourth (1/4) of the voting interests, and shall be submitted to a vote of the Members not later than the next annual meeting.

(B) Vote Required: Except as otherwise required by Florida law, these Articles of Incorporation may be amended by vote of a majority of the voting interests present and voting at any annual or special meeting or by approval in writing of a majority of the voting interest without a meeting, provided that notice of any proposed amendment has been given to the Members of the Association, and that the notice contains a fair statement of the proposed amendment.

(C) Effective Date: An amendment shall become effective upon filing with the Secretary of the State.

ARTICLE VIII

DIRECTORS AND OFFICERS

(A) The affairs of the association will be administered by a Board of Directors consisting of three (3) Directors.

(B) Directors of the Association shall be elected by the Members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws, or if not provided in the Bylaws, then as provided by Florida Statute.

(C) The business of the Association shall be conducted by the Officers designated in the Bylaws. The Officers shall be elected by the Board of Directors at its first meeting following

the annual meeting of the Members of the association and shall serve at the pleasure of the Board.

ARTICLE IX

INITIAL DIRECTORS

The initial directors of the Association shall be:

Randy Wilkerson
Donna Wilkerson
Albert Bass

ARTICLE X

INITIAL REGISTERED AGENT

The name and Florida street address of the initial registered agent is: Randy Wilkerson, 373 Egret Avenue, Naples, Florida 34108.

ARTICLE XI

INDEMNIFICATION

To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every director or officer of the Association against all expenses and liabilities, including any attorneys fees actually and reasonably incurred by or imposed on him/her in connection with any legal proceeding (or settlement or appeal proceeding) to which he/she may be a party because of his/her being or having been a director or officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his/her actions or omissions to act were material to the cause adjudicated and involved:

(A) Willful misconduct or a conscious disregard for the best interest of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.

(B) A violation of criminal law, unless the director or officer had no reasonable cause to believe his/her action was unlawful or had reasonable cause to believe his/her action was lawful.

(C) A transaction from which the director or officer derived an improper personal benefit.

(D) Wrongful conduct by directors or officers appointed by the developer, in a proceeding brought by or on behalf of the Association.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a director or officer may be entitled.

IN WITNESS WHEREOF, Randy Wilkerson does hereby execute these Articles of Incorporation this 3rd day of October, 2003.

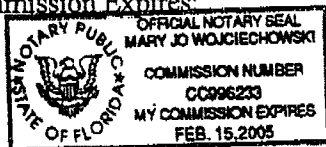
INCORPORATOR:

Randy Wilkerson
RANDY WILKERSON

STATE OF FLORIDA)
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 3rd day of October, 2003 by **RANDY WILKERSON**, who is personally known to me (or has produced _____ as identification).

My Commission Expires:



Mary Jo Wojciechowski
Notary Public
Mary Jo Wojciechowski
Printed Name

ACCEPTANCE BY REGISTERED AGENT

Having been named as registered agent to accept service of process for the above corporation at the place designated in these Articles of Incorporation, I am familiar with and accept the appointment as registered agent and agree to act in this capacity.

REGISTERED AGENT:

Randy Wilkerson 10/3/03
RANDY WILKERSON DATE

FILED
03 OCT -6 PM 1:03
CLERK OF DISTRICT COURT
FALLS BURGESS, FLORIDA

BYLAWS
OF
ESTERO PALMS HOMEOWNER'S ASSOCIATION, INC.
(a Florida Not-For-Profit Corporation)

SECTION 1. IDENTIFICATION OF ASSOCIATION.

These are the Bylaws of **ESTERO PALMS HOMEOWNER'S ASSOCIATION, INC.** (the "Association") as duly adopted by its Board of Directors ("Board"). The Association is a Corporation Not-for-Profit, organized pursuant to Chapter 617, Florida Statutes.

1.1 Association Address. The office of the Association shall be for the present at 373 Egret Avenue, Naples, Collier County, Florida 34108, and thereafter may be located at any place in Lee County, Florida (the "County") designated by the Board.

1.2 Fiscal Year. The fiscal year of the Association shall be the calendar year.

1.3 Corporate Seal. The seal of the Association shall bear the name of the Association, the word "Florida", and the words "Corporation Not-for-Profit".

SECTION 2. EXPLANATION OF TERMINOLOGY.

Definitions. The terms defined in the Articles of Incorporation of the Association (the "Articles") and the Declaration of Covenants, Conditions and Restrictions for Estero Palms ("Declaration") are incorporated herein by reference.

SECTION 3. MEMBERSHIP; MEMBERS MEETINGS; VOTING AND PROXIES.

3.1 Membership. The qualification of Members, the manner of their admission to membership in the Association and the termination of such membership and the voting by Members shall be as set forth in the Articles and the Declaration.

3.2 Annual Members' Meeting. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County on such day or days and at such time or times as is designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State of the State of Florida. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles and Declaration) and transact any other business authorized to be transacted at such Annual

Members' Meeting. For purposes of these Bylaws, provisions applicable to meetings of Members shall also apply to meetings of Class Members.

3.3 Special Meetings. Special Meetings of the Membership as a whole or of a class of Members (meetings other than the Annual Members' Meeting) shall be held at any place within the County whenever called by the President or Vice-President or by a majority of the Board. A special meeting must be called by such President or Vice-President upon receipt of a written request from Members having the right to vote at least one-third (1/3) of the total number of votes entitled to be cast by Members at such special meeting or, as to any Class Members, upon receipt of a written request for two-thirds (2/3) of the Members of such Class. Special Meetings of the Membership shall be conducted in the same manner as Annual Members' Meetings.

3.4 Notice. A written notice of all Members' Meetings, whether the Annual Members' Meeting or "Special Meetings" (collectively "Meeting"), shall be given to each Member at his last known address as it appears on the books of the Association, and shall be mailed to the said address not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the day, time and place of the Meeting. Notice of any Special Meeting shall describe the purpose or purposes of the meeting, and business at any Special Meeting shall be limited to the purpose or purposes described in the notice of the meeting. The notice of all Annual Members Meetings shall, in addition, specify the number of Directors of the Association to be designated by Developer and the number of Directors to be elected by the Members. All notices shall be signed by an officer of the Association or reflect a facsimile of such a signature. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice. Attendance of a Member at a meeting, either in person or by proxy, constitutes waiver of notice and waiver of any and all objection to the place, time, or manner in which the meeting has been called or convened, unless the Member attends the meeting solely for the purpose of stating, at the beginning of the meeting, any such objection or objections to the transaction of affairs.

3.5 Quorum and Vote Required. The percentage of voting interests required to constitute a quorum at a meeting of the Members shall be thirty percent (30%) of the total voting interests. A quorum of the members of a Class shall consist of Class Members entitled to cast thirty percent (30%) of the total number of votes of the Class Members of that Class. Unless otherwise provided by law or the Governing Documents, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained.

3.6 Member Action. Any Member may join in the action of any Meeting by signing and concurring in the minutes thereof and such a signing shall constitute the presence of such Member for the purpose of determining a quorum. When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written proxy shall be required to decide the question. If the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the Documents, then such express provision shall govern and control the required vote on the decision of such question.

3.7 Election of Directors. Election to the Board of Directors shall be made by a Nomination Committee selected by the President or by nomination from the floor. A Member may nominate himself or herself as a candidate for the Board of Directors at any meeting at which an election of Directors is to be held. Election to the Board of Directors shall be by written ballot. At such election, the Members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. The Developer has the right to select one or all of the Directors pursuant to the provisions of the Declaration, which provisions shall control over the Articles and these Bylaws. The election of directors shall be by secret ballot. Following the "Turnover Event" as defined in the Declaration, for elections of members of the Board of Directors, Members shall cast their vote only by ballot that the Member personally casts.

3.8 Adjournment if No Quorum. Adjournment of an annual or special meeting to a different date, time or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time or place pursuant to Section 3.4 above. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under Florida Statutes or the Governing Documents, notice of the adjourned meeting must be given to persons who are entitled to vote and are Members as of the new record date but were not Members as of the previous record date.

3.9 Minutes of Meetings. Minutes of all Meetings shall be kept in a business like manner and be available for inspection by the Members and Directors at all reasonable times.

3.10 Voting Rights. Voting rights of Members shall be as stated in the Articles and Declaration.

3.11 Proxy Voting. Unless otherwise provided in the Governing Documents, Members may vote in person or by proxy. To be valid, a proxy must be dated, must state the date, time and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place. Only Members who are natural persons shall be authorized to hold proxies.

3.12 Secret Ballot. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of ten percent (10%) of the votes represented at such Meeting and entitled to be cast on such matter if such request is made prior to the vote in question, except for election of directors, which shall always be by secret ballot.

SECTION 4. BOARD OF DIRECTORS; DIRECTORS' MEETINGS.

4.1 Association Business. The business and administration of the Association shall be by its Board of Directors.

4.2 Number of Directors and Term. The number of Directors which shall constitute the whole Board of Directors shall be three (3). Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a Director of the Association. In order to provide for a continuity of experience by establishing a system of staggered terms, at the first election at which Members other than the Developer elect a majority of the Directors, one (1) Director shall be elected to serve a one (1) year term, one (1) Director shall be elected to serve a two (2) year term, and one (1) Director shall be elected to serve a three (3) year term. At that first election, the candidate receiving the highest number of votes shall be elected to the three (3) year term, the candidate receiving the second highest number of votes shall be elected to the two (2) year term, and the candidate receiving the third highest number of votes shall be elected to the one (1) year term. In the cases of tie votes, the Directors elected shall decide amongst themselves who shall serve the longer terms. Thereafter, each Director shall be elected for three (3) year terms, such that the term of one (1) Director expires each year. Each Director shall serve until his or her successor is duly elected, unless he or she shall sooner resign or is removed as provided herein.

4.3 Organizational Meeting. The organizational meeting of a newly elected Board shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they are elected. No further notice of the organizational meeting shall be necessary.

4.4 Regular and Special Meetings. Regular meetings of the Board may be held at such times and places in the County as shall be determined from time to time by a majority of Directors. Special meetings of the Board may be called at the discretion of the President and Vice-President. Special meetings of the Board must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Such Special meeting may be held in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all Directors shall agree upon.

4.5 Notice. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally or by mail, telephone or telegraph at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during, or after a meeting and such shall be deemed equivalent to the receipt of notice by such Director. Notice of all Board meetings shall be given to members by posting a Notice in a conspicuous place in the Neighborhood at least forty eight (48) hours in advance of a meeting, except in an emergency. If a Notice is not posted in a conspicuous place in the community, notice of each Board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency.

4.6 Quorum. A quorum of the Board of Directors shall consist of the Directors entitled to cast a majority of the votes of the entire Board. A Director may join in the action of a meeting of the Board of Directors by signing the minutes thereof, and such signing shall constitute the presence of such Director for the purpose of determining a quorum. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall

constitute the official acts of the Board of Directors, except as may be otherwise specifically provided by law, by the Articles or by the Documents. If at any meetings of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board of Directors.

4.7 Presiding Officer. The presiding officer at all Board of Directors meetings shall be the president. In the absence of the President, the Directors shall designate any one of their number to preside.

4.8 Directors' Fees. Directors' fees, if any, shall be determined by the Members.

4.9 Minutes. Minutes of all meetings of the Board shall be kept in a business like manner and be available for inspection by Members and Directors at all reasonable times. These Minutes shall be retained for not less than seven (7) years from the date of the meeting.

4.10 Executive Committee. The Board of Directors shall have the power to appoint an Executive Committee of the Board. An Executive Committee shall have and exercise such powers of the Board of Directors as may be delegated to such Executive Committee by the Board of Directors.

4.11 Meetings Open to Members. After the Turnover Event, all meetings of the Board of Directors shall be open to the Members and properly noticed as described herein, except for meetings between the Board and its attorney with respect to proposed or pending litigation.

4.12 Removal of Director. A Director elected by all the Members may be removed from office upon the affirmative vote of a majority of the Members or the agreement in writing of a majority of Members. A Director appointed by Developer as provided in the Documents, may be removed only by Developer in its sole and absolute discretion and without any need of a meeting or vote. Developer shall have the unqualified right to name a successor for any Director elected or designated by it and thereafter removed by it or for any vacancy on the Board of Directors as to a Director designated by it. Developer shall notify the Board of Directors of the name of the respective successor Director and the commencement date for the term of such successor Director.

4.13 Vacancies on Board of Directors. A vacancy on the Board caused by the expiration of a Director's term, or by removal pursuant to section 4.12 above, shall be filled by electing a new Board member. Any other vacancy occurring prior to the expiration of a term shall be filled by the affirmative vote of the majority of the remaining Directors, even if the remaining Directors constitute less than a quorum, or by the sole remaining Director.

SECTION 5. POWER AND DUTIES OF THE BOARD OF DIRECTORS.

All powers and duties of the Association shall be exercised by the Board of Directors.

Such powers and duties shall include, but not be limited to, all powers and duties set forth in the Documents.

SECTION 6. OFFICERS OF THE ASSOCIATION.

6.1 Executive Officers. Executive officers of the Association shall be the President, who shall be a Director, one (1) or several Vice-Presidents, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors. Each officer shall hold office for a term of one (1) year unless he or she shall sooner resign or shall be removed or otherwise disqualified to serve. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board of Directors. The Board of Directors may, from time to time, elect such other officers and assistant officers and designate their powers and duties as shall be required to manage the affairs of the Association. One person may hold any two offices simultaneously except where the functions of such offices are incompatible.

6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not-for-profit, including, but not limited to, the power to appoint such committees at such times from among the Members as he may in his discretion determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President shall preside at all meetings of the Board of Directors.

6.3 Vice-President. In the absence or disability of the President, a Vice-President shall exercise the powers and perform the duties of the President. The Vice-President(s) shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board of Directors. In the event there shall be more than one Vice-President elected by the Board of Directors, then they shall be designated "First", "Second", etc., and shall exercise the powers and perform the duties of the Presidency in such order.

6.4 Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the Members, which minutes shall be kept in a business like manner and be available for inspection by Members and Directors at all reasonable times. He shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. He shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of the Secretary of the Association as may be required by the Board of Directors or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

6.5 Treasurer. The Treasurer shall have the custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with the good accounting practices and he shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

6.6 Compensation. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board of Directors. This provision shall not preclude the Board of Directors from hiring a Director as an employee of the Association or preclude the contracting with a Director or a party affiliated with a Director for the management or performance of contract services for the Association.

SECTION 7. ACCOUNTING RECORDS; FISCAL MANAGEMENT.

7.1 Accounting Records. The Association shall maintain accounting records in accordance with good accounting practices, which shall be open to inspection by Members and institutional Mortgagees or their respective authorized representatives at reasonable times and upon reasonable notice. The authorization of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Written summaries of the accounting records shall be available at least annually to the Members. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; and, (ii) an account for each Lot which shall designate the name and address of the owner thereof, the amount of Individual Assessments and all other Assessments, if any, charged to the Lot, the amounts and due dates for payment of same, the amounts paid upon the account and the balance.

7.2 Budget. The Board of Directors shall adopt a Budget (as provided for in the Declaration) of the anticipated Association expenses and income for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board of Directors ("Budget Meeting") called for that purpose to be held preceding the year to which the Budget applies. No vote of the members shall be required but notice of the special meeting shall be given as provided in these Bylaws. Prior to the Budget Meeting, a proposed Budget for the Association Expenses shall be prepared by or on behalf of the Board of Directors. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member and each owner shall be given notice of the Individual Assessment applicable to his Lot. The copy of the Budget shall be deemed furnished and the notice of the Individual Assessment shall be deemed given upon its delivery or upon its being mailed to the Member shown on the records of the Association at his last known address as shown on the records of the Association.

7.3 Financial Procedures and Reports. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between the calendar years on a pro-rata basis any expenses which are prepaid in any one calendar year for the Association Expenses which cover more than such calendar year; (iv) assessments may be made monthly but shall not be made less than quarterly, at the discretion of the Board, in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Association Expenses and for all unpaid Association Expenses previously incurred; (v) items of Association Expenses incurred in a Calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received; and (vi) within sixty (60) days of the conclusion of each fiscal year, the Association shall prepare an annual financial report in accordance with section 617.303, Florida Statutes, and any amendment thereto and provide Members with a copy of the financial report or with written notice that the

report is available upon request at no charge to the Member. Notwithstanding the foregoing, the Assessments for Association Expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the cash basis method of accounting.

7.4 Assessments. The individual Assessment shall be payable as provided for in the Declaration.

7.5 Deficiencies. No Board of Directors shall be required to anticipate revenue from Assessments or expend funds to pay for Association Expenses not budgeted or which shall exceed budgeted items, and no Board of Directors is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Association Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of an adjustment to the applicable Assessment (e.g., Individual Assessment or Special Assessment) which determination shall be in the discretion of the Board of Directors.

7.6 Association Depository. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board of Directors in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

7.7 Official Records of the Association. Following the "Turnover Event", the Association shall maintain official records and accounting records of the Association in the manner and extent required by Section 617.303(3) and (4), Florida Statutes or any subsequent amendment thereto.

SECTION 8. RULES AND REGULATIONS.

The Board of Directors may at any meeting adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation and use of any of the Land provided, however, that such rules and regulations are not inconsistent with the terms or provision of the Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members shown on the records of the Association at the time of such delivery or mailing at the last known address for such Members as shown on the records of the Association and shall not take effect until forty-eight (48) hours after such delivery or mailing. Notwithstanding the foregoing, where rules and regulations are to regulate the use of specific portions of the Land, the same shall be conspicuously posted on such property and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view towards protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

SECTION 9. PARLIAMENTARY RULES.

SECRETARY'S CERTIFICATION

I am Secretary of the Estero Palms Homeowner's Association, Inc., and having been duly sworn, depose and state as follows:

Attached hereto is a true and correct copy of Bylaws of Estero Palms Homeowner's Association, Inc., which were adopted at the first meeting of the Board of Directors held on Nov. 6, 2003. This Certificate is executed and recorded to evidence adoption of the Bylaws attached hereto.

Dated this 7th day of NOV., 2003.

WITNESSES:

**ESTERO PALMS
HOMEOWNER'S ASSOCIATION, INC.**

Witness #1/Signature

Printed Name

By: Donna L. Wilkerson
Name: Donna L. WILKERSON
Its: Secretary

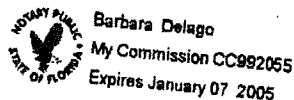
Witness #2/Signature

Printed Name

STATE OF FLORIDA)
COUNTY OF COLLIER)

Before me, the undersigned authority, on this day personally appeared, Donna L. Wilkerson, Secretary of Estero Palms Homeowner's Association, Inc., a Florida Not For Profit Corporation, who executed the foregoing instrument in his authorized representative capacity indicated above and who is personally known to me and who did take an oath.

Witness my hand and official seal in the County and State last aforesaid, this 7th day of NOV., 2003.



Barbara Delago
Notary Public
Barbara Delago
Printed Name of Notary

My Commission Expires: Jan. 7, 2005

My Commission No. is: CC992055