

FOURTH AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

THIS FOURTH AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (hereinafter referred to as the "Declaration") is made as of this ____ day of ____, 2025 [*editor's note: inserted here will be the recording date of this Fourth Amended and Restated Declaration*], by PENINSULA CORPORATE CENTER ASSOCIATION, INC., a Florida not-for-profit corporation (the "Association").

RECITALS

Declarant, Knight Commerce Centre, Inc., a Florida corporation ("Knight") and Commerce Centre, L.C., a Florida limited liability company ("Commerce Centre") entered into that certain Declaration of Covenants, Restrictions and Easements, dated as of May 13, 1997 and recorded in the Public Records of Palm Beach County at Official Records Book 9814, Page 137, and that certain First Amendment to the Declaration of Covenants, Restrictions and Easements dated as of December 31, 1997 and recorded in the Public Records of Palm Beach County at Official Records Book 10223, Page 436, and that certain Amended and Restated Declaration of Covenants, Restrictions and Easements dated as of April 12, 1999 and recorded in the Public Records of Palm Beach County at Official Records Book 11052, Page 917, and that certain First Amendment to Amended and Restated Declaration of Covenants, Restrictions and Easements dated as of October 5, 2000 and recorded in the Public Records of Palm Beach County at Official Records Book 12062, Page 324, and that certain Second Amended and Restated Declaration of Covenants, Restrictions and Easements dated as of December 29, 2003, and recorded in the Public Records of Palm Beach County at Official Records Book 16370, Page 196 (collectively, the "Original Declaration"), providing for a common plan of development for the "Property" as defined in the Original Declaration, which Property is described on Exhibit A attached hereto.

The Association was formed to serve as the "Association" as provided for in the Original Declaration.

The Property or portions thereof shall be subject to the covenants, conditions, restrictions and rights set forth in this *Fourth Amended and Restated Declaration of Covenants, Restrictions and Easements* as an amendment and restatement of the Original Declaration in its entirety, each and all of which is and are for the benefit of the Property and portions thereof, the Declarant and each owner, tenant and occupant of the Property and shall inure to the benefit of and shall pass with each and every portion of each thereof.

NOW, THEREFORE, it is hereby agreed and declared that the Property is and shall be transferred, held, sold, conveyed, leased, occupied and accepted subject to this Declaration; it is further agreed and declared that the following covenants, restrictions, rights, conditions and burdens, uses, privileges, charges and liens shall: (1) exist at all times hereafter amongst all parties having or acquiring any right, title or interest in or to any portion of the Property; (2) be binding upon and inure to the benefit of each owner of the Property or any portion thereof; and (3) run with the land subjected to this Declaration, to be held, sold and conveyed subject to this Declaration.

ARTICLE 1

DEFINITIONS

The following terms have the following meanings in this Declaration:

- 1.1 **"Affiliate"**: with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such Person.
- 1.2 **"Annual Assessments"**: shall mean Assessments pursuant to an annual budget of Common

Expenses as provided in Section 8.2 hereof.

- 1.3** "Approval of Owners": shall mean by an affirmative vote of at least sixty-six and two-thirds percent (66-2/3%) of the total voting interests cast by members of the Association eligible to vote at the time the vote is taken; provided, however, not less than thirty (30%) of the total voting interests held by all members of the Association shall be cast at the time the vote is taken.
- 1.4** "Assessments": shall mean Annual Assessments, Supplemental Assessments and Special Assessments.
- 1.5** "Association": shall mean and refer to Peninsula Corporate Center Association, Inc., a Florida not-for-profit corporation, its successors and assigns.
- 1.6** "Board" or "Board of Directors": the Board of Directors of the Association.
- 1.7** "By-Laws": the By-Laws adopted by the Association.
- 1.8** "Commercial Owner": the Owner of a Commercial Parcel or Condominium Unit in a Condominium Parcel.
- 1.9** "Commercial Parcel": any Parcel other than a Residential Parcel.
- 1.10** "Committee" or "ARB": any Committee established pursuant to Article III, Sections 10 and 11 of the Bylaws. The Architectural Review Board ("ARB") shall be established pursuant to Article 6.
- 1.11** "Common Area": Attached hereto as Schedule "1" and made a part hereof is a certification prepared by a licensed surveyor identifying portions of the Property now or in the future owned or maintained by the Association for the common use and enjoyment of the Owners, including, but not limited to, the Utility Easement, the Sign Easement, the Lift Station Easement, all other easements granted hereunder or pursuant to the Subdivision Plat, the Roadway, and the Storm Water Detention Facility. With respect to the Roadway, and the Storm Water Detention Facility, the Common Area shall include only the Roadway Easement and the Storm Water Detention Facility Easement.
- 1.12** "Common Expense": the cost and expense incurred by the Association or the Board:
- (a) to improve, maintain, and restore the Easement areas, Common Area and Common Improvements;
 - (b) for operating expenses for the Association incurred by the Committee, provided, however, that such funds shall not be used for compensation of any member serving on the Committee;
 - (c) for operational expenses including, but not limited to, management costs and professional fees for architects, engineers, accountants, attorneys and any professional manager, managing agent or other property service provider;
 - (d) to enforce the provisions of this Declaration;
 - (e) to do any other thing reasonably necessary or desirable, in the good faith determination of the Board, to keep the property neat and in good order, or which in the reasonable judgment of the Board may be of general benefit to the Owners or Occupants of the Property;
 - (f) for any other costs incurred by the Association or the Board, including, without

limitation, public liability or casualty insurance covering the Common Area and Common Improvements;

- (g) for any improvements or amenities to the Common Area or Common Improvements, whether or not contemplated at the time of making this Declaration, which may be required by any Governmental Authority or which the Board may deem to be in the best interests of the Property and the Owners;
- (h) for any real estate or personal property taxes assessed against the Common Area or Common Improvements; or
- (i) to establish reasonable reserves for contingencies, replacements and any extraordinary expenditures;

provided, however, that in no event shall "Common Expenses" include: (i) the costs of the initial construction of the infrastructure improvements to the Property, including, without limitation, the Roadway (except as provided in subsection 1.12(g) above), the Storm Water Detention Facility and all Utility Systems; or (ii) costs or expenses relating to improvements which are not, in the determination of the Board, for the benefit of the Property as a whole and which would more appropriately be the subject of a Limited Special Assessment, even if such improvements may be located in the Common Area.

- 1.13 **"Common Improvements"**: all Improvements now or in the future owned or maintained by the Association for the common use and enjoyment of the Owners and, including, but not limited to the Roadway, all signage located in the Sign Easement Area, the Storm Water Detention Facility, the sanitary sewer lift station and any other such improvement located in or upon any Common Area.
- 1.14 **"Condominium Parcel"**: any portion of the Property submitted to the condominium form of ownership. The terms "Condominium", "Unit" and "Unit Owner" and all other references to terms used in the establishment of a condominium, shall be as defined in Chapter 718, Fla. Stat., as same may be amended from time to time.
- 1.15 **"Condominium Association"**: any association responsible for administering the affairs of any commercial portion of the Property developed as a Condominium Parcel.
- 1.16 **"Declaration"**: this Fourth Amended and Restated Declaration of Covenants, Restrictions and Easements, together with all amendments thereto as made from time to time.
- 1.17 **"Declarant"**: CarrAmerica Development, Inc., a Delaware Corporation, and any Person(s) to which the Declarant specifically assigns all or a portion of the Declarant's rights or obligations under this Declaration by written instrument recorded in the Public Records of Palm Beach County.
- 1.18 **"Easement"**: any easement on, over or under any area(s) of the Property for utilities; ingress or egress; storm water drainage, retention or detention; landscape, signage, or any other purpose, which is reserved or granted in this Declaration or which is now or hereafter recorded in the Official Records and/or depicted on the Subdivision Plat and which complies with the terms, covenants and conditions of this Declaration.
- 1.19 **"Fee Residential Parcel"**: any portion of the Property developed as zero lot line townhouses, townhomes, patio homes or other attached or detached single family Residential Units owned in fee simple
- 1.20 **"Governmental Authorities"**: any board, bureau, commission, department or body of any municipal, county, state or federal governmental unit or subdivision thereof, having or acquiring jurisdiction over the Property or any part thereof.

- 1.21 **"Guidelines"**: written guidelines which the ARB may adopt, subject to the approval of the Board of Directors, for the development of the Property, which set forth in greater detail the design standards and requirements for construction and maintenance of Parcels and Improvements.
- 1.22 **"Homeowners' Association"**: any association responsible for administering the affairs of any portion of the Property developed as a Fee Residential Parcel.
- 1.23 **"Improvements"**: all improvements, structures and appurtenances thereto of every type and kind and all plants and landscaping elements placed, constructed or located on the Property, including but not limited to, buildings, parking areas, roads, driveways, sidewalks, walkways, loading areas, fences, screening walls, retaining walls, poles, and signs of any type or kind.
- 1.24 **"Lake Maintenance Agreement"**: that certain lake Maintenance Agreement entered into by the Declarant and the City of Boca Raton, Florida, and recorded in the public records of Palm Beach County at Official Records Book 10709, Page 636.
- 1.25 **"Laws"**: all laws, statutes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities.
- 1.26 **"Limited Special Assessments"**: shall mean Assessments for the costs of any construction, repair or replacement of any area in which maintenance is undertaken by the Board pursuant to the Declaration as provided in Section 8.5 hereof which the Board determines is not for the benefit of the Property as a whole and should be assessed only against those Owners benefited thereby; provided, however, that in no event shall any Limited Special Assessment be made for the cost of the initial construction of the infrastructure improvements to the Property, including, without limitation, the Roadway, the Storm Water Detention Facility and all Utility Systems.
- 1.27 **"Mortgage"**: a mortgage or deed of trust creating a lien against a portion of the Property (including a Residential Unit) made in good faith and for value given to secure an obligation of the Owner (or Residential Unit Owner) of such portion and not given for the benefit of an Affiliate of such Owner.
- 1.28 **"Mortgagee"**: the holder from time to time of a Mortgage.
- 1.29 **"Occupant"**: any Person legally entitled to occupy or use any part of a Parcel.
- 1.30 **"Original Owner"**: the first purchaser of each unimproved Parcel from the Declarant, other than an Affiliate of the Declarant.
- 1.31 **"Owner"**: the Person(s) which may, from time to time, hold fee simple title of record to a Parcel: or, with respect to any portion of the Property developed as a Condominium Parcel, the Condominium Association responsible for administering such Condominium Parcel, which will hold all rights as an Owner hereunder for the benefit of the owners(s) of each Residential Unit in the Condominium Parcel: or, with respect to any portion of the Property developed as a Fee Residential Parcel, the Homeowners' Association responsible for administering such Fee Residential Parcel, which will hold all rights as an Owner hereunder for the benefit of the owner(s) of each Residential Unit therein, subject to Sections 7.3 and 7.9 below. In the event fee simple title to a Parcel is held by more than one Person, the obligations of the Owners of that Parcel under the provisions of this Declaration shall be the joint and several obligations of such Persons. The term "Owner" shall not include Persons who hold merely a lien or interest in a Parcel or any portion thereof as security for the performance of an obligation, including any Mortgage that has not foreclosed on its Mortgage.
- 1.32 **"Parcel"**: any portion of the Property subject to separate ownership; provided that any

Condominium Parcel or Fee Residential Parcel will be treated as a single Parcel for purposes of this Declaration.

- 1.33 **"Permittees"**: all customers, clients, contractors, employees, agents, invitees, tenants, and licensees of any Owner and of any tenant of any Owner.
- 1.34 **"Person"**: any natural individual, corporation, partnership, trustee, or any other legal entity capable of holding title to real property.
- 1.35 **"Plan"**: all of the plans and specifications required to be submitted by an Owner to the Committee under Article 6 below.
- 1.36 **"Principal Improvement"**: the principal building or Residential Unit and related Improvements constructed or to be constructed on a Parcel.
- 1.37 **"Property"**: the real property described in Exhibit A attached hereto.
- 1.38 **"Protective Covenants"**: the conditions, restrictions, easements, charges and liens set forth in this Declaration.
- 1.39 **"Public Records"**: the Public Records of Palm Beach County, Florida.
- 1.40 **"Residential Association"**: any Homeowners' Residential Association.
- 1.41 **"Residential Developer"**: any Person(s) that has developed any portion of the Property as Residential Units, including but not limited to any Fee Residential Parcel.
- 1.42 **"Residential Parcel"**: any Fee Residential Parcel in existence on or after the date of recording this Fourth Amended and Restated Declaration in the Public Records, as more particularly shown on Schedule "3" attached hereto and made a part hereof.
- 1.43 **"Residential Sign Easement"**: the right to erect and maintain signage in the Residential Sign Easement Area as shown on the Plat of Peninsula Village Greens at Plat Book 102, Pages 6-13, in the Public Records of Palm Beach County ("Village Greens Plat").
- 1.44 **"Residential Sign Easement Area"**: that portion of the Sign Easement Area designated on the Village Greens Plat as the Residential Sign Easement.
- 1.45 **"Residential Unit"**: means those parts of the Property, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence on a Fee Residential Parcel. The term includes the land and the improvements thereon, if any. In the case of a structure which contains multiple dwellings, each dwelling is a separate Residential Unit.
- 1.46 **"Residential Unit Owner"**: the Person(s) who from time to time owns Residential Unit.
- 1.47 **"Roadway"**: the road bed and right-of-way in which it is located, which may be public or private, designated as Parcel R-1, together with the rights granted over the Roadway Easement Area pursuant to the Roadway Easement, as shown on the Subdivision Plat and to be constructed by Declarant.
- 1.48 **"Roadway Easement"**: the easement created by the Subdivision Plat for purposes of constructing, maintaining and using such portion of the Roadway as traverses a Parcel, as shown on the subdivision Plat.
- 1.49 **"Roadway Easement Area"**: that portion of a Parcel over which the Roadway Easement is created as shown on the Subdivision Plat.

- 1.50 **"Sign Easement"**: the sign easements created by and as shown on the Subdivision Plat.
- 1.51 **"Sign Easement Area"**: the area designated for sign easements on the Subdivision Plat.
- 1.52 **"Special Assessments"**: shall mean Assessments for the costs of any construction, repair or replacement of any area in which maintenance is undertaken by the Board pursuant to this Declaration as provided in Section 8.4 hereof, including specifically, but not by way of limitation, such costs as may be expended by any Governmental Agency pursuant to the Lake Maintenance Agreement, provided, however, that in no event shall any Special Assessments be made for: (i) the cost of the initial construction of the infrastructure improvements to the Property, including without limitation, the roadway, the Storm Water Detention Facility and all Utility Systems; or (ii) costs or expenses relating to improvements which are not, in the determination of the Board, for the benefit of the Property as a whole and which would more appropriately be the subject of a Limited Special Assessment, even if such improvements may be located in the Common Area.
- 1.53 **"Storm Water Detention Facility Easement"**: the drainage easements created by and as shown on the Subdivision Plat over a portion of a Parcel to be included in the Storm Water Detention Facility.
- 1.54 **"Storm Water Detention Facility Easement Area"**: that portion of a Parcel designated on the Subdivision Plat as being subject to drainage easements in connection with the Storm Water Detention Facility.
- 1.55 **"Storm Water Detention Facility"**: the storm water management facilities including all appurtenant access and maintenance, facilities, located or to be located in Parcel L-1, Parcel L-2, and the Storm Water Detention Facility Easement Area and constructed by Declarant.
- 1.56 **"Subdivision Plat"**: that certain Peninsula Corporate Center Plat" recorded in Plat Book 83, Pages 122-124, for the City of Boca Raton, in the County of Palm Beach, State of Florida, and any amended or replacement plat of the Property or portion of the Property in the future legally recorded in the Public Records.
- 1.57 **"Supplemental Assessments"**: shall mean Assessments for common Expenses in excess of amounts budgeted and charged in the Annual Assessment for any year provided in Section 8.3 hereof.
- 1.58 **"Utility Easement"**: the grant of the perpetual, non-exclusive right-of-way and easement to: (a) enter and re-enter a portion of the servient land specified in accordance with Section 5.1 hereof, and during the work hereinafter described, to enter and re-enter the land of the grantor, if any, within 10 feet on either side of such specified area, for the purposes of constructing, installing, laying, removing, repairing, replacing, re-laying, and maintaining Utility Systems; and (b) use said Utility Systems for purposes herein described. Each Utility Easement shall include a reservation in favor of the Owner of servient estate to make every use of the premises affected by the applicable Utility Easement, provided that such reserved right does not materially interfere with the rights granted to the grantee of said easement, and from time to time, to relocate such easement at such servient Owner's expense without unreasonable interference to the dominant estate.
- 1.59 **"Utility Systems"**: systems for any one or more general utilities, whether maintained privately or by the applicable utility company, and whether above ground or underground, including without limitation, water, sewer, electricity, natural gas, storm water, telephone, computer, cable television, traffic signal or control devices, together with all necessary pipes, conduits, fittings, appurtenances and related facilities, including without limitation, sanitary sewer lift stations.

ARTICLE 2

PURPOSE OF THIS DECLARATION

This Declaration and the covenants, restrictions and easements it contains are for the benefit of the present and future owners of each Parcel comprising the Property, and are imposed for the following purposes:

- (a) to ensure that the Property will be maintained as an attractive setting for business, commerce and residential use with ample landscaped open areas, attractive, high-quality structures, proper uses and appropriate development of each site;
- (b) to ensure that the commercial and residential portions of the Property are developed, used and maintained harmoniously;
- (c) to ensure that residentially zoned portions of the Property are developed, used and maintained as Residential Parcels, and that no provision contained herein interferes with such development or use, and that to the extent any provision potentially interferes with such development or use, the provision should be construed to accommodate residential development to the maximum extent possible;
- (d) to protect Owners and Occupants against improper development and use of surrounding Parcels;
- (e) to prevent construction of Improvements which are inconsistent with the materials and designs approved by the ARB;
- (f) to encourage the timely development of attractive Improvements that enhance the value of the Property as a whole by harmonizing with the appearance and function of other Improvements on the Property;
- (g) to ensure adequate off-street parking and loading facilities, sign controls and setbacks; and
- (h) to ensure the maintenance of landscaping and signage (to the extent not maintained by the Owners), for the Common Area, Common Improvements and other portions of the Property as decided by the Board.

The Association and the ARB (Architectural Review Board, as defined in the Article 6) shall use this Article 2 as a general standard in interpreting this Declaration and judging performance under it, in preparing and revising the Guidelines, in approving or disapproving the development of Parcels, and in carrying out the overall development of the Property. Provided, however, that this Article 2 shall not be construed as a limitation of any provision of this Declaration, which may be interpreted by the Association and the ARB, in its entirety, and any portion of which may be relied upon the Association or the ARB for purposes of determining authority for their actions hereunder.

ARTICLE 3

GENERAL RESTRICTIONS AND DEVELOPMENT STANDARDS

All Parcels and Improvements on or within Parcels shall be constructed, enlarged, altered and maintained in compliance with the Declaration, any Guidelines the Committee may adopt, any covenants and restrictions of record and all applicable Laws. This Article sets forth the basic standards which shall apply to the construction and maintenance of all Parcels and Improvements on or within Parcels. In the event of any conflict between the standards in this Article 3 and the standards established by the Guidelines or any applicable Law, the least restrictive legally enforceable standard shall apply.

3.1 **Permitted Uses.** Each Owner covenants to use and/or cause its parcel to be used only by covenants, conditions and restrictions set forth in this Declaration. The Property shall be maintained in a first-class condition consistent with other mixed-use commercial residential centers in Boca Raton, Florida. In addition, the Property shall not be used for any purpose: (i) which does not comply with applicable Laws; and (ii) for which an owner would be required to apply for a variance from the then-current zoning classification affecting the Property, without obtaining the prior written approval of the Association.

3.2 **General Use Restrictions**

(a) The following uses of the Property shall be and are hereby prohibited:

(i) No use or operation of any part of the property shall be permitted that results in the existence of a condition that constitutes by reason of odor, fumes, dust smoke, noise vibration, pollution hazard of fire or explosion or otherwise, a legal nuisance under any applicable Law.

(ii) No use or operation of any part of the Property shall be permitted which involves, as the predominant purpose or result of such use or operation, the storage, transportation, processing, manufacturer, or disposal of any toxic, explosive, radioactive or other material hazardous to human health or the environment, including without limitation, "Hazardous Substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. Section 9601 et seq.) (collectively, "Hazardous Materials"); provided, however, that nothing contained in the immediately preceding part of this sentence shall be construed to prohibit: (A) the operation on Parcel 6 (or Parcel 5, if the Owner of Parcel 6 gives its consent) of an automobile service station (whether a full-service or self-service station and including a food market, but not including a lube service operation mechanical shop, or a carwash), provided that all Hazardous Materials stored, handled, vended or otherwise dispensed on the Property as the result of the operation of such automobile service station shall be stored, handled, vended or otherwise dispensed in accordance with all applicable laws and regulations; or (B) the incidental use of Hazardous Materials for common household, garden, office or retail use or for other business use which is not the predominant purpose or result of the operation of such business, provided that all such materials are handled, stored and disposed of in accordance with all applicable Laws and disposal occurs off the premises of the Property. No on-site disposal, storage, or accumulation of Hazardous Materials shall be permitted under any circumstances within the Property, except as expressly permitted herein; or (C) with Board approval, the installation on any Parcel of an underground or above-ground (permanent or temporary) fuel tank for emergency generator use in compliance with all state, federal and local laws, ordinances and regulations.

(b) In addition to (and without limiting) the use restrictions set forth in Section 3.2(a) above, the following specific uses of the Property shall be and are hereby prohibited:

(i) any trailer, mobile home or manufactured home court or park, junk yard, scrap metal yard or waste material business;

(ii) any dumping or storage of gravel, dirt, sand or other minerals on the property or any portion thereof; provided, however, that reasonable amounts of gravel, dirt, sand or other mineral may be stored on the Property for reasonable periods of time for use in (and during the period

- of) construction of Improvements on the Property, or following the excavation of ditches or ponds for drainage or other public utility purposes (but, in such latter case, such excavated materials must, within a reasonable period of time following such excavation, be either spread over portions of the Property in a substantially level and uniform manner or disposed of off the premises of the Property); or any dumping, disposal, incineration (except as provided below) or reduction of garbage or refuse; it is expressly provided, however, that incineration of refuse or garbage from uses within the Property shall not be prohibited if such incineration is performed in accordance with all applicable Laws;
- (iii) any establishment that, as the predominant purpose and result of its operation, conducts fire or bankruptcy sales or auctions or regularly conducts sales from non-permanent, outdoor structures, such as tents, trailers or mobile homes, stalls or the like, excepting such trailers as are permitted under Section 3.8 below;
- (iv) any movie or motion picture theater, or any establishment: (A) which features topless, bottomless or totally nude performers, waitresses, waiters or other personnel; (B) which is not a motion picture theater, but that provides recorded, on-premises entertainment featuring nude or partially nude persons performing or simulating sexual acts; (C) which is not a motion picture theater, but that, as the predominant purpose and result of its operation, sells or rents so-called "X-rated" or obscene movies or pornographic or sexually oriented materials or paraphernalia; (D) which is not a motion picture theater but as the predominant purpose and result of its operation, regularly shows so-called "X-rated" or obscene motion pictures or video tapes; (E) which operates as a sexually oriented massage parlor or modeling studio; or (F) which, as the predominant purpose and result of its operation, operates as a pool hall, game room or amusement parlor;
- (v) any establishment that, as the predominant purpose and result of its operation, operates as a used car sales or storage lot, or as a place or location for the sale or storage of used cars, or as an outdoor place or location for the storage or sales of used car parts (the term "used cars" as used herein means and includes used passenger cars, used trucks, used vans, used buses and every other kind of used motor vehicle);
- (vi) a business the predominant purpose and result of the operation of which is the washing of cars, trucks or other motor vehicles (as distinguished from the washing of cars, trucks or other motor vehicles as a non-predominant element of the operation of an automobile service station or other primary use not prohibited by this Declaration);
- (vii) a rendering plant or a slaughter house;
- (viii) any industrial use that would require a permit from any governmental Authority, or that would involve the use of smokestacks, waste storage ponds, or other facilities, Improvements or waste disposal techniques that are characteristic of heavy industrial or manufacturing use such as petrochemical plants, steel plants, fertilizer production facilities, waste incineration facilities or similar industrial uses; and

3.3 Special Use Restrictions. No portion of the Property shall be used for a gas station or free standing convenience store without the prior written approval of the Board and the Owner of

Parcel 6, which approval may be withheld in such Owner's sole and absolute discretion.

- 3.4 Responsibilities of Owner or Occupant.** The Owner or Occupant or any other user of each Parcel or portion of a Parcel shall jointly and severally have the duty, at its or their sole expense, to comply in all material respects with all of the Protective Covenants.
- 3.5 Maintenance.** Each Owner shall keep its Parcel and Improvements on or within its Parcel in a well-maintained, safe, clean and attractive condition at all times in a manner typical of a quality business park or residential development.
- 3.6 Refuse Disposal.** Each Owner shall remove or cause to be removed at its expense any trash, refuse or waste which may accumulate on its Parcel.
- 3.7 Damage to Improvements.** If any Improvements on or within a Parcel are damaged or destroyed by fire or other casualty, the Owner of that Parcel shall within six (6) months of such damage or destruction: (a) restore those Improvements; or (b) demolish them and landscape the Parcel in compliance with the requirements of the Guidelines or of this Declaration; or (c) construct new Improvements after complying Article 6 below.
- 3.8 Trailers.** Trailers and other temporary structures shall be permitted only during construction of a permanent Improvement unless otherwise approved in writing by the Board. Any such trailer or temporary structure shall be permitted only with the Association's prior written consent, which consent will not be unreasonably withheld, and shall be subject to all applicable governmental rules and regulations, and such objects shall be removed within thirty (30) days after the issuance of a permanent occupancy permit or, if no occupancy permit is required, thirty (30) days after substantial completion of the Improvement.
- 3.9 Compliance with Laws; Indemnity.** Each Owner shall comply with all Laws which affect the Property owned by it, including, but not limited to, any Law pertaining to environmental pollution or hazardous, dangerous or toxic substances or wastes, and no Owner shall permit any other Person to violate any such Law pertaining to environmental pollution or hazardous, dangerous or toxic substances or wastes which affect the Property owned by such Owner. Any Owner violating this Section 3.9 shall indemnify every other Owner, the Declarant, the Association and the Board against all liability and costs arising from such violation, including reasonable attorney's fees. Declarant shall comply with all laws and governmental regulations which affect its obligations hereunder, including, but not limited to, any law or regulation pertaining to environmental pollution or hazardous, dangerous or toxic substances or wastes.
- 3.10 Landscaping Requirements.**
- (a) Landscaping Standards.** Each Owner shall provide or cause to be provided landscaping or ground cover on all areas of its Parcel that have been cleared and are not covered by Improvements in accordance with standards set forth in this Declaration and/or by the Association and any applicable requirements of any Governmental Authorities. All landscaped areas shall be planted to provide an attractive setting in compliance with the Guidelines established by the ARB under Article 6 of this Declaration. All landscaped areas shall be regularly irrigated and shall receive regular maintenance, including trimming, fertilization and mowing. Each Owner shall be responsible for repairing or replacing, or causing to be repaired or replaced, any deteriorated or damaged landscape materials on its Parcel.
 - (b) Trees.** No existing trees may be removed except in compliance with the Guidelines and as approved by the Committee.
 - (c) Time of Completion.** Subject to delays caused by weather and normal planting seasons, the Owner shall complete all required landscaping within sixty (60) days after the substantial completion of the Improvements on the Parcel.

- (d) **Vacant Parcels.** The Owner shall maintain any vacant Parcel to prevent erosion by both water and wind. If a Parcel has been cleared, appropriate ground cover shall be planted and maintained.

3.11 Parking and Sidewalks.

- (a) **Parking Areas.** All parking shall be only in garage spaces or on paved parking spaces or Residential Unit driveways to be constructed on each Parcel or portion of a Parcel (except as incidental to construction). Parking is not permitted on any street including but not limited to Peninsula Corporate Circle and Peninsula Corporate Drive or in any parking setback of any Parcel, without prior written approval from the Association. The location, number and size of parking spaces shall be subject to approval by the ARB and shall be in compliance with the Guidelines and any applicable requirements of any Governmental Authorities. All parking area and access driveways shall have a wearing surface of asphalt, concrete and other similar hard surfaced materials approved by the Committee and shall be graded to assure proper drainage. Notwithstanding the foregoing, this Section 3.11 shall not apply to the property owned by the Homeowners' Association.
- (b) **Curb Cuts.** All curb cuts shall be designed to be consistent with efficient traffic patterns and shall not unnecessarily hinder traffic flow to or from other Parcels, and shall conform to any applicable requirements of any Governmental Authorities.
- (c) **Maintenance.** All parking lots, sidewalks and other hard surface areas located on each Parcel shall be swept and cleaned regularly and cracks and other damaged areas shall be repaired or replaced as required. Broken bumper stops and/or curbing shall be replaced and drainage inlets, storm sewers and any surface and subsurface drainage facilities shall be maintained in good repair and shall remain clear of debris so as to enable the proper flow of water.
- (d) **Lighting.** Levels of light intensity in the private roadways, commercial parking areas and exterior walkways and sidewalks shall be maintained at appropriate levels in compliance with the Guidelines and bulbs shall be replaced expeditiously as failure occurs. Light fixtures shall be maintained in good repair and shall be kept functional at all times.

- 3.12 Storage of Materials; Screening Fences.** Refuse receptacles and standard residential storage items may be placed on a Parcel without prior consent, provided they are properly screened from view in accordance with the Guidelines. Any storage tanks, trailer storage, or other large items require the Association's prior written consent. If it becomes necessary to store such item(s) in the open, the storage area shall be screened with materials pre-approved by the ARB in writing. Any screening or fences shall be in compliance with the Guidelines and all applicable requirements of any Governmental Authorities.

- 3.13 Utilities.** All utilities must be placed underground. Transformers, electric, gas, or other meters or other apparatus that are visible from adjacent Parcels or public areas shall be adequately screened and subject to the ARB's prior written approval. Installations by the Association over, under or upon the Common Areas are exempt from this provision.

3.14 Sign Requirements.

- (a) **All Signs Subject to ARB Approval.** All matters concerning sign must be approved in writing by the ARB. Any sign erected without the ARB's prior written approval shall be removed within three (3) days after the receipt of written demand from the Association. If the Owner fails to remove the sign within five (5) business days, the Association shall have the right, but not the obligation, to enter upon the Parcel and remove the sign. The cost of such removal shall be assessed against and paid by the Owner in the manner provided in Section 9.1 below.

- (b) **General Sign Requirements.** All signage shall conform to the Guidelines and any applicable requirements of any Governmental Authorities. The design, location and orientation of all signs shall be subject to the approval of the ARB. Advertising signs are strictly prohibited unless approved by the ARB in its sole and absolute discretion. Banners and streamers of any kind are prohibited unless approved by the ARB. Ground signs may be illuminated, but not in an unsightly manner. Each Owner shall erect necessary traffic, directional or warning signs of a size and character appropriate for such purposes. Signs with flashing lights and signs with visibly movable parts are prohibited.
- (c) **Temporary Signs.** Temporary signs identifying the Owner or Occupant are permitted during construction, provided that the Owner first obtain the written approval of the Association, which approval may contain reasonable limitations on the size and design of such signs, and provided further that such approval shall not extend for more than one (1) year.
- (d) **Other Signs.** The provisions of this Section 3.14 shall not apply to:
 - (i) monuments, markers and signs originally erected by the Declarant for the purposes of decoration and/or identification of the Property;
 - (ii) any signs erected by the Association in the Sign Easement Area; and
 - (iii) any signs erected by any Residential Developer or by the Association in the Residential Sign Easement Area; and
 - (iv) signs identifying the Property and/or offering Parcels and/or buildings on Parcels for sale or lease; provided that signs for the purpose of marketing Parcels or buildings on Parcels for sale or lease shall not block or unreasonably interfere with signs erected by an Owner pursuant to this Article 3.

- 3.15** **Maintenance of Common Areas and Common Improvements.** The Association shall be responsible for the maintenance of the Common Areas and Common Improvements in a well-maintained, safe, clean and attractive condition at all times in a manner typical of a quality business park or residential development. The Association shall also be responsible for the payment of taxes assessed against the Common Areas and Common Improvements. All work pursuant to this Section 3.15, and all expenses hereunder, shall be paid for by the Association by way of Assessments pursuant to Article 8 hereof. The costs of any maintenance, repair or replacement to the Common Areas or Common Improvements caused by the negligent conduct of any Owner, or by the failure of any Owner to comply with applicable rules and regulations of the Association, shall be levied as a Limited Special Assessment against such Owner. No Owner may waive or otherwise escape liability for Assessments for such maintenance expenses by non-use of the Common Areas or Common Improvements or by abandonment of its right to use the Common Areas and Common Improvements.

ARTICLE 4 **GRADING AND CONSTRUCTION**

- 4.1** **Cessation of Construction.** If construction of any Improvement on any Parcel stops for nine (9) months or more before that Improvement is enclosed, the Owner, upon not less than sixty (60) days written notice and demand of the Association, shall either resume construction, demolish and remove the non-enclosed Improvement, or present a remediation plan acceptable to the Association (or complete the Improvement if the Improvement is ancillary to a completed Principal Improvement) and if the Improvement is demolished and removed, the Owner shall landscape the Parcel in compliance with the Guidelines or other requirements of this Declaration. If construction of any Improvement on any Parcel stops for

a period of six (6) months after that Improvement is enclosed or completed, as the case may be, the Owner, upon not less than thirty (30) days written notice and demand of the Association, shall landscape the Parcel in compliance with the Guidelines or other requirements of this Declaration.

- 4.2 **Construction Damage and Debris.** The Owner shall conduct all grading and construction work in a manner so as to prevent dirt and debris from accumulating beyond the boundary lines of the Parcel or from entering any detention or retention facility on the Parcel. Only rubber tired equipment shall be permitted beyond the boundary lines of the Parcel. During grading and construction, the Owner shall be responsible for any damage to all Improvements within or bordering the Property and shall remove on a daily basis any dirt or debris on such roads or sidewalks to the extent such damage, dirt or debris results from the Owner's activities.
- 4.3 **Disturbance of Association Landscaping, Utilities, Amenities.** If, in the course of construction on its Parcel, the Owner disturbs any naturally occurring or otherwise existing landscaping other than as approved by the ARB, the Owner shall replace such material in a timely manner in substantially the same location on the Property (unless the ARB otherwise agrees) at its expense in conformity with the good nursery practices and in substantial conformity with the Plans approved by the ARB for the Parcel. In addition, the Owner shall replace any such replanted landscaping material which is not surviving in good health one (1) year after the time of replanting with new landscaping material of the same variety and of substantially the same size. The Owner further agrees to notify the Association prior to disturbing any Common Improvements or utility lines installed by the Declarant or the Association. The Owner shall immediately repair or restore to its original condition any portion of the Common Improvements or any utility line disturbed or damaged by the owner's activities, at the Owner's sole cost, to ensure continuous use and operation of the entire Common Improvements and/or utility system. Neither the Common Improvements nor any existing utility line may be relocated without the consent of the ARB and any utility provider involved, and then only within an easement in form satisfactory to the ARB (approval of which shall not be unreasonably withheld, delayed or conditioned) and any utility provider involved.
- 4.4 **Trees.** The Owner shall follow construction practices that will ensure the preservation of trees on the Parcel and on all adjacent roadways, consistent with the Guidelines and the landscaping plan approved by the ARB.

ARTICLE 5 EASEMENTS

- 5.1 **Utility Easements.** The Owner of each Parcel hereby grants to, or reserves for the benefit of the Association, and the Owners of the other Parcels, their successors and assigns, perpetual and non-exclusive Utility Easements on, over and under the area within 10 feet of any public or private street right-of-way.
- 5.2 **Easement for Ingress and Egress.** The Owner of each Parcel hereby grants to the Owners of the other Parcels, their successors and assigns, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular traffic on, over and across the Roadway.
- 5.3 **Easement for Signage.** The Owners of Parcel 6 and Parcel 1 hereby grant to the Association, a perpetual, non-exclusive easement for the purpose of erecting and maintaining monument signs and related landscaping and lighting for the Property in the Sign Easement Area. Association may add additional property to the Sign Easement Area by amendment to the Subdivision Plat or other appropriate instrument provided that the Owner of any Parcel affected by such expansion of the Sign Easement Area shall consent thereto.
- 5.4 **Easement for Residential Signage.** Each Residential Developer, its successors and assigns, including without limitation, the Association or Residential Association, has the nonexclusive

right to use the Residential Sign Easement Area for the purpose of erecting and maintaining a monument sign and related landscape for the Residential Parcel.

- 5.5 **Easement for Roadway.** The Owner of Parcel 7 hereby grants to the Association, a perpetual, non-exclusive right-of-way and easement to enter and re-enter the "Roadway Easement Area" for the purpose of constructing, operating, managing, maintaining, altering and conserving the Roadway and to use the same for its intended purposes.
- 5.6 **Easement for Storm Water Detention Facility.** The Owner of Parcel 7 hereby grants to the Association, a perpetual, non-exclusive right-of-way and easement to enter and re-enter the "Storm Water Detention Facility Easement Area" for the purpose of constructing, operating, managing, maintaining, altering and conserving the Storm Water Detention Facility and to use the same for its intended purposes.
- 5.7 **Easement for Drainage.** The Association and the Declarant hereby grant to each Owner of a Parcel, a perpetual, non-exclusive right-of-way and easement on, over and under parcel R-1, Parcel L-1, Parcel L-2 for the purpose of installing, using, and maintaining drainage systems to transfer surface water to Parcel L-1 and Parcel L-2 (including, without limitation, access to the Storm Water Detention Facility), in accordance with the master grading and drainage plan for the Property, the Lake Management Agreement, all other applicable Laws, and any other contractual agreements with the Association.
- 5.8 **Relocation of Easements.** The Association may in the future relocate any Easement or, with respect to parcels then owned by the Association, reserve to itself or grant to one or more Persons additional Easements consistent with the purposes of this Declaration provided, however, that the Roadway Easement Area and the Storm Water Detention Facility Easement Area may not be relocated without the consent of the Owner of Parcel 7. Unless specifically depicted or stated to the contrary in this Declaration or in any document or Subdivision Plat filed in the Public Records on or before the date of this Declaration, no Easement reserved or granted by this Declaration now or in the future shall be utilized or located or relocated in a way that would unreasonably interfere with the use of any Improvement then existing on the Parcel or unreasonably limit the construction or use of Improvements to be placed on the Parcel. In addition, the Association, shall reimburse each Owner for all reasonable direct out of pocket costs incurred by the Owner as a result of the relocation of any Easement on such Owner's Parcel by such party, if and only if such relocation is undertaken by the Association for the benefit of another Owner and not as a result of the request, demand, act or omission of any: (a) utility company or governmental body; or (b) other person or entity which person or entity has a legal right to cause the Association to relocate such Easement.
- 5.9 **Association's Right of Entry.** The Association hereby specifically reserves for the benefit of itself the right to enter upon any Easement upon prior reasonable notice, to maintain, repair or alter any Easement, together with the right of ingress and egress to them across other portions of the Property; provided, however, that the Association shall use reasonable efforts to minimize interference with the operation of the Owners' businesses or residences and shall restore any altered or maintained Easement in a manner generally consistent with the condition as existed prior to the alternation and the entering party shall reimburse each Owner for all reasonable direct out of pocket costs incurred by the Owner as a result any material alteration of such Easement on such Owner's Parcel if and only if such material alteration is undertaken by the Association, as the case may be, for the benefit of another Owner and not as a result of the request, demand, act or omission of any: (a) utility company or Governmental Authority; or (b) other Person which as the legal right to cause the Association to make such material alteration.
- 5.10 **Regulation and Use of Easements.** The enjoyment, at any time, of any non-exclusive Easement created and established by this Declaration shall be subject to such reasonable and non-discriminatory regulations, restrictions and/or limitations, as the owner of the parcel (or, in the case of a Condominium Parcel or Fee Residential Parcel, the applicable Residential

Association) burdened by such non-exclusive Easement may impose at such time, provided that such regulation, restriction and/or limitation is not inconsistent with the rights here in granted and does not materially interfere with the intended uses of said Easement.

- 5.11 **Easements for Benefit of Permittees.** Any Easements or rights of entry granted or established by or pursuant to this Declaration for the benefit of any Owner shall be for the benefit not only of such Owner but also for the benefit of any Permittee of such Owner's Parcel.
- 5.12 **Lake Maintenance Agreement.** All rights of the Association, any and all Owners, and all Members of the Association, with respect to the Storm Water Detention Facility shall be subject to the Lake Maintenance Agreement.
- 5.13 **Easements and Other Rights Granted to Association.** All easements and rights granted and conveyed to the Association by the Subdivision Plat or pursuant to this Declaration are hereby declared to be granted and conveyed to the Association for the benefit of all Owners and shall be appurtenant to and shall pass with the title to each Parcel.

ARTICLE 6 ARCHITECTURAL REVIEW BOARD

- 6.1 **The ARB.** There is hereby created an Architectural Review Board ("ARB"), consisting of no fewer than one (1) and no more than three (3) persons. Each member of the ARB shall serve for a term of one (1) year. The Board shall have the sole right to establish the number of persons on the ARB and to appoint and remove all members of the ARB.
- 6.2 **ARB's Adoption of Guidelines.** The ARB may, but shall not be required to, adopt written Guidelines which set forth detailed design standards and requirements for construction and maintenance of Improvements and Parcels, subject to approval of the Board of Directors. The ARB may modify or repeal the Guidelines at any time, subject to approval of the Board of Directors but no modification shall affect any approval or consent already given to any Owner or Occupant, nor shall any such modification or repeal materially impair the economic value of any of the Property or of any then existing improvements within the Property, and any such modification or repeal shall otherwise be subject to all Laws. The ARB shall promptly disseminate the Guidelines and any modifications thereto to all Owners.
- 6.3 **ARB's Approval of Plans.** No Owner shall: (a) construct or place any Improvement on or within any Parcel, or (b) alter or add to any existing Improvement in a way which would affect building size, placement or external appearance, until Plans have been submitted to, and approved in writing by, the ARB and, if required, any Governmental Authorities.
- 6.4 **Form and Content of Plans.** The "Plans" shall include two (2) full sets of the applicant's construction drawings, plans and specifications, its landscape drawings, plans and specifications, and its rendering or elevation drawings, to be submitted under cover of a transmittal letter to the ARB. The Plans shall be in such form and shall contain such information as may be required by the Guidelines or the ARB, but shall in any event include at a minimum unless waived by the ARB in writing the following:
- (a) A site development plan of the Parcel showing the kind, shape, composition, and location of all structures with respect to the parcel (including proposed front, rear, and side setback lines) and with respect to structures on adjoining Parcels, and the number and location of all parking spaces, curb cuts and driveways on the Parcel;
 - (b) Civil engineering drawing(s) prepared by a civil engineer duly licensed under the laws of the State of Florida showing the grading scheme and drainage plans, including the invert elevation of all sanitary and storm sewer connections and the location of all utility connections;

- (c) A landscaping plan for the Parcel;
- (d) A plan for the location of signs and lighting;
- (e) A plan for the location of mailboxes for the Residential Units; and
- (f) A building elevation plan showing dimensions, materials, and exterior color scheme in no less detail than required by the appropriate Governmental Authority for the issuance of a building permit.
- (g) Any additional information reasonably requested by the ARB which will enable the ARB to determine the location, character, design, use, scale and appearance of the proposed Improvements.

6.5 **Review Fee.** With each submission of Plans to be reviewed by the ARB, a review fee will be paid in the initial amount of \$500 to defray administrative costs payable to the Association. An Owner shall not be required to pay a second fee in connection with the resubmission of plans previously reviewed by the ARB if the resubmission is made within 120-days following the ARB's initial disapproval of such Plans. Such fee shall be subject to increase as is deemed appropriate by the Association to reflect cost increases in the future. If the ARB, in its sole discretion, determines that it will require the services of one or more paid consultants, including but not limited to, architects, engineers, or landscape architects, in order to adequately review the Plans, then all fees charged by such consultants shall be passed through to the applicant in the form of an additional review fee. Notwithstanding anything contained herein to the contrary, no Plans shall be deemed approved until such time as the review fee has been paid in full.

6.6 **Review and Approval Procedure.** The ARB shall approve or disapprove all Plans within thirty (30) days after they are submitted. The ARB's approval or disapproval shall be evidenced by a written cover letter either enclosing one set of the Plans marked "Approved", or explaining the reasons for disapproval. Failure by the ARB to approve or disapprove any Plans within 30 days after submission shall not be deemed to constitute approval. In the event no decision has been rendered within thirty (30) days, the Owner may, within the (5) days after such 30-day period, request a final determination, in which case the ARB will render its decision postmarked no later than ten (10) days after such request in writing delivered via Certified Mail/Return Receipt Requested. Failure by the ARB to respond within such ten (10) day period shall be deemed approval. Resubmission of plans previously reviewed shall be approved or disapproved by the ARB within ten (10) days. The decision of the ARB shall be final, conclusive and binding upon the applicant, subject only to review by and at the discretion of the Board upon request of an applicant made to the Board in writing not more than thirty (30) days following disapproval of plans by the ARB. The ARB may disapprove Plans for any reason related to the planned development of the Property, including, without limitation, purely aesthetic reasons. Any changes to approved Plans, other than those made pursuant to minor change orders of the sort ordinarily made in the course of construction which neither materially alter the design or materials used in the Improvements or deviate from the Guidelines, shall be submitted to the ARB for review and approval.

6.7 **No Liability to ARB.** Neither the ARB, the Board, the Association, nor any of its or their members, employees, officers, directors or agents, shall be liable to any Owner, to anyone submitting Plans for approvals, or to any other Person, by reason of good faith exercise of judgment or mistake or nonfeasance arising out of in connection with the approval, disapproval or failure to approve any such Plans and specifications or for any other action in connection with its or their duties under this Declaration. No ARB member shall receive any compensation for serving on the ARB.

ARTICLE 7 THE ASSOCIATION

7.1 The Association, Creation, Powers, Organization. The Association shall have such powers as may be provided for it in this Declaration, including but not limited to, the power:

- (a) subject to Section 6.1, to provide for the selection of members to serve on the ARB as set forth in Article 6 above;
- (b) to provide for the enforcement of the provisions of this Declaration and the Guidelines;
- (c) to provide such other services and facilities as may be Approved by the Owners;
- (d) in general to maintain and promote the desired character of the Property.
- (e) to exercise the powers of a not-for-profit corporation pursuant to the Not For Profit Corporation Act of Florida, Chapter 617 Florida Statutes, and, with respect to Residential Units only, Chapter 720 Florida Statutes;
- (f) to levy Assessments against a Parcel for maintenance fees, Declaration enforcement costs, ARB expenses and other Common Expenses reasonably approved by the Association in accordance with its governing documents and Florida law; and
- (g) to hold title to Common Areas and Common Improvements.

Pursuant to this Declaration, the Board shall constitute the final administrative authority and all decisions of the Board with the respect to the administration of the Property shall be binding. All rights, title and obligations vested or imposed upon the Association by this Declaration shall be held and performed by the Board. The By-Laws for governing the Association shall be those duly enacted by the Board from time to time.

7.2 Membership. Ownership of a Parcel or portion of a Parcel which is subject to Assessments as provided herein shall be the sole qualification for membership in the Association ("member" or "membership"); provided however, with respect to any Condominium Parcel, the Condominium Association responsible for administering such Condominium parcel will hold all rights as an Owner hereunder for the benefit of the owner(s) of each commercial condominium Unit in the Condominium Parcel, including membership in the Association; and with respect to any Fee Residential parcel, the Homeowners' Association responsible for administering such Fee Residential Parcel will hold all rights as an Owner hereunder for the benefit of the owner(s) of each Residential Unit therein, including membership in the Association, subject to Sections 7.3 and 7.9 below. Each Parcel shall only have one (1) membership regardless of the number of Persons that own that Parcel. If more than one Person is the record owner of any parcel, or an Owner is a trustee, corporation, partnership or other legal entity other than a natural person, the votes for that parcel shall be cast by the Person designated by the Owner(s) of that Parcel. In no event shall the votes cast with respect to any Parcel be cast by more than one Person. Membership shall be appurtenant to and may not be separated from ownership of any Parcel.

7.3 Member's Voting Rights. Subject to Paragraphs (b), (c) and (d) below, each membership shall have one (1) vote for each acre in the Parcel to which such membership attaches. Votes may be fractional; provided, however, that for purposes of determining the votes with respect to any Parcel, any portion of such Parcel that lies within the Roadway Easement Area or the Storm Water Detention Facility Easement Area shall be considered as if it were not part of such Parcel but were instead part of the Common Area.

- (a) Attached hereto as Schedule "2" and made a part hereof is a certification prepared by a licensed surveyor identifying all Parcels, and the acreage of all Parcels, in the Property, including the Fee Residential Parcel. Schedule "2" shall be deemed to be a

clarification, not a modification, of the acreage of each Parcel subject to this Declaration, and shall be deemed authoritative with respect thereto.

- (b) With respect to voting by Residential Unit Owners, the total number of votes attributable to the Residential Parcel shall be equal to the acreage of the Residential Parcel as shown on Schedule "2". The foregoing total will be equally divided among the Residential Units into which the Residential Parcel is subdivided. Votes hereunder may be fractional. This Paragraph (b) shall be deemed to be a clarification, not a modification, of the voting rights of Residential Unit Owners under this Declaration.
- (c) With respect to voting by Residential Unit Owners on any matter for which a vote of the Owners shall be taken under this Declaration or any of the governing documents of the Association, including without limitation a vote undertaken pursuant to Section 12.1 below, but excluding votes under paragraphs 7.5 (a) and (b) below, the Homeowners Association shall present the issue or ballot to the Residential Unit Owners in that Residential Parcel and shall thereupon report the results of that voting to the Association in exact accordance with the results of the vote in the Residential Parcel; *i.e.*, the number of "yes" votes, the number of "no" votes, and the number of abstentions or no-votes. The Association shall allocate the foregoing votes cast as a percentage of the total number of votes which may be cast on behalf of the Residential Parcel as shown on Schedule "2" for that Residential Parcel. This Paragraph (c) shall be deemed to be a clarification, not a modification, of the voting rights of Residential Unit Owners under this Declaration.
- (d) With respect to voting by commercial condominium Unit Owners, the total number of votes attributable to the commercial Condominium Parcel shall be equal to the acreage of the commercial Condominium Parcel as shown on Schedule "2". The foregoing total will be equally divided among the commercial condominium Units into which the Condominium Parcel is subdivided. Votes hereunder may be fractional. This Paragraph (d) shall be deemed to be a clarification, not a modification, of the voting rights of commercial condominium Unit Owners under this Declaration.

7.4 Governance. The Association shall be governed by a Board of Directors. The Board shall consist of up to six (6) Directors; there shall be one (1) Director per Parcel (except that Parcels 4 and 5 shall be combined) as shown on Schedule "2". Directors shall be members (or, in the case of a corporation, partnership or trustee members, any party designated by such corporation, partnership or trustee member to represent that member) of the Association.

- (a) The Directors shall serve staggered terms. In order to transition to staggered terms, at the first annual meeting of the Association to occur after this Fourth Amended and Restated Declaration is recorded in the Public Records, the Directors representing Parcel 1-NCCI, Parcel 1-SW, and Parcels 4 and 5 (combined) as shown on Schedule "2" shall serve for one (1) year, and the Directors representing Parcel 6, Parcel 9, and the Peninsula Village Greens Replat (Residential Parcel) as shown on Schedule "2" shall serve for two (2) years. Thereafter, and subject to the provisions of paragraph (d) of Section 7.5 below, each Director selected shall serve a term of two (2) years.
- (b) In all meetings of the Board of Directors, a quorum of Directors necessary to take action shall be a majority of the sitting Board of Directors. Directors may be present in person or by interactive electronic communication technology that allows all participants to hear each other simultaneously. In the event a Director participates in a meeting by speaker-phone, a telephone speaker must be used so that the conversation of the user of the speaker-phone can be heard by all persons present at the meeting.

- (c) On all matters to be determined by the Directors except the adoption of the annual budget, each Director shall be entitled to cast one (1) vote; the motion or matter shall be determined by a majority of the Directors present.
- (d) With respect to the adoption of the annual budget, each Director shall be entitled to cast the number of votes equal to the acreage of the Parcel as shown on Schedule "1" which that Director represents. Votes may be fractional if so indicated on Schedule "1"; however, upon voting no Director may cast less than the full number of votes allocated to that Director for or against the adoption of the annual budget. The annual budget shall be adopted by a majority vote of the total voting interests of the Directors present in person or by speaker-phone.

7.5 **Selection of Directors.** At the annual meeting of the Association, which shall be held, and notice of which shall be sent, pursuant to this document and the By-Laws, Directors shall be selected to fill all upcoming vacancies on the Board. With respect to all Parcels other than the Residential Parcel, the Owner (or commercial Condominium Association, as the case may be) of each Parcel shall notify the Secretary of the Association in writing of the selection of a Director to represent such Parcel for the forthcoming term if the seat for the Director representing that Parcel will become vacant at the annual meeting. With respect to the Residential Parcel, if the seat for the Director representing the Residential Parcel will become vacant at the annual meeting, election of a Director to represent the Residential Parcel shall occur as provided below:

- (a) With respect to the Residential Parcel only, solicitation and selection of candidates for the position of Director of the Association shall be conducted by the Residential Association in conformity with the provisions of Chapter 720, Fla. Stat. and the governing documents of the Residential Association. At or before the annual meeting of the Association, the Secretary of the Residential Association shall notify the Secretary of the Association in writing of the person selected as Director to represent the Residential Parcel for the forthcoming term.
- (b) With respect to the Residential Parcel only: (i) recall of the Director representing the Residential Parcel; and (ii) replacement of the Director representing the Residential Parcel if that position becomes vacant for any reason; shall be governed by the applicable provisions of paragraph 7.5(a) of this Declaration in conformity with Chapters 617 and 720, Fla. Stat. and the governing documents of the Residential Association.
- (c) With respect to all Directors other than the Director representing the Residential Parcel, vacancies in the Board occurring between annual meetings of the Members shall be filled by the Owner (or commercial Condominium Association, as the case may be) of the affected Parcel within sixty (60) days of the effective date of the vacancy. If that Owner (or commercial Condominium Association, as the case may be) does not appoint a replacement Director within sixty (60) days, the replacement Director for that Parcel may be selected by majority vote of the remaining Directors then sitting on the Board (even if the remaining Directors constitute less than a quorum).
- (d) In the event a vacancy on the Board occurs between annual meetings, elections or appointments to fill the vacancy under paragraphs (b) or (c) of this Section 7.5 shall be effective for the balance of the term of the vacant seat.

7.6 **Limitation of Liability of Directors and Officers.** This Section shall be governed by Florida Statutes § 617.0831, as amended from time to time. Neither the Directors, the members of the ARB nor the officers of the Association, shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors, members or officers except for any acts or omissions found by

a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless the directors, members and officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors, members or officers unless any such contract or act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorney's fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such officer, member or director may be involved by virtue of being or having been such director, member or officer; provided, however, that such indemnity shall not be operative with respect to:

- (a) any matters as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his or her duties as such director or officer; or
- (b) any matter settled or compromised, and, in the opinion of independent counsel selected by or in a manner determined by the Board, there is clear and convincing evidence for such person being adjudged liable for gross negligence or fraud in the performance of his or her duties as such director or officer.

7.7 **Miscellaneous.** All funds collected by the Association shall be held and expended for the purposes designated in this Declaration and the By-Laws and shall be held for the benefit of all Owners. Said funds shall be administered pursuant to the provisions of this Declaration and the By-Laws. All contracts and agreements entered into by the Board or the officers of the Association shall be deemed executed by said parties, as the case may be, as agent for the Owners or the Association.

7.8 **Property Manager.** The Association may from time to time employ one or more professional property managers to perform, carry out or exercise any or all of the duties, powers or authority of the Association, the Board or of the ARB. Any fee charged by such property manager shall be included in the Common Expenses for the Property.

7.9 **Meetings of the Board.** An Assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that Assessments will be considered and the nature of the Assessments. Written notice of any meeting at which Special Assessments will be considered or at which amendments to rules regarding Residential Unit use will be considered must be mailed, delivered, or electronically transmitted to the members and Residential Unit Owners and posted conspicuously on the Property.

ARTICLE 8

ASSESSMENTS

8.1 **Authority to Levy Assessments.** The Association, acting through the Board and in accordance with Florida law and the Association's governing documents, shall have the right, power and duty to levy Assessments (including Special Assessments) against the Commercial Owners and their Commercial Parcels, the Condominium Parcel Owners and their Condominium Parcels, and the Residential Unit Owners and their Residential Units, for costs incurred by the Association, the Board and the ARB in carrying out its purposes, including the costs of enforcing this Declaration, and for all other Common Expenses; provided, however, with respect to any Residential Parcel, the Association shall invoice the Assessment through the applicable Residential Association, which shall invoice and collect from the individual Residential Unit Owners their pro rata share of, and remit to the Association, the amount of the assessment against the Residential Parcel. The Association may assign its lien rights established under this Article 8 to the Residential Association with respect to the Assessments attributable to the Residential Parcel for that fiscal year. In the event the Residential

Association remits 100% of the Assessments attributable to the Residential Parcel in any given fiscal year, the Association will immediately and automatically assign its lien rights established under this Article 8 to the Residential Association with respect to the Assessments attributable to the Residential Parcel for that fiscal year.

- 8.2 Annual Budget of Common Expenses.** Before the start of each year, the Association shall prepare and distribute to the Owners and as to the Residential Parcel, only to the Residential Association as agent for the Residential Unit Owners an estimate and budget of Common Expenses for the coming year which shall serve as the basis for that year's Annual Assessment. The budget shall be only an estimate and shall not limit the actual amount of Common Expenses. The budget may take into account reserves for any contemplated repair or replacement of Common Improvements for which the Association is responsible. If such reserves are depleted or, in the opinion of the Association, significantly reduced, then any supplemental budget or the next regular annual budget shall provide for the re-establishment of such reserves as the Association decides are reasonably appropriate.
- 8.3 Supplemental Budgets.** If the Annual Assessment proves inadequate to defray the Common Expenses during any year, or if one or more Commercial Owners or Residential Unit Owners shall fail to pay all or part of its share of any Annual Assessment, then the Association may adopt a supplemental budget or budgets and shall determine the amount of a Supplemental Assessment accordingly. The Association shall give all Owners and as to the Residential Parcel, only to the Residential Association as agent for the Residential Unit Owners written notice stating the amount of and reasons for any Supplemental Assessment, and such Supplemental Assessment shall become due on the date set by the Association, not less than thirty (30) days following notice of such date being given to the Owners and as to the Residential Parcel, only to the Residential Association as agent for the Residential Unit Owners. All Commercial Owners and Residential Unit Owners shall be obligated to pay any Supplemental Assessment. In the event of a Supplemental Assessment resulting from the failure of one or more Commercial Owners or Residential Unit Owners to pay all or part of its share of any Annual Assessment, the assessments otherwise owing from all other Commercial Owners and Residential Unit Owners shall be reduced or credited, on a pro rata basis, upon payment or collection of such delinquent assessments in an amount equal to the net amount of such delinquent assessment paid or otherwise collected. The obligation of any Commercial Owner or Residential Unit Owner that fails to pay all or part of its share of any Annual Assessment shall not be reduced or satisfied by virtue of any Supplemental Assessment declared by the Association as a result of such failure.
- 8.4 Special Assessments.** The Association may levy Special Assessments to defray, in whole or in part, costs of any construction, repair or replacement of any area in which maintenance is undertaken by the Association pursuant to this Declaration, provided, however, that in no event shall any Special Assessment be levied for the costs of the initial construction of the infrastructure improvements to the Property, including, without limitation, the Roadway, the Storm Water Detention Facility and the Utility Systems. All Commercial Owners and Residential Unit Owners shall be obligated to pay any Special Assessment. Should it become necessary for the City of Boca Raton, Florida, or any other Governmental Authority to expend any funds to maintain any lake which constitutes part of the Storm Water Detention Facility pursuant to the Lake Maintenance Agreement, the Board shall levy a Special Assessment for such expenditure.
- 8.5 Limited Special Assessments.** In the event that the Association undertakes any construction, repair or replacement of any area pursuant to this Declaration that is not, in the reasonable determination of the Board, for the general benefit of the Property, the Association shall levy Limited Special Assessments to defray, in whole or in part, the costs of such construction, repair or replacement. Only the Commercial Owner or Residential Unit Owners of the Parcel or Parcels benefitted by such construction, repair or replacement shall be obligated to pay any such Limited Special Assessment, on a pro rata basis between them as determined in its reasonable discretion by the Board. In no event shall any Limited Special Assessment be

levied for the costs of the initial construction of the infrastructure improvements to the Property, including, without limitation, the roadway, the Storm Water Detention Facility and Utility Systems.

- 8.6 **Payment of Assessments.** Annual Assessments, Supplemental Assessments, or Special Assessments, or Limited Special Assessments shall be paid periodically and up to one year in advance pursuant to invoice from the Association to each Owner and to the Residential Association as agent for each Residential Unit Owner. Assessments shall be paid within thirty (30) days of receipt of each invoice as to a Commercial Parcel, or sixty (60) days of receipt of such invoice as to a Residential Parcel.

- 8.7 **Owner's Share of Assessments.** Each Owner's share of any Assessment (other than a Limited Special Assessment) shall be determined as follows:

OS = TA x (OA Divided by TPA);

OS = an Owner's share of assessment;

TA = the total Assessment;

OA = the total acreage of all Parcels or portion(s) of Parcels owned by that Owner, excluding therefrom any portion of such parcels contained within the Sign Easement Area, the Roadway Easement Area or the Storm Water Detention Facility Easement Area, as more particularly set forth in Schedule "2"; and

TPA = the total acreage for all Parcels owned by all Owners, but excluding the Sign Easement Area, the Residential Sign Easement Area, the Storm Water Detention Facility Easement Area and the Roadway Easement Area, as more particularly set forth in Schedule "2".

In order to determine the Assessment against a Residential Unit, the Assessment against a Residential Parcel, determined as set forth above, will be equally divided among the Residential Units into which the Residential Parcel is subdivided (or to the extent not fully developed, the number of Residential Units for which such residential parcel is approved for development). In order to determine the Assessment against a Condominium Unit, the Assessment against a Condominium Parcel, determined as set forth above, will be equally divided among the Condominium Units into which the Condominium Parcel is subdivided (or to the extent not fully developed, the number of Condominium Units for which such commercial parcel is approved for development).

All Assessments, including Limited Special Assessments, shall be the personal obligation of each Commercial Owner, Condominium Unit Owner, and Residential Unit Owner, and the *in rem* obligation of each Commercial Parcel, Condominium Unit, and Residential Unit.

- 8.8 **Establishment of Liens.** Any and all Assessments made by the Association in accordance with the provisions of this Declaration, together with Interest thereon and any "Late Charge" (as hereinafter defined), and the costs of collection (including, without limitation, court costs and reasonable attorneys' fees) (all of the foregoing sometimes hereinafter collectively referred to as the "Lien Costs") shall become the personal obligation of each such Commercial Parcel and Commercial Owner, and each Residential Unit Owner, so assessed.

- (a) **Late Charge.** The Association may, at its option, impose a late charge of five percent (5%) of the amount of the delinquent assessment or portion thereof ("Late Charge") to defray additional administrative costs.

- (b) **Notice of Lien.** The Lien Costs shall become a charge and continuing Lien ("Lien") against the Commercial Parcel(s) and Residential Units only from and after the time of the recordation amongst the Public Records of a written acknowledged statement ("Notice of Lien") by the Association setting the amount due to the Association as of the date the statement is signed, the legal description of the Commercial Parcel or Residential Unit against which the Lien is charged and the record Owner thereof. A copy of the Notice of Lien shall be mailed to the Owner in the manner hereinafter provided for giving notice set forth in Section 13.6.
- (c) **Release of Lien.** Upon full payment of all sums secured by such Lien or other satisfaction thereof, the Association shall cause to be recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Association may demand from the applicable Commercial Owner of Residential Unit Owner payment of a reasonable fee to be determined by the Association, to cover the cost of preparing and recording the Notice of Release prior to recording same. Any purchaser who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sum stated in the Notice of Lien.

8.9 **Subordination of Liens.** All Liens shall be subordinate to the lien of Mortgages recorded prior to the date on which the Notice of Lien is recorded and all taxes, bonds, assessments or other levies which by law would be superior.

8.10 **Enforcement of Liens.** If any Assessment or installment thereof remains delinquent beyond its due date, the Association shall notify the delinquent Commercial Owner or Residential Unit Owner as to the Default (the "Notice of Default"). Notwithstanding the foregoing, the Association may provide one (1) notice to the Residential Association as agent for each Residential Unit Owner.

- (a) **Notice Contents.** The Notice of Default shall state: (i) that the Assessment or an installment thereof is delinquent; (ii) all actions necessary to cure the default; (iii) with respect to Commercial Owners, a date not less than fifteen (15) days from the date of the notice, and with respect to Residential Unit Owners, a date not less than forty five (45) days from the date of the notice, by which such default must be cured; and (iv) that the failure to cure the default on or before the date specified in the notice may result in the Association invoking one or more of the remedies hereinafter provided.
- (b) **Interest.** In the event any Commercial Owner or Residential Unit Owner fails to pay an Assessment or installment thereof within fifteen (15) days after the same becomes due, such Assessment or installment shall bear interest from its due date at the highest non-usurious rate allowable by law.
- (c) **Remedies.** The Association shall have any and all of the following remedies, to the event permitted by Law, which remedies are in addition to all other remedies available to the Association:
 - (i) To accelerate, if applicable, the entire amount of any Assessment due to be paid installments.
 - (ii) To advance, on behalf of the Commercial Owner(s) or Residential Unit Owner in default, funds to accomplish the needs of the Association up to and including the full amount for which such Commercial Owner(s) or Residential Unit Owner is liable to the Association. Monies so advanced, together with interest thereon at the highest non-usurious rate allowable by law, any Late Charge, and all costs of collection thereof (including without limitation reasonable attorney's fees), may thereupon be collected

by the Association and such advance by the Association shall not waive the default.

- (iii) To file an action in equity to foreclose its Lien at any time after the effective date thereof. In the event of any such foreclosure, the delinquent Commercial Owner or Residential Unit Owner may be required to pay a reasonable rental for the Commercial Parcel or Residential Unit, as applicable, and the Association in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Association shall have the right to purchase such Commercial Parcel or Residential Unit at any foreclosure sale, and to retain, lease, mortgage or convey the same.
- (iv) To file an action at law to collect the Lien, without waving any lien rights or rights of foreclosure.

8.11 **Liens - Residential Parcels.** Any Assessments against any Residential Parcel(s) will be billed to the applicable Residential Association, and the applicable Residential Association will be responsible for collecting each Residential Unit Owner's share and promptly remitting the total Assessment to the Association. The Association's Lien hereunder will be of superior dignity with and to any lien in favor of the applicable Residential Association securing payment of assessment due to such Residential Association pursuant to applicable condominium documents or homeowner covenants and restrictions.

8.12 **Financial Records.** The Association shall keep a full and correct accounting of the receipts and expenditures for costs incurred by the Association in connection with the Property, itemizing expenses incurred. These records shall be available for inspection by an Owner, or residential Unit Owner, at any reasonable time during normal business hours as may be requested. Upon ten (10) days' written notice to the Association and payment of a reasonable fee set by the Association, any Owner or Residential Unit Owner shall be furnished a statement of its account setting forth the amount of any unpaid Assessment or other charges due and owing from such Owner or Residential Unit Owner.

8.13 **Effect of Abandonment or Non-Use.** No Commercial Owner or Residential Unit Owner may waive or otherwise escape liability for any Assessment by the abandonment of its Commercial Parcel or Residential Unit or by the non-use of any Property which the Owner or Residential Unit Owner has a right to use under this Declaration.

ARTICLE 9

ENFORCEMENT

9.1 **Enforcement.** If any Owner breaches any obligation under this Declaration, other than for delinquent assessments, the Association may give written notice to the Owner specifying the nature of the breach. If the Owner has not: (i) cured the breach within ten (10) days after such notice is received. In the event that a violation cannot reasonably be cured within the initial ten (10) day period, the Association may, at its sole discretion, grant a reasonable extension of the cure period. Such an extension shall be contingent upon the violator demonstrating good faith efforts to remedy the violation and providing written notice to the Association detailing the steps being taken to cure the issue. The Association's decision to grant or deny an extension shall be final and binding.; (ii) cured such breach within such longer time as may be reasonable necessary due to Force Majeure (as defined hereinafter); or (iii) if such breach cannot be cured within said ten (10) day period and Owner has not commenced to cure such breach within said 10-day period, and thereafter diligently proceeded to cure such breach, then the Association may, but shall not be required to, enter upon the Parcel and abate and remove, correct or repair the condition causing the breach; provided, however, that if the condition causing the breach creates an imminent threat of loss or damage to any Common Improvement or to any Improvement or property on another

owner's Parcel or any injury to any person, the Association may enter upon the Parcel immediately to abate and remove, correct or repair the condition. In addition, the Declarant, the Board, the Association and every Owner may seek to enforce this Declaration against any Owner by legal proceedings, at law or in equity.

The total cost of any action taken (including labor, material, overhead and reasonable attorney's or other consultant fees) by the Association after the Owner's breach and failure to cure shall be assessed against and paid by the Owner within thirty (30) days after receipt by the Owner of a statement specifying the nature and costs of the action taken by the Association. The statement may include, at the Association's option, a charge of fifteen percent (15%) of the direct or actual costs incurred to help defray the Association's administrative expenses connected with taking any action.

Neither the Association, the Board nor the Committee by reason of holding of any hearing or making any determination of a breach or nuisance by an owner or taking any curative action on any parcel shall be liable to the Owner for any loss or damage thereby sustained by the Owner or anyone claiming by or under the Owner, except for negligence or wanton and willful misconduct.

- 9.2 Specific Performance.** In the event of any violation or threatened violation by any Owner of any of the provisions of this Declaration, each of the Owners shall have the right to maintain action for specific performance against the Owner(s) who are alleged to have violated the provisions of this Declaration, and each Owner agrees that no objection to the form of action in any proceeding for specific performance of this Declaration shall be raised by an allegedly breaching Owner so that such specific performance of this Declaration may not be obtained by the other Owners.
- 9.3 Limitation on Liability.** Except for the obligation to pay the Assessments as provided herein and the other Lien Costs pursuant to Section 8.7, no Owner shall be entitled to recover damages from another Owner for breach of the provisions of this Declaration as a contract. However, this provision shall not affect, limit, or otherwise restrict: (i) the right of an Owner to obtain injunctive or other equitable relief hereunder; or (ii) any other right or remedy an Owner has at law, including any right or remedy resulting from the Easements created pursuant to Article 5.
- 9.4 Excuse For Non-Performance.** If performance by an Owner of any act or obligation hereunder is prevented or delayed by war, national emergency, labor disputes or strikes, acts of God, governmental restrictions or moratoria, or any other causes beyond the reasonable control of such party, then the time for performance of the act or obligation will be extended for the period that such act or obligation is delayed or prevented by any of the above causes. Any party claiming inability to perform pursuant to this Section 9.4 shall give prompt notice thereof to all Owners.
- 9.5 Default Shall Not permit Termination.** No default under this Declaration shall entitle any party to cancel or otherwise rescind this Declaration, provided, however, that this limitation shall not affect any other rights or remedies that a party may have by reason of any default hereunder.
- 9.6 Waiver of Default.** A waiver of any default by an Owner must be in writing and no such waiver shall be implied from any omission by a party to take any action in respect of such default. No express written waiver of any default shall affect any default or cover any period of time other than the default and the period of time specified in such express waiver. One or more written waivers of any default in the performance of any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained herein. The consent or approval by any Person to or of any act or request by another Person requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent

similar acts or requests. The rights and remedies given to a Person by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity that a party might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by a party shall not impair such party's standing to exercise any other right or remedy.

ARTICLE 10

MORTGAGEE PROTECTION

10.1 **Mortgagee's Opportunity to Cure.** Notwithstanding anything to the contrary contained herein, during the continuance of any Mortgage of which the Association has been given written notice as provided in Section 10.4 hereinbelow, and until such time as the lien of any Mortgage has been extinguished:

- (a) Any Mortgagee shall have the right, but not the obligation, at any time prior to the termination of this Declaration, to pay all amounts due hereunder, to obtain any insurance, to pay any taxes and Assessments, to make any repairs and improvements, to do any other act or thing required of any Commercial Owner or Residential Unit Owner hereunder and to do any act or thing that may be necessary and proper in the performance and observance of the agreements, covenants and conditions hereof to remedy or to prevent a violation of this Declaration. All payments so made and all things so done and performed by a Mortgagee shall be as effective to prevent or to cure a default under this Declaration as if made, done and performed by the defaulting Commercial Owner or Residential Unit Owner instead of by the Mortgagee.
- (b) Upon the occurrence of any event of default under this Declaration, the Mortgagee of the defaulting Commercial Owner or Residential Unit Owner shall have sixty (60) days after receipt of notice from the Association or other Owners setting forth the nature of such event of default and, if the default is such that possession of the Parcel of the defaulting Commercial Owner Residential Unit or the defaulting Residential Unit Owner may be reasonably necessary to remedy the default, a reasonable time after the expiration of such sixty (60) day period, within which to remedy the default; provided that: (i) the Mortgagee has fully cured any default in the payment of any monetary obligations of the defaulting Commercial Owner or Residential Unit Owner under this Declaration within such sixty (60) day period and shall continue to pay currently such monetary obligations as and when the same are due; and (ii) the Mortgagee has acquired the defaulting Commercial Owner's Parcel or defaulting Residential Unit Owner's Residential Unit or commenced foreclosure or other appropriate proceedings in the nature thereof within such period, or prior thereto, and is diligently prosecuting any such proceedings.
- (c) Any event of default under this Declaration that in the nature thereof cannot be remedied by the Mortgage of the defaulting Commercial Owner or Residential Unit Owner shall be deemed to be remedied if: (i) within sixty (60) days after receiving written notice from the Association or the other Owners setting forth the nature of such event of default, or prior thereto, the Mortgagee of the defaulting Commercial Owner or Residential Unit Owner acquires the defaulting Commercial Owner's Parcel or Defaulting Residential Unit Owner's Residential Unit, or commences foreclosure or other appropriate proceedings in the nature thereof and diligently prosecutes any such proceedings to completion; and (ii) the Mortgagee fully cures any default in the payment of any monetary obligations of the defaulting Commercial Owner or Residential Unit Owner hereunder that does not require possession of the defaulting Commercial Owner's Parcel of Residential Unit Owner's Residential Unit within such sixty (60) day period and thereafter continues to faithfully perform all such monetary

obligations that do not require possession such Parcel or Residential Unit; and (iii) after gaining possession of such Parcel or Residential Unit, the Mortgagee performs all other obligations of the defaulting Commercial Owner or Residential Unit Owner hereunder as and when the same are due.

- (d) If the Mortgagee of the defaulting Commercial Owner or Residential Unit Owner is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving the defaulting Commercial Owner or Residential Unit Owner from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Subsection 10.1 (b) and (c) above the commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Mortgagee has cured any default in the payment of any monetary obligations of the defaulting Commercial Owner or Residential Unit Owner under this Declaration and continues to pay currently such monetary obligations as and when the same fall due.

- 10.2** **Application of Charges to Mortgagee.** Although authorized to make such payments pursuant to this Article, no Mortgagee shall be personally liable for the payment of Assessments or other charges against that portion of the Property to which its lien applies, except those accruing after the Mortgagee obtains title to such property pursuant to its remedies under the Mortgage. All liens for unpaid Assessments and other charges shall be subordinate to the lien of any Mortgage against the applicable portion of the Property, and each Mortgagee who obtains title pursuant to its remedies under the Mortgage, and any purchaser at a foreclosure sale, shall take title to such property free and clear of any claims for unpaid Assessments and other charges, and liens therefore, that accrued prior to such acquisition of title. Any such sale shall extinguish such liens, but the purchaser or Mortgagee who do acquires title shall be liable for charges and impositions accruing after the date of such sale. Notwithstanding any term herein to the contrary, however, for all Mortgages encumbering a Residential Unit or Units and recorded in the Public Records after the recording of the Fourth Amended and Restated Declaration, the provisions of Section 720.3085 (2)(c) and (3), Fla. Stat., as now exist or may hereafter be amended, shall apply to the Mortgagee's obligation for the payment of Assessments or other charges accruing prior to the date the Mortgagee obtains title to the Residential Unit or Units.

- 10.3** **Limitation of Enforcement Against Mortgagee.** No violation of this Declaration by, or enforcement of this Declaration against, an Owner or Residential Unit Owner, including an action of foreclosure of any lien for unpaid Assessments, shall impair, defeat, eliminate or render invalid the lien of any Mortgage, but this Declaration shall, subject to Section 10.2, be enforceable against any Commercial Owner or Residential Unit Owner who has acquired its title by foreclosure, trustee's sale, voluntary conveyance or otherwise.

- 10.4** **Requirement for Notice of Mortgage.** The provisions of this Article 10, and any other provision of this Declaration concerning recognition of any Mortgage or Mortgagee, shall not apply to any Mortgage or Mortgagee unless and until written notice of the existence of such Mortgage, the identity and notice address of the mortgagee, and the Commercial Parcel or Parcels, or Residential Unit or Units, encumbered by such Mortgage, is given to the Association by the Owner(s) of the Commercial Parcel(s), or Residential Unit Owner(s) of the Residential Unit(s) encumbered by such Mortgage.

ARTICLE 11

CONDEMNATION

- 11.1** **Definitions.**

- (a) **"Condemnation"** means the taking or possession of all or any part of the Property

under the power of eminent domain, or the voluntary sale (with the consent of any Owner and any other Persons having an interest therein) of all or any part of the Property to any Person having the power of eminent domain, provided that the Property or such part thereof is then under the threat of condemnation evidenced by notice of the same from a governmental agency having the power to do so.

- (b) **"Condemnation Date"** means the earlier of the date when possession of the condemned property or any part thereof is taken by the condemning authority, or the date when title to the condemned property or any part thereof vests in the condemning authority.

- 11.2 **Restoration Upon Condemnation.** If any part of the Improvements on an Owner's Parcel is taken by condemnation, such Owner shall, subject to the rights of any Mortgagee, reconstruct or cause to be reconstructed, such Improvements as nearly as possible to the condition as existed immediately prior to such taking, to the extent that proceeds available to the Owner from the condemnation award are adequate and the reconstruction is economically feasible in such Owner's reasonable judgment.

- 11.3 **No Termination of Easements and Licenses.** Nothing contained in this Article shall affect the existence of the Easements described under Article 5, except to the extent such Easements burden the portion of land taken by condemnation.

- 11.4 **Mortgage Participation.** Nothing contained in this Article shall be deemed to prohibit any Mortgagee or Occupant from participating in any eminent domain proceedings on behalf of or in conjunction with any Owner.

ARTICLE 12

AMENDMENTS

- 12.1 **Amendments.** This Declaration may be amended by the Association with the Approval of the Owners as provided in Section 1.3 of this Declaration voting in person or by proxy at a meeting of the Owners; provided, however, at least 30% of the total voting interests in the Association must participate in the vote; and, further;

provided however, that no amendment shall be made without the consent of that Owner or Mortgagee if such amendment would, in the determination of the Board, materially and adversely affect: (i) the manner in which any Owner's Assessment is determined; (ii) any approvals or consents already given to any Owner; (iii) the rights and privileges of an Owner under this Declaration; or (iv) the rights of any Mortgagee. No consent of a Mortgagee shall be required unless the Association has been given notice of such Mortgagee as provided in Section 10.4 hereof. Failure of a Mortgagee to approve or disapprove any amendment for which its approval is requested within thirty (30) days of such request shall be deemed to constitute the approval of such Mortgagee to such amendment.

- 12.2 **Effectiveness of Amendments.** Any amendment shall become effective upon recording in the Official Records.

ARTICLE 13

OTHER PROVISIONS

- 13.1 **Protective Covenants Run With Land.** This Declaration shall attach to and run with the Property and shall be binding on every Person which may hereafter come into ownership, occupancy or possession of any portion of the Property. By the registration or acceptance of

the conveyance of a Parcel, or any interest or right therein (including fee or leasehold), the Person to which such interest is conveyed shall be deemed to accept and agree to be bound by the provisions of this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired such interest or right. The rights, liabilities and obligations set forth herein are direct, mutual and reciprocal among all Owners and their successors and assigns, shall attach to and run with the ownership of a Parcel and may not be severed or alienated from such ownership.

- 13.2 Remedies Cumulative; No Waiver.** All remedies provided in this Declaration or available at law or in equity are cumulative and not exclusive. The failure of the Declarant, the Association or any Owner to enforce any provision of this Declaration shall not be deemed to be a waiver of the right to do so at a later date or of the right to enforce any other provision.
- 13.3 Creation of Additional Parcels.** No Owner shall subdivide or resubdivide any Parcel or part thereof without the Association's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.
- 13.4 Agreement with Other Land Owners.** The Association may enter into commercially reasonable agreements with the owners of real estate in the vicinity of the Property for sharing responsibility, costs and decision-making authority for the maintenance and repair of any publicly dedicated right-of-way used now or in the future by the Owners and the owners of other real estate. Any such agreement shall be in writing and recorded in the Public Records.
- 13.5 Severability.** If any provision of this Declaration is held to be invalid by any court, the invalidity of that provision shall not affect the validity of the remaining provisions of this Declaration.
- 13.6 Notice.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall be either: (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier; (b) sent by facsimile, with written confirmation by overnight delivery or first class mail, in which case notice shall be deemed delivered upon receipt of confirmation of transmission of such facsimile notice; or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt.

In the event of legal action, to Association c/o its Registered Agent as shown on the records of the Secretary of State, State of Florida

With a copy to:

Association's Designated Attorney

Notwithstanding any term herein to the contrary, the Board of Directors may modify the names, addresses, and parties identified in this Section 13.6 by recording a notice thereof in the Public Records of Palm Beach County, Florida.

Each Owner other than a Residential Unit Owner shall file its correct mailing address with the Association and shall notify the Association promptly in writing of any subsequent change of address. Each Residential Unit Owner shall file its correct mailing address with the Residential Association and shall notify the Residential Association promptly in writing of any subsequent change of address.

- 13.7 Construction; Captions.** The provisions of this Declaration shall be liberally construed to effectuate its stated purposes. The captions contained in this Declaration are for convenience of reference only, and shall not affect the meaning, interpretation or construction of this Declaration.

- 13.8 **Assignment.** The Declarant may assign in part or in whole and all of its duties, rights, powers, privileges and reservations to any party as to all or any part of the Property. No assignment shall be effective unless in writing and signed the Declarant and the party accepting the assignment, and recorded in the Public Records.
- 13.9 **Duration.** This Declaration shall remain in full force and effect for a period of thirty (30) years beginning as of the date of recording the Original Declaration as provided in Chapter 712 Florida Statutes, and shall automatically be extended for successive periods of ten (10) years each.
- 13.10 **Force Majeure.** For the purposes of any of the provisions of this Agreement, neither the Declarant, any Owner, the Board or the Association shall be considered in breach of its obligations hereunder in the event of any delay caused by fire or other casualty, strike, shortage of labor or material, unusual weather condition, war, riot, act of terrorism or like events beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its respective obligations hereunder ("Force Majeure").
- 13.11 **Governing Law.** This Declaration shall, in all respects, be governed, constructed, applied and enforced in accordance with Florida law and venue for any action hereunder shall be exclusively in the state courts of Palm Beach County, Florida.
- 13.12 **No Third Party Beneficiary.** This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary, decree or otherwise. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever.
- 13.13 **Entirety.** This Declaration embodies the entire agreement among the Owners and the Association and supersedes all prior agreements and understandings relating to the Property. Without limitation of the preceding sentence, this Declaration constitutes an amendment and restatement in its entirety of the Original Declaration.
- 13.14 **Attorney's Fees.** Should any Owner, the Association or Declarant employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorney's fees, expended or incurred in connection therewith.
- 13.15 **Waiver of Jury Trial.** To the extent permitted by applicable law, the Association, the Declarant and all Owners hereby waive any right to trial by jury in any legal proceeding arising out of or relating to this Declaration.
- 13.16 **No Partnership.** Neither anything contained in this Declaration nor any acts of the Owners shall be deemed or construed by Owners, or any of them or by any other Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners.
- 13.17 **Estoppel Certificate.** The Association shall, on not less than twenty (20) days' prior written request, execute, acknowledge and deliver to any Owner or other Person making such request a statement in writing stating whether or not its knowledge a particular Owner is in default under the provisions of this Declaration. Any such certificate delivered pursuant to this Section 13.17 may be relied on by any prospective purchaser or mortgagee of such Owner's Parcel, but reliance on such certificate may not extend to any default of which the Association had no actual knowledge at the time of issuing the certificate.
- 13.18 **Incorporation of Documents.** Any and all deeds conveying a Parcel or any portion thereof shall be conclusively presumed to have incorporated therein all of the terms and conditions

of this Declaration. Whether the incorporation of the terms and conditions of this Declaration is specifically set forth by reference in such deed, acceptance by the grantees of such a deed shall be deemed to be acceptance by such grantee of all of the terms and conditions of this Declaration.

- 13.19 No Condominium Regime.** Nothing contained in this Declaration shall be deemed or construed to create a regime of condominium ownership for the Property.
- 13.20 Development Order.** The Property is subject to that certain Development Order adopted by the City of Boca Raton, recorded in the public records of Palm Beach County, as amended, Official Records book 10633, at page 497, and all matters incorporated therein and all amendments thereto.

EXHIBIT A

Legal Description of Property

Parcels 1 thru 9, inclusive, Parcels R-1, R-2, L-1 and L-2, together with all other property subject to and as shown on plat recorded in Plat Book 83, pages 122-124, of the Public Records of Palm Beach County, Florida.

The Plat referred to herein, defined as the "Subdivision Plat" at Section 1.56 of this Declaration, is known as the PENINSULA CORPORATE CENTER PLAT; a portion of which Plat was replatted as PENINSULA VILLAGE GREENS, according to the Plat thereof, recorded in Plat Book 102, Pages 6-13, of the Public Records of Palm Beach County, Florida.