

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF**

**VILLA ROSA SARASOTA FLORIDA**

**With Certificate of Amendments, dated May 28, 2009**

**THIS DECLARATION** is made this September 28, 1999 by WESTFIELD HOMES SW FLORIDA VENTURE NO. 1. INC. a Florida corporation, whose address is 397 Interstate Boulevard, Sarasota, Florida 34240. Hereinafter called "Declarant."

**WHEREAS**, Declarant is the Owner of certain property in Sarasota County, Florida, which is more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Property"); and

**WHEREAS**, for the purpose stated hereinafter, Declarant desires to impose upon the Property certain covenants, conditions and restrictions which will touch and concern the Property and are intended by Declarant to be covenants running with the land for the purpose of creating a general plan of development for the Property and for the purpose of maintaining and enhancing the value thereof.

**NOW THEREFORE**. Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, conditions, covenants and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**The original Declarant as defined in section 7 of these Definitions (Westfield Homes SW Florida Venture No. 1, Inc.) has turned over the Subdivision to the Owner controlled Association. All references throughout this Declaration or any Association document to the powers that may be exercised by Declarant shall now be exercised by the Association, unless specifically terminated at Turnover, through the legal entity called Villa Rosa Sarasota Homeowners Association, Inc. and its Board of Directors. Said Association is entitled to undertake and assume all such actions, rights, or obligations to fulfill the purpose and intent of the restrictions under both the Declaration and Florida law.**

**ARTICLE I  
Definitions**

The following words or letters when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

**Section 1.** "Articles of Incorporation" shall mean the Articles of Incorporation, and any amendments thereto, of the Association.

**Section 2.** "ACC" shall mean the Architectural Control Committee described in Article VII hereof.

**Section 3.** "Association" shall mean and refer to the Villa Rosa Sarasota Homeowners Association, Inc., a Florida non-profit corporation, its successors and assigns.

**Section 4.** Board shall mean the Board of Directors of the Association.

**Section 5.** "By-Laws" shall mean the By-Laws and any amendments thereto of the Association.

**Section 6.** "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners and those areas dedicated to Sarasota County, Florida, which Declarant has elected to continue to maintain. The Common Areas shall initially include the following areas identified on the Plat:

Tract 200: Streets and entryway to the Property  
Tract 201: 16' Wide Public Right of Way

Tract 500: Private Lake, Drainage and Utility Easement  
Tract 501: Private Lake, Drainage and Utility Easement  
Tract 602: 10' Wide Landscaping Buffer, Utility & Limited Access Easement Tract  
603: 10' Wide Landscaping Buffer & Limited Access Easement  
Tract 700: Preserve Area  
Tract 701: Preserve Area

Easements: described in that certain Agreement of Easements and Shared Use of Facilities between the Declarant and Clyde Wilson, Jr., etc., et al, recorded in O.R. 1998080776, Public Records of Sarasota County, Florida (hereinafter referred to in this Declaration as the "Shared Use Agreement" as further clarified in that document titled Acknowledgment Agreement recorded on June 16, 2004, under Official Records Instrument 2004116640 in Sarasota County, Florida.

**Section 7.** "Declarant" shall mean and refer to Westfield Homes SW Florida venture No. 1, Inc., a Florida Corporation, its successors and assigns.

**Section 8.** "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Villa Rosa Sarasota, as amended from time to time.

**Section 9.** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area.

**Section 10.** "Member(s)" shall mean and refer to those persons entitled to membership as provided in this Declaration, the Articles of incorporation and the By-Laws. References herein to "members" shall mean "Members" and vice versa. Voting rights of the members are set forth in Article III.

**Section 11.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 12.** "Plat" means the recorded plat of Villa Rosa, Unit 1, and any amendments or additions thereto recorded upon the public records of Sarasota County, Florida.

**Section 13.** "Shared Use Agreement" shall mean and refer to the Agreement for Easements and Shared Use of Facilities more fully described in Section 6 above. One of the purposes of the Shared Use Agreement is to provide access to the Property. Therefore, all of the rights of any Owner or other party in the Property are subject to terms and conditions of the Shared Use Agreement. For easy reference to same, the original agreement was executed by the co-personal representatives of the Estate of Clyde H. Wilson, Sr. and Westfield Homes of SW Florida Venture No. 1, Inc. and was recorded in the Public Records of Sarasota County, Florida under Instrument Number 1998080766, dated June 18, 1998. Thereafter, a number of transactions related to recording the Plat for Unit I for Villa Rosa, joinder by the Estate to same, recording the Declaration and the conveyance by Westfield to the Association occurred and were noted in the public records under various instruments. A document referred to as ACKNOWLEDGMENT AGREEMENT was recorded on June 16, 2004 under Official Records Instrument 2004116640 in Sarasota County, Florida by Westfield Homes of Florida, Inc. (via a merger with Westfield Homes of SW Florida Venture No. 1, Inc.) and Merrill Villa Rosa, LLC. The purpose of said document was to clarify the Association's ownership rights as set forth therein as well as reflected in Section 6 of Article I of the Declaration for Villa Rosa Sarasota.

**Section 14.** "Work" means the initial construction of improvements, including dwelling units, Common Area amenities, landscaping and hardscaping upon all or any portion of the Property for a single family residential community and the sale and/or leasing thereof by Declarant and as designated home builders

## **ARTICLE 11**

### **Property Rights**

**Section 1. Easements of Enjoyment.** Each Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area that is appurtenant to, and will pass with, the title to every Lot, subject to the following:

(a) **Access.** If ingress and egress to any lot is through any of the Common Area, then any conveyance or encumbrances of that portion of the Common Area shall be subject to that Lot Owner's easement.

(b) **Fees.** The Association's right to charge reasonable fees for the use, safety and maintenance of any common facilities from time to time situated on the Common Area.

(c) **Suspension.** The Association's right (i) to suspend such Owner's right to use any facility owned *or* controlled by the Association for a period of unpaid assessments; and (ii) to suspend any Owner's right to use any such facility for any infraction of the Association's valid rules and regulations.

(d) **Dedication.** The Association's right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as the Association considers advisable. Any such dedication or transfer requires the approval of two-thirds (2/3) of the members present and voting in person or by proxy at a meeting duly convened for such purpose. In addition, as provided under Florida law, the Association may defend actions in eminent domain or bring inverse condemnation proceedings. Before commencing any litigation against any party in the name of the Association involving amounts in excess of \$100,000, the Association must also obtain the affirmative approval of a majority of the voting interests/members.

(e) **Rules and Regulations.** The Association's right to adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Common Area.

**Section 2. Delegation of Use.** Any Owner may delegate, In accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Property.

**Section 3. Operation of the Common Area.** The Association shall at all times operate, supervise, control and manage the Common Area and any Income producing activities that may be established or permitted to operate In the Common Area. The Association, in its sole discretion, shall determine all actuates and programs to be carried on In the Common Area and shall employ the necessary personnel required therefore. Any landscape/wail easements shown on the Plat are owned by the Association and shall be maintained by the Association.

**Section 4. Utility Service.** Public Utilities serving the Property and Lots have been or will be installed underground in the Common Area and within, below and upon the Property, for the use, benefit and service of the Property, the Lots and all improvements upon the Property. Any public utility serving the subdivision shall have the right to install, maintain, and repair all utilities for lines, wires, pipes, equipment and other items necessary for supplying light, heat, air conditioning, water, sewer, power, telephone, any TV and other means of communication to the Property, and such other utility and/or communications made available in the future by advances in technology and approved by the Board.

**Section 5. Publics Easements.** Fire, police, health, sanitation, cable communications, drainage, U.S. Mail, and other public service personnel and vehicles shall have a permanent, perpetual and nonexclusive easement for ingress and egress over and across the Common Area.

**Section 6. Lot Easements.** The Association shall be responsible for the maintenance of all easements situated on any Lot for utility purposes.

**Section 7. Encroachment Easements.** In the event that any Lot shall encroach upon any of the Common Area or upon any other Lot, or in the event that any Common Area shall encroach upon any Lot then an easement shall exist to the extent of accommodating and abating that encroachment, for so long as the encroachment shall exist.

**Section 8. Boulevard of Roses Access Easements .** A main entrance to the Property is over an easement through the lands described on the Plat as the "Private Access, Drainage and Utility Easement," which is called

Boulevard of Roses on the Plat, and which easement is held by the Declarant pursuant to the Shared Use Agreement. Upon turnover, Declarant assigned all rights to said Shared Use Agreement recorded in the public records under instrument number 1998080766, dated June 18, 1998 to the Association. All rights previously exercised by Declarant are now within the Association's power to exercise in accordance with the terms and conditions of such Agreement. As a party to the Shared Use Agreement, Declarant has the obligation to allow the owner of the parcels to the North and South of Boulevard of the Roses the use of access easements onto Boulevard of the Roses. Declarant reserves the right to allow such access easements and other rights for the benefit of the owners of such parcels, pursuant to, and in the manner described in, the Shared Use Agreement. Once such additional easements are granted, the Property and all Owners shall be subject to such additional easements and the rights granted in connection therewith.

**Section 9. Association's Right of Entry.** The Association's duly authorized representatives or agents shall, at all reasonable times, have and possess an easement and reasonable right of entry and Inspection upon the Common Area or any Lot for the purpose of fully and faithfully discharging the duties of the Association contained herein or established by law.

**Section 10. Permanence.** The benefit of rights and easements granted by the Declaration constitutes a permanent appurtenance to, and will pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as nonexclusive, its benefit, nevertheless, is exclusive to all Lots granted such benefit. Including the following parties: (1) all family or household members of the Owner. (11) such Owner's tenants and contract purchaser (III) all family or household members of such tenants and purchaser provided they actually reside upon such Owners lot in no event does the benefit of any such easement extend to the general public except as provided in Section 5 above. The burden of all rights and easements granted by this Declaration constitutes a permanent servitude upon the lands affected.

**Section 11. No Partition.** There shall be no judicial partition of the Common Area, nor shall Declarant, or any Owner, or any person acquiring any interest in the Property or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co-tenancy.

**Section 12. Drainage Easements.** Those areas shown as \*Drainage Easement on the Plat shall be maintained by the Association, as more fully provided hereafter.

### **ARTICLE III Membership and Voting Rights**

**Section 1. Membership.** Every Owner of a Lot is subject to assessment and shall be a member of the Association. Membership shall be appurtenant and may not be separated from ownership of any Lot.

**Section 2. Voting Rights.** There shall be only one (1) class of members, who are those Owners, as defined in Section 1 of this Declaration. All members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership in Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine: but in no event shall more than one 1 vote be cast with respect to any such Lot and no vote may be apportioned. If the record owners cannot determine how said vote shall be cast, then no vote shall be counted. If required under Florida law or if the Board determines same to be necessary, multiple owners of a Lot or Lots titled in a business entity may be required to execute and file with the Association a voting certificate destination who shall be entitled to vote the member's vote.

### **ARTICLE IV Covenants Regarding Use**

The property and each Lot is subject to the following restrictions and other covenants in connection with the use thereof:

**Section 1. Use.** Except as hereafter stated, no Lot shall be used except for residential purposes. No building, structure or improvements shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling not to exceed one (1) story, patios, porches, garages, a swimming pool, landscaping, walls, fencing, driveways and sidewalks appurtenant thereto. Each dwelling shall contain a minimum of a two-car garage. All such improvements must be approved in writing by the ACC prior to commencement of construction.

**Section 2. Minimum Residence Size.** No dwelling shall be erected or allowed to remain on any Lot unless the living area of the dwelling, exclusive of the garage, porches, patios and lanais shall be not less than 1,500 square feet. However, living area shall include screened porches with permanent roofs that are constructed as a component of the original roof structure.

**Section 3. Minimum Lot Size.** No dwelling shall be constructed on a Lot or plot having an area of less than 4,200 square feet. Lots may not be divided, partitioned, combined, re-subdivided or reduced in size from its original platted size by any method whatsoever. Any owner of more than one (1) Lot where said Lots are contiguous may not build one (1) residence or dwelling which is located on said lots as each Lot must have one (1) dwelling upon same.

**Section 4. Setbacks.** The minimum setback lines hereinafter imposed are not intended to engender uniformity of setbacks; they are meant to avoid overcrowding and monotony. It is intended that setbacks may be staggered as appropriate so as to preserve important trees, and assure vistas of water and open areas. No dwelling or other structure shall be erected closer to the front Lot line than twenty (20) feet No dwelling or other structure shall be erected closer than ten (10) feet to the rear Lot line, or closer than five (5) feet to any side interior Lot line, provided however that all buildings shall be separated by not less than twelve (12) feet No dwelling or other structure situated on a corner Lot shall be erected closer than twenty (20) feet to any street right-of-way.

**Section 5. Nuisance Prohibited.** No residence or other structure on any Lot shall be used for commercial or business purposes, except in connection with the Work as elsewhere provided herein. Each Owner shall refrain from any act or use of his Lot that could reasonably cause embarrassment, discomfort, annoyance or a nuisance to any other Owners (including the Declarant) or the neighborhood. No noxious, offensive or illegal activities shall be carried on upon any Lot. Without limiting the generality of the foregoing:

- (a) The assembly or disassembly of motor vehicles and other mechanical devices which might cause disorderly, unsightly or unkempt conditions. The shooting of firearms, fireworks or pyrotechnic devices of any kind or size and any other similar inherently dangerous activities, shall not be pursued or undertaken on any lot.
- (b) No rubbish of any character whatsoever, nor any substance, thing or material shall be kept upon any Lot which would be unsightly, or which will emit foul or noxious odors, or that will cause any loud noise that will or might disturb the peace and quiet of the occupants of surrounding Property.

**Section 6. On Site Construction Required.** No structure shall be moved onto any Lot, except builder's temporary structure, which shall be used by an authorized builder in connection with construction work and activities engaged upon any Lot. The failure of a builder to maintain any such structure shall be grounds for the Association to demand its removal.

**Section 7. Animals.** The ability to keep pets is a privilege, not a right, and the Association is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance or a safety threat to other residents within the Property. No animals, livestock or poultry of any kind shall be kept, raised or bred on any Lot. Dogs, cats and other common household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes; they are kept on a leash, whether on private property or the common elements and provided further that no person owning, or in custody, possession, charge or control of any dog or other pet shall cause, permit or allow the dog or other pet to stray, run or in any manner be at large in or upon any public street or the private property of others. Owners are responsible for the actions of their

pets, to include, but not limited to, the responsibility to pick up any pet waste and properly dispose of same. No more than a total of three (3) such animals may be kept on any lot.

**Section 8. Signs.** Unless approved by the Board or the ACC, no signs of any kind, including "For Rent", "For Sale", or any other similar signs shall be displayed to the public view, erected or maintained on any Lot (including within windows of improvements/dwellings). As required by Florida law, as amended, any architectural guidelines as to size and style for signs are for advertising an Owner's Lot /residence for lease or sale will be provided to an Owner upon Owner's request. Any Lot Owner may also display a sign provided by a contractor for security services within 10 feet of any entrance to the residence/improvement so long as same is a reasonable size (or as set forth in the ACC Guidelines).

**Section 9. Exterior Attachments.** No solar panels, pool heaters, window shutters, gutters, exterior radio, television, electronic or like antennas, aerials, satellite dishes or transmission or receiving tower(s), apparatus or devices, or other similar or dissimilar exterior attachments, shall be installed, permitted or located on any Lot without approval from the ACC (Architectural Control Committee) which shall provide upon request guidelines to the Owner as required by Florida law, as amended. Not any Lot without approval from the ACC (Architectural Control Committee), which shall, withstanding the above, 18" satellite dishes are permitted on all Lots, provide they have received prior approval from the ACC, do not exceed 4 feet in height and are landscaped in such a manner as to allow reception, but provide as much camouflage of the dish as possible. Notwithstanding this provision, as mandated by Florida law solar collectors or other energy devices based on renewable resources are permitted to be installed by a Lot Owner, however the Board or ACC may establish written rules or guidelines as to the placement of solar collectors on an Owner's roof in accordance with Florida law so long as said determination does not impair the effective operation of said collectors.

**Section 10. Utility Easements.** Easements for the Installation and maintenance of utilities are reserved as shown on the Plat of the Property. Within these easements, no structure, trees or bushes or other materiel or plantings shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may Impede the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Association, except for those improvements for which a public authority or utility company is responsible.

**Section 11. Trees.** All Lot Owners shall use reasonable care to preserve and retain as many trees as is reasonably possible. No excavation, fill or cutting of trees shall be performed in violation of law, any Ordinance or of this Declaration. The Association shall be responsible for maintaining certain landscaped areas located on a Lot which shall include any mulched areas, but shall expressly exclude any enclosed or partially enclosed lanai or walled areas or screened enclosures. The Association's obligation for maintenance does not include an obligation for replacement of any trees. Lot Owners shall be responsible for replacing any trees that become diseased or are otherwise destroyed or damaged due to natural weather events or disasters or for any reason. The Board or ACC shall provide guidelines to Lot Owners who seek to replace a diseased or fallen tree or who wish to add any trees to Owner's Lot. Owner shall also comply with another regulations established by the County or other applicable governmental regulating division. As provided by Florida law, no Lot Owner may be prohibited from using or installing either xeriscape or Florida friendly landscape as those terms are defined under the law.

**Section 12. Fences, Wall and Hedges** All fences, walls or hedges existing at the time this amendment is recorded in the public records shall be grand fathered and permitted. In the event any such fence, wall or hedge is removed, whether due to damage, natural disaster or for any other reason, Lot Owners for same shall be required to comply with this provision. Fences, walls and hedges may be constructed or maintained only as permitted by the ACC in accordance with the written guideline, but in no event to exceed six (6) feet in height. Fences shall be of shadow box or board on board only, unless otherwise approved by the ACC. No fence, wall or hedge shall be constructed or maintained between a front street and front dwelling line or between a side street and a side dwelling line unless installed as part of Declarant's or builder's work. No chain link fence shall be placed on or permitted to remain on any Lot or

any part thereof. Each fence which is built as part of the original construction of the improvements upon the Lot(s) or placed by the Declarant or builder on the dividing lines between the Lots shall be treated in law as if it were a party wall; and no such fence shall be deemed to be an encroachment, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(a) If a fence has been installed by the Declarant or builder, as part of the work for the sole benefit of any specific lot owners, the reasonable cost of repair and maintenance shall be shared equally by the lot owners whose lot is contiguous to the fence. Where the Declarant or builder has installed a fence for the benefit of the Property as a whole, such as a perimeter wall, the Association shall pay the reasonable cost of repair and maintenance. Where a fence has been installed solely for the benefit of a single Lot Owner, whether by the Lot Owner or by the Declarant or builder, the reasonable cost of repair and maintenance shall be the sole obligation of that individual Lot Owner.

(b) All repairs to any fence shall be made using materials which are of like grade, quality, material, color, finish and workmanship as that which was provided by the Declarant or builder at the time of conveyance of the Lot to the Owner of such Lot, or as approved by the ACC, if the fence was originally constructed by someone other than the Declarant in accordance with the written guidelines.

(c) Notwithstanding the above, an Owner of a Lot who by his or her negligent or willful act causes damage to or the destruction of a fence shall pay the entire cost of repair or replacement of the damaged portion. Failure to do so after written notice and an opportunity shall entitle, but not obligate the Association to undertake any such remedial action and charge the cost thereof to the Lot Owner with the same rights for collections as if such charge were a assessment.

(d) The provision of this Section concerning fences is also applicable to any fence or wall erected, or to be erected, along any lake, drainage area, drainage easement or any portion of the Common Area. No fence or wall shall be reconstructed that will impede the flow of water or modify the drainage design.

(e) In the event the Association enters upon any Lot to make any repairs or take any action authorized herein, such entry upon a Lot shall not be deemed a trespass.

**Section 13. Sidewalks.** Simultaneously with the construction of a dwelling on any Lot, a concrete sidewalk shall be installed at the expense of the Lot Owner according to the specifications of Sarasota County, Florida, the line and grade of said sidewalk to be in accordance with the site plan of such Lot approved by the ACC. Notwithstanding the construction of said sidewalk by the Lot Owner, the repair of any sidewalk shall be a common expense and undertaken by the Association, provided, however, that a Lot Owner shall be responsible for any damage caused by the Owners, their guests or invitees for either willful or negligent acts.

**Section 14. Commercial Uses.** No trade, business, profession or other type of commercial activity shall be carried on upon any Lot unless permitted by Sarasota County as a Home Occupation and provided that such activities do not impact or detract from the residential character of the Subdivision. No evidence of a home occupation shall be visible, no signage may be displayed and no customers or employees other than family shall frequent the Lot to conduct business, except that real estate brokers, Owners and their agents may show dwellings and Lots for sale or lease. Any work or

maintenance undertaken by the Association in fulfilling its obligations under the Declaration shall not be considered a commercial use.

**Section 15. Appearance of Lots.** No Lot or any part thereof shall be used as a dumping ground for rubbish. Each Lot, whether improvements are or are not located thereon, and whether occupied or not, shall be maintained reasonably clean from refuse, debris, rubbish, unsightly growth and fire hazard. No stripped, unsightly, offensive, wrecked, junked, dismantled, inoperative or unlicensed vehicles or portions thereof, or similar unsightly items, nor any furniture or appliance designed for normal use or operation within (as distinguished from outside of) a dwelling; shall be parked, permitted, stored or located upon any Lot in any such manner or location as to be visible from the public streets or neighboring Lots.

The foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pickup by garbage and trash removal services, if placed in a neat and sanitary manner curbside within twelve (12) hours of such expected removal. No lumber, brick, stone, cinder block, concrete or other building materials, mechanical devices or any other thing used for building purposes shall be stored on any Lot, except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonable necessary for the construction to completion of the improvement for which same is to be used.

**Section 16. Omitted.**

**Section 17. Lot Upkeep and Maintenance.** Except for the maintenance to be performed by the Association elsewhere set forth herein, all Lot Owners with completed residences thereon shall keep and maintain such Owner's Lot (including but not limited to that portion of the Lot between sidewalks, if any, and the street), together with the exterior of all buildings, structures and improvements located thereon, in a first class, neat, attractive, sanitary and substantial condition and repair, together with painting, repairing, replacing and caring for roofs, gutters, downspouts, exterior building surfaces, lighting fixtures, shrubs and other vegetation, walks, driveways and other paved areas and all other exterior improvements, such as to keep the same in a condition comparable to their original condition, normal wear and tear excepted.

**Section 18. Mailboxes.** The mailboxes and support, if any, which is provided by the Declarant or builder at the time of conveyance by Declarant or builder, shall remain the same color and structure (design) as it was at the time of conveyance by Declarant or builder. The Association may establish guidelines for any replacement mailboxes or support posts, with which Lot Owner shall comply for any replacement. Lot Owners are responsible for the maintenance, repair and replacement of the Lot Owner's mailbox and support.

**Section 19. Vehicles Parking.** Except as set forth hereafter, only conventional passenger automobiles may be parked in any parking area and only if the automobile has a current license tag affixed to it. A "conventional passenger automobile" shall be limited to vehicles which are primarily used as passenger motor vehicles, and which have a body style consisting of two doors, four doors, hatchback, convertible, station wagons, or minivans which do not exceed 18 feet in length, and sport utility vehicles that have not been modified by increasing their height, off-road tires, roll bars of the like.

All other motor vehicles including but not limited to commercial vehicles (any vehicle primarily used in a trade or business or having advertising or promotional information, symbols or materials affixed thereto), truck (any vehicle designed or used principally for the carriage of goods and including a motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passenger, and specifically including all pickup trucks, and vans exceeding 18 feet in length), boats, campers, recreational vehicles (vehicles having kitchen or bathroom facilities), trailers, motor homes, mobile homes, and any and all other vehicles (other than the afore described conventional passenger automobiles) shall be prohibited from parking within the property, except within the confines of a garage.

Exceptions to the foregoing exist as follows: (i) service vehicles may be temporarily parked in parking areas during the time they are actually servicing a Lot, but in no event overnight; (ii) boats, trailers, trucks commercial and recreational vehicles and other prohibited vehicles may be temporarily parked in a designated



parking area when they are being actively loaded or unloaded; (iii) motor homes and other recreational vehicles operated by persons residing outside of Sarasota County, Florida may be temporarily parked in the driveway of the host Owner. Temporarily parked as used herein shall mean no more than 24 continuous hours and (iv) any of the motor vehicles trailers or other vehicles which are otherwise prohibited by virtue of this section may be parked inside an Owner's assigned garage provided the garage door is kept closed and the vehicle is only located outside of the closed garage when it is being loaded, unloaded or driven.

No vehicle shall be parked in a manner as to impede or prevent access to any other parking space. All drivers will obey parking regulations posted on the private streets, parking areas and all other traffic regulations which may be promulgated from time to time by the Association. No vehicle which cannot operate on its own power shall remain within the Property for more than twenty-four (24) hours and no vehicle may be repaired anywhere within the Property, other than replacement of a battery or changing a flat tire. Any other work on a vehicle must be done within the garage provided the garage door is kept closed and the vehicle is located entirely within it.

Parking is not permitted on the lawns or landscaped areas including the grass area between the road curb and sidewalk; the cost of repairing any damage to the sprinkler system heads or piping caused by illegal parking in that area to be borne by the car owner. Parking on streets or beyond the driveway parameters or parking on the sidewalk is prohibited. Notwithstanding same, parking on the streets is permitted in limited circumstances and only for a limited time such as service vehicles or guests of an Owner, and then only if necessary to service a Lot or if the Owner's driveway and other authorized parking areas are completely full provided same does not exceed 24 hours for guest parking. Any parking in the streets shall be at the Owners' or guests' own risk. Guest vehicles and guest parking shall otherwise comply with all requirements of this Declaration.

Any and all vehicles parked or stored on the Property which do not comply with the foregoing parking regulations shall be deemed "improperly parked" and are subject to towing by the Association, at the vehicle owner's expense, at any time after twenty-four (24) hours have elapsed from the time the vehicle owner has been notified in writing. The Association may assess the Owner for the cost of removing a vehicle owned by the Owner or by Owner's guests or invitees as more fully described in Article VI, Section 4 hereafter.

Provided the Association complies with the notice requirements under Florida law, in addition to the above, any commercial, recreational or other vehicle parked, stored, repaired, serviced, painted, dismantled, rebuilt, constructed or operated in violation of the restrictions provided in this Declaration, or in violation of any reasonable rules and regulations adopted by the Association from time to time, may be towed away or otherwise removed by or at the request of the Association. The Owner of the Lot to whom such vehicle belongs or to whom the operation of such vehicle is a family member, guest or invitee shall reimburse the Association for any costs incurred by the Association and the Association shall have a lien right against such Lot to enforce collection of such reimbursement. Any cost or expense not incurred by, or the responsibility of, the Association but necessary to recovery of the towed vehicle shall be borne solely by the Owner or the operator of the towed or removed vehicle.

**Section 21. Repainting of Homes.** If the exterior of any home (including trim, doors and garage doors) is repainted within the first five years subsequent to conveyance by Declarant or builder, it shall be painted in the same color or as close to the same color as possible of that which was provided by the Declarant or builder at the time of conveyance, unless an alternative color is approved by the ACC. No two homes, which Lots are contiguous to each other or are immediately adjacent to each other, can be painted the same color.

**Section 22. Window Air Conditioners.** No window air conditioning unit shall be installed in any window that is visible from any street.

**Section 23. Exemption of Declarant and Designated Builders.** Every person, firm or corporation purchasing a Lot recognizes that Declarant or designated builders shall have the right to do the following, as part of the Work:

- (a) Use of Lots and residences erected thereon for sales offices, field construction offices, storage facilities and general business offices;
- (b) Maintain furnished model homes on the Lots which are open to the public for inspection seven (7) days per week for such hours as deemed necessary or convenient by Declarant or designated builder; and
- (c) Erect and maintain such signs on the Lot in connection with the uses permitted in (a) and (b) above.

Declarant's and builder's rights as set forth in this Declaration shall terminate when Declarant or any authorized builder has sold the last residential Lot to a third party home buyer. It is the express intention of this section that the rights granted herein to maintain sales offices, general business offices, furnished or unfurnished model homes and signs shall not be restricted or limited to Declarant's or builder's sales activity relating to the Property, but shall benefit Declarant or builder in the construction, development and sale of such other property and Lots which Declarant or builder may own. All provisions of this Declaration in conflict with this section shall be deemed inoperative as to Declarant or a designated builder.

The Declarant has assigned the Association to the Owners and by the express terms of the original Declaration as set forth above the Declarant's rights and builder's rights have been terminated and this exception can no longer be exercised by them.

**Section 24. Front Doors.** The front door of each residence constructed on a Lot shall be maintained in an attractive manner, and any changes to the original doors as to style or color must be approved by the ACC. No glass storm doors shall be permitted on the top of the front doors; however, decorative leaded glass replacement front doors are permitted with approval from the ACC. Screened doors and screened enclosures are permitted, provided Owner complies with the ACC guidelines for same and receives ACC approval.

**Section 25. Front Yards.** The front yard of each residence constructed on a Lot shall remain grass, and the Association shall maintain such grass, and no such front yard shall be paved over (either concrete, asphalt or otherwise), nor covered with rock, gravel or other similar material, unless the initial construction by the Declarant or builder utilized an alternate plant ground cover due to heavy shade on the Lot. Thereafter the same type of plant ground cover shall be utilized unless otherwise approved by the ACC. Notwithstanding same, as provided by Florida law, no Lot Owner may be prohibited from using or installing either xeriscape or Florida friendly landscape as those terms are defined under the law. The Association shall be responsible for maintaining any such installed landscape provided it is approved by the ACC. To further clarify the Association's obligations as to same, the Association shall also be responsible for maintaining, but not replacing, any such landscape and grass, as same is the responsibility of the Lot Owner.

**Section 26. Window Coverings.** All Interior window coverings that are visible from any street shall be white in color, or have a white backing, in order that all windows present a uniform white presence to the exterior of the Improvement

**Section 27. Drainage Easements.** The Flat reflects certain areas as 'Drainage Easements'. Drainage easements shall not contain the following improvements: impervious material of any kind, concrete patios, decks, pools, utility sheds or bulking structures, unless, and only in such event, such structures are specifically approved by Sarasota County.

**Section 29. Swimming Pools and Patio Enclosure.** In the event any Owner constructs a swimming pool on a Lot, such swimming pool must be entirely in-ground, and the Owner of the Lot must erect a screen enclosure or a fence meeting all life safety and jurisdictional requirements around the entire perimeter of that portion of Lot located behind the house so as to prevent access to the swimming pool by unsupervised or unauthorized parties. This Section shall not create any liability or responsibility on the part of the Declarant or the Association from any claims arising from the review and/or approval of any such fencing or screen enclosure by the Declarant, the Association or the ACC, or the lack of a fence or screen enclosure, or the construction thereof, in connection with any swimming pool. The term swimming pool shall also include any spa, whirlpool bath, or similar device as determined by the ACC. All patio enclosures must be approved by the ACC and shall be constructed with white aluminum supports.

**Section 30. Outdoor Clotheslines.** No outdoors clothesline of any kind whatsoever, temporary or permanent shall be permitted on any lot, unless the lines are not visible from the exterior of such Lot.

**Section 31. Temporary Structures, Outbuildings, Athletic Equipment Flags, Lawn Ornaments, and Access Ramps.** No temporary structure, storage shed, basketball goal, baseball or tennis pitching machines nets or batting cages, trailer, tent, shack, mobile homes, boat or recreational vehicle shall be permitted on any Lot at any time, or used on any Lot at any time as a residence, either temporarily or permanently, unless approved by the ACC or as otherwise permitted in Section 19 titled vehicles.

With the exception of household barbecue grills containing propane tanks, no gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any residential structures built on the Property or any ancillary buildings, and except for household barbecue grills containing propane tanks, all gas tanks, gas container and gas cylinders shall be installed underground in every instance where gas is used. Propane gas containers may be placed above ground if enclosed on all sides by a decorative wall approved by the ACC. The installation of a permanent generator must be approved by the ACC and must also comply with any ordinance or requirement issued by Sarasota County. Emergency generators are for use during emergencies only and do not require approval by the ACC; however Lot Owners shall be required to comply with and follow the manufacturer's guidelines for use. Storage of all generators shall be such as to not be visible to the public.

An owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4 ½ , feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag.

An owner may erect a freestanding flagpole no more than 20 feet in high on any portion of the owner's real property, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The owner may further display in a respectful manner from the flagpole one official United States flag, not larger than 4 ½ feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA Flag. Such additional flag must be equal in size to or smaller than the United States flag.

Seasonal and holiday flags and lawn or yard ornaments and lights are permitted; provided they are used for the limited time of the seasonal holiday and they are removed within seven (7) calendar days after said holiday. No such flags, lawn ornaments or other similar seasonal items are permitted to remain all year long or for a period beyond the specific holiday. The purpose of this provision is to allow Lot Owners to express themselves and participate in the holiday season, but to avoid extended use or display beyond the holiday season. Any lawn ornaments that a Lot Owner desires to keep year round on the Lot must be approved by the ACC. By way of example, and not limitation, this includes glass globes, statues and similar decorations.

Any Lot Owner may construct an access ramp, if a resident or occupant of a Lot has a medical necessity or disability that requires a ramp for egress and ingress provided the conditions required under Florida law

pursuant to 720.304(5), Florida Statutes, as amended, have been met. Such conditions include an unobtrusive design and configuration and aesthetic considerations as well as submission and approval by the ACC of said plans and an affidavit from an attending physician as to the medical necessity of same.

**Section 32. Roofs.** All roofs shall be barrel-style cement or clay tile only and any replacements shall be required to match current tile color and style. While barrel-style and clay tile are the materials to be used, the ACC may consider but is not required to consent to any alternative materials that advances in technology may provide that still meet the aesthetic guidelines of the Community.

**Section 33. Violations.** In the event of a violation of these Covenants and Restrictions or any rule or regulation of the Association by an owner, his or her guest or invitee, the Association shall have following rights as permitted under Florida law:

a.) The Association may suspend for a reasonable period of time the rights of an Owner's or an Owner's guest or both to use the common areas and facilities, however suspension of common area use rights shall not impair the right of an Owner or tenant to have vehicular or pedestrian access (ingress and egress) to the Lot, including the right to park;

b.) The Association may levy reasonable fines, not to exceed \$100 per violation, against any Owner or tenant, guest or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. No fine may exceed \$1000 in the aggregate. No fine may become a lien, however, a fine may be reflected on an Owner's account and noted as a charge owed to the Association. The Association also has the option of filing an action for collection on the fine in Small Claims court to receive a judgment. In the event legal counsel is sought for any collection efforts taken by the Association, whether for the fine, any lien or any other charge or funds owned to the Association, the Association shall be entitled to recoup its attorney's fees and costs and said recovery is not limited to lawsuits or other proceedings. The prevailing party in any action shall also be entitled to recover any fees and costs paid.

c.) Prior to a fine or suspension being imposed, the Association shall provide at least fourteen (14) days written notice to the person sought to be fined or whose rights will be suspended. The notice must inform the party that the party has an opportunity for a hearing before a committee of at least three (3) Owners. While the committee members will be appointed by the Board, no committee member can be an officer, board member, director, or employee or the spouse, parent, child, brother, or sister of same. In order for a fine to be imposed, a majority of the committee members must approve the fine or suspension.

d.) The Association has the right to suspend the voting rights of an Owner who has not paid the regular assessments, and such assessments must be in arrears for an excess of ninety (90) days.

**Section 34. General Restrictions.** Except as expressly provided in this Declaration or with the Association's rules and regulations:

- (a) **Obstructions.** There shall be no obstruction of the Common Area nor shall anything be kept or stored on the Common areas.
- (b) **Alterations.** Nothing shall be altered on, constructed upon, or removed from the Common Area.
- (c) **Activities.** No activity shall be permitted in or upon the Common Area.
- (d) **Water bodies.** The Board of Directors from time to time may regulate and/or prohibit any and all uses and activities in, upon and about any water body situated in whole or in part of the Common Area.

**Section 35. General Prohibitions and Indemnity.** Each Owner shall defend, indemnify and hold the Association and all other Owners harmless against all loss from any violation of this Declaration. The indemnification provisions of this Section shall in no way be construed to make an Owner an Insurer of the

Association or the Common Area. The Association shall be responsible for insuring itself and the Common Area all in accordance with Article X of this Declaration.

**Section 36. Rules and Regulations.** No Owner or other person residing within the Property or invitees shall violate the Association's rules and regulations for the use of the Lots or the Common Area, and all Owners and other persons residing within the Property, and their invitees, at all times shall do all things reasonably necessary to comply with the same. Wherever any provision of this Declaration, or any supplemental declaration, prohibits any activity, condition or structure within the Property except as permitted by the Association's rules and regulations, such restriction or prohibition is self-executing until the Association promulgates rules and regulations expressly permitting such activities. Without limitation, any rule or regulation shall be deemed 'promulgated' when posted conspicuously at such convenient location within the Property as the Association from time to time may designate for such purpose.

**Section 37. Ownership Rights Limited to that Enumerated.** No transfer of title to any Lot shall pass any rights in and to the Common Area except as expressly enumerated in this Declaration or any applicable supplemental declaration. No provision in any deed or other Instrument of conveyance of any interest in any Lot shall be construed as passing any such right, title and interest except as expressly provided in this Declaration or applicable supplemental declaration. The conveyance of the Common Area to the Association shall vest in the Association exclusively all riparian rights in and to any stream, pond, lake or other water body situated thereon, in whole or in part, notwithstanding the fact that any lot is shown or described as abutting the same. Such conveyance additionally shall vest in the Association the underlying fee simple title or right of reverter, as the case may be to any street, utility easement or other area dedicated to public use and situated upon, or abutting, the Common Area notwithstanding the fact that any Lot also is shown or described as abutting the same.

**Section 38: Enforcement.** All of the restrictions contained herein shall be enforceable by specific performance and injunctive relief. In addition to the enforcement rights as provided elsewhere in this Declaration, the Association has all of the rights and remedies set forth in Chapter 720, Florida Statutes, as amended. Such rights include the right to lien, file lawsuit for damages and in equity. As to any disputes between the Association and an Owner regarding use of or change to the Lot or the common areas and any covenant enforcement disputes, disputes regarding amendments, meetings of the Board or its committees, membership meetings not involving elections and access to the Association records must be filed with the Florida Department of Land Sales for mandatory mediation prior to any action being filed in a court of law. Florida law shall govern the procedure for same. As to assessments that are not paid when due, the Association has all of the rights for collection of same to include a lien, foreclosure rights and a lawsuit for enforcement of the personal obligation, provided the Association complies with all of the procedural requirements for each remedy.

## Article V

### Rights and Obligations of the Association

**Section 1. The Common Area.** Subject to the rights of Owners set forth in this Declaration and any Supplemental Declaration, the Association has exclusive management and control of the Common Area and all improvements thereon and all furnishings, equipment and other personal property related thereto. The Association shall keep the foregoing in good, clean, substantial, attractive, sanitary and serviceable condition, order and repair. The Association's duties with respect to the Common Area include the management, operation, maintenance, repair, servicing, replacement and renewal of all streets, roads, improvements, equipment and personal property installed thereon by Declarant as part of the work. The Association's duties also include the duty to maintain, repair and replace under the circumstances outlined in Section 2 hereafter.

#### Section 2. Maintenance.

**(a) Responsibility of Association.** The Association shall provide the following maintenance, repair and replacement services to and for the benefit of the Owners, the cost for which

shall be assessed to each Owner as part of the annual assessment against each Lot in the Property. Any contractor retained by the Association for the purposes of meeting the Association obligations hereunder shall provide evidence of Workers Compensation coverage or an exemption there from

- (i) Operation and maintenance of entry features, signage, monumentation, and gates;
- (ii) Recreation center facilities operation and maintenance, including the repair, replacement and maintenance of all improvements to the Common Area, the community pool, spa, fitness center and pool furniture and equipment, and the exterior improvements installed by Declarant as part of the Work, and their replacements;
- (iii) Road maintenance, repair and replacement within the Property, including specifically shared maintenance, repair and replacement of any facilities pursuant to the cost sharing provisions of Shared Use Agreement;
- (iv) Street lighting;
- (v) Landscape maintenance in the Common Areas and on Lots, except as otherwise exempted or clarified as an Owner obligation in other sections of this Declaration;
- (vi) Repair, replacement, and maintenance of the utility easements within the Property including sidewalks as provided in the Declaration;
- (vii) Maintenance, repair and replacement of irrigation and drainage equipment and facilities within the Property, including specifically shared maintenance, repair and replacement of any facilities pursuant to the Shared Use Agreement; and
- (viii) Reserve or sinking fund for replacement of any items set forth above as required by Florida law.

**(b) Exclusion of Association's Responsibility.** The Association's duty of maintenance does not include: building painting, roof repair or replacement, glass surfaces; replacement of exterior doors or any trees, shrubs, lawns or landscaped areas within an enclosed or screened patio, entry or lanai area including the enclosed rear patios of Lots, except that the Association will maintain and replace any hedge or other landscaping, if any, installed by Declarant or builder as part of the Work along the boundary between any Lot and the Common Area. The Association also is not responsible for any maintenance, repair or replacement resulting from any fire, wind, flood, tornado, hurricane or other casualty; and each Owner will promptly correct any and all such casualty damage to such Owner's Lot within a reasonable time as specified below. Where it is stated herein that the Association has "exclusive control," it means the Owners of Lots shall not be required, or entitled, to conduct such activities, it being the intent of the Association to control such activities for purpose of maintaining uniformity within the Property. All maintenance performed by the Association shall be at least up to the maintenance standards established in the Declaration.

(c) **Responsibility of Owner.** The Owner shall provide exterior maintenance as follows, the cost for which each Owner shall be individually responsible:

- (i) the cost of labor and materials for repairs, maintenance and capital improvements to any buildings on Lots, painting any buildings, repair or replacement of roofs on individual Lots;
- (ii) repair or replacement of all glass surfaces on his/her Lot;
- (iii) replacement of exterior doors;
- (iv) replacement of any trees, shrubs, lawns or landscaped areas within a fully enclosed or screened entry or lanai area or patio area including the rear patios of an Owner's respective Lot;
- (v) maintenance, repair, or replacement resulting from any fire, wind, flood, tornado, hurricane or other casualty damage within the Lot of an Owner;
- (vi) repair or replace any property whether upon such Owner's Lot or any other Lot, or the Common Area, which repair or replacement is required because of any gross negligence or the willful act of such Owner or any member of such Owner's family or household, or any invitee of such Owner; and
- (vii) washing of lead walks and entry walkway areas, driveways and exterior building surfaces and sidewalks and roofs.

All maintenance performed by the Owner shall be at least up to the maintenance standards established by the Association.

**(d) Failure of Owner to Repair.** The Association may perform maintenance or make repairs and assess the costs of any required exterior maintenance or repairs to the Owner of any Lot under the following circumstances: (i) such Owner does not maintain in a reasonable condition any lawn or landscaped area on such Owner's Lot that the Association is not otherwise required to maintain; or (ii) such Owner does not when reasonably necessary replace any glass surfaces or exterior doors on such Owner's Lot; or (iii) any maintenance, repair or replacement, whether upon such Owner's Lot, or any other Lot or Common Area, is required because of any willful act of such Owner or any member of such Owner's family or household or any invitee of such Owner; or (iv) any Owner fails promptly to repair or replace, as the case may be, any casualty damage to such Owner's Lot; and (v) such Owner has failed to undertake the necessary maintenance or replacement within a reasonable period of time following written notice from the Association. Upon the occurrence of the foregoing, and after reasonable prior written notice to such Owner giving the Owner fourteen (14) in which to take any remedial action, the Board upon a majority vote at a Board meeting at which a quorum is present may undertake such maintenance, replacement or repairs and may assess by specific assessment the costs of such maintenance, replacement or repairs, as the case may be, against such Owner's Lot in the manner provided by Article VI, Section 4, of this Declaration in addition to any other remedies provided to the Association under Florida law or this Declaration. In no event shall the entry of the Board or any designated contractor upon the Lot be considered a trespass.

**Section 3. Services.** The Association may obtain and pay for the services of any person to manage its affairs to the extent it deems advisable, as well as such other personnel as the Association determines are necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person with whom it contracts. Without limitation, the Association may obtain and pay for legal, management, and accounting services necessary or desirable in connection with the operation of the Property or tile enforcement of this Declaration, any supplemental declaration, or its Articles, By - Laws, rules and regulations. The Association may contract with others to furnish trash collection, lawn care, building and parking lot maintenance, and any other services or materials, or both, to all Lots, or to any group of Lots; provided, however, if such services or materials, or both, are furnished to less than all Lots, then: (i) only those Lots enjoying the benefit thereof shall be assessed for the cost thereof as provided In Article VI, Section 4 of this Declaration: and (ii) provided further, each such Owner's consent shall be required.

**Section 4. Personal Property.** The Association may acquire, hold and dispose of tangible and intangible personal property, subject to such restrictions as from time to time may be contained in the Association's By-Laws or Declaration. Such items may include, but is not limited to, pool equipment or any furniture provided for the general use of members in the Clubhouse

**Section 5. Rules and Regulations.** The Association from time to time may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Lots, the Common Area, or any combination thereof, which rules and regulations shall be consistent with the rights and duties established by this Declaration, and any applicable supplemental declaration. The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property as a residential community. All rules and regulations shall be enforced in a uniform manner and no rule shall be enforced selectively. All rules and regulations shall be established by the Board of Directors and voted on for approval, with a majority of the Board required to establish any rule or regulation or any amendment to any previous rule or regulation. The Association's procedures for enforcing its rules and regulations at all times shall provide the affected Owner with reasonable prior written notice and an opportunity to cure or remedy same prior to taking any action.

**Section 6. Implied Rights.** The Association may exercise any other right, power or privilege given to It expressly by this Declaration, any supplemental declaration, its Articles or By-Laws and every other right, power or privilege reasonably to be implied from the existence of any right power or privilege so granted or reasonably necessary to effectuate the exercise of any right, power or privilege so granted.

**Section 7. Restriction on Capital Improvements.** Except in an emergency which affects the safety of the Owners or if there is a threat of imminent damage to the Association property, the Association Board may not authorize capital improvements in excess of \$10,000 in the aggregate in any one (1) calendar year to the Common Area without receiving approval of two-thirds (2/3) of the voting interests who are present in person or by proxy at a meeting called for that purpose.

**Section 8. Litigation.** The Association shall have the power to initiate or defend litigation on behalf of the Association. However, as provided by Florida law, before commencing any litigation involving amounts in excess of \$100,000, the Association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership.

## Article VI

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed or other conveyance shall be deemed to covenant, and agrees to pay the Association, as hereinafter provided:

- (a) Annual assessments or charges, which shall include assessments for the maintenance and operation of the Lots and Common Area and shall include such reasonable reserves as the Association may deem necessary to fulfill its duties and responsibilities hereunder. These annual assessments may be collected in monthly, quarterly or yearly payments on determined from time to time by the Board; and
- (b) Special assessments for capital improvements as provided In Section 3 of the Article. Such assessments shall be for those purposes stated hereinafter and shall be fixed, established and collected from time to time *as* hereinafter provided; and
- (c) Specific assessments as provided in Section 4 hereafter.



Annual and special assessments shall be allocated to each Lot in an amount proportional to a fraction of which the numerator is one and the denominator is the total number of platted Lots In the Property from time to time. By definition, specific assessments are specific to each Lot so assessed and may vary from Lot to Lot, depending upon the purpose of such assessment.

The annual, special and specific assessments, together with Interest thereon and costs of collection of same, including attorneys' fees, shall be a charge on each Lot and shall be a continuing lien upon the costs of collection of the same, including reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

**Section 2. Purpose of Assessment.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents In the Property and for the improvement, repair, replacement and maintenance of Lots and the Common Area including, but not limited to, payment for operation and maintenance of improvements to the Lots and Common Area as elsewhere provided herein the costs of taxes, insurance, labor, equipment, materials, management, maintenance and supervision thereof, as well as for such other purposes as are permissible activities of the Association and undertaken by it.

**Section 3. Special Assessments for Capital Improvements.** Subject to the limitations and conditions imposed by Section 7, Article V the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repairer replacement of any capital improvement that, in the judgment of the Board of Directors of the Association, benefits all Lots, including the necessary fixtures and personal property related thereto.

**Section 4. Specific Assessments.** Any and all accrued, liquidated indebtedness of any Owner to the Association arising under the provision of this Declaration, or by contract expressed or implied, or because of any act or omission of any Owner or person for whom such Owner is responsible, also may be assessed by the Association against such Owner's Lot after such Owner fails to pay it within thirty (30) days after written demand.

**Section 5. Date of Commencement of Annual Assessment; Due Dates.** The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The annual assessment shall be payable in monthly installments due on the first day of each calendar month, or in annual or quarter-annual installments, if so determined by the Board of Directors. The due date of any special or specific assessment levied under Sections 3 or 4 hereof, respectively, shall be fixed in the resolution authorizing such assessment.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall fix the amount of assessment against each Lot subject to the Association's jurisdiction and shall set the date of commencement for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Property and assessments, applicable thereto, that shall be kept on file in the office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall thereafter be sent to every Lot Owner subject thereto.

The Association shall, upon demand at any time, furnish to any Lot Owner liable for said assessments, a certificate in writing signed by an Officer or authorized agent of the Association setting forth whether said assessments have been paid as to any particular Lot. This certificate shall be conclusive evidence of payment of any assessment, due to the Association, which is stated therein to have been paid.

From time to time, the Association, through actions of its Board of Directors, may enter into an agreement or agreements with one or more persons firm or corporations, for the purpose of providing professional management, operation of and maintenance of services for the Common Area.

**Section 7. Amount of Quarterly Assessments.** The assessments shall be established by the Board of Directors of the Association after consideration of the current maintenance costs and needs of

the Association to meet its obligations as set forth herein. The quarterly payment for the Annual assessment will be determined by the Board at a budget meeting and notice shall be provided to Owners for payment of same in accordance with the Bylaws and Florida law. No annual assessment may be increased more than 15% of the previous year's assessment unless two-thirds (2/3) of the voting interests approve of same.

**Section 8. Effect of Nonpayment Assessment; Remedies of Association.** If the assessments are not paid within thirty (30) days after the date when due then such assessment shall become delinquent and shall, together with such interest thereon at the highest rate permitted by law and late fees calculated at the greater of \$25 or 5% of the assessment due and the costs of collection thereof; including attorneys' fees, as hereinafter provided, thereupon become a continuing lien on the property so assessed, which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to the lien, as provided by Florida law, each assessment shall also be a personal obligation of the Lot Owner. Any payment received by the Association shall be applied to interest, then the late fee, then the attorney's fees and then the delinquent assessment regardless of any restrictive writing or endorsement placed on or accompanying any payment. The Association shall also have the right to accelerate the annual assessment provided the Owner is given fourteen (14) days written notice and an opportunity to bring the account current.

If the assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date when due at the rate of eighteen percent (18%) per annum, provided, however, in no event shall this interest rate exceed the maximum allowable by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and may record a claim of lien against the Lot or may foreclose the lien against the Lot, or pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment, and recoverable by the Association, the costs of collection of same, including, but not limited to, reasonable attorneys' fees and the costs of preparing and filing the claim of lien and the complaint in any such action. Additionally, in the event that a judgment is obtained, such judgment shall include interest on the assessment as provided hereinabove and costs of collection and reasonable attorneys' fees. Attorneys' fees, as provided for herein, shall include attorneys' fees incurred in any appeal of such action, to be fixed by the court, together with the costs of the action. Prior to any lien being filed, the Association shall comply with all procedural and notice requirements mandated by Florida law and in particular, but not limited to section 720.3085. Florida Statutes as same may be amended.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot. It shall be the legal duty and responsibility of the Association to enforce the timely payment of the assessments.

In addition to the rights of collection of assessments stated in this Section, any and all persons acquiring title to, or an interest in, any Lot as to which the assessment is delinquent, including, without limitation, persons acquiring such interest by operation of law and by judicial sale, shall not be entitled to the enjoyment of the Common Area, until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid. Any purchaser at a judicial sale shall be required to pay any assessments, fees, charges, interests and costs to the Association within thirty (30) days of demand or the Association shall have all rights of collection as against any other Owner.

**Section 9. Lien Priority.** The Association's lien for assessment is effective from and shall relate back to the recording of the original Declaration of Covenants, Conditions and Restrictions and said lien shall, also take priority over any intervening mortgages.

Any unpaid assessment that cannot be collected as a lien against a Lot by reason of the provisions of this Section may be deemed by the Board if permitted by Florida law to be an assessment divided equally among, payable by, and a lien against all Lots subject to the jurisdiction of the Association, including the Lot as to which the foregoing, or conveyance in lieu of foreclosure, took place.

**Section 10. Homesteads.** By acceptance of a deed thereto, each Owner of each Lot is deemed to acknowledge conclusively that: (i) the assessments established by this Article are for the improvement and maintenance of any homestead thereon; and (ii) the Association's lien for such assessments has priority over any such homestead; and (iii) such Owner irrevocably waives the benefit of any homestead exemption otherwise available with respect to all amounts secured by such lien as the lien for any unpaid assessment specifically relates back to the recording of the original Declaration of Covenants, Conditions and Restrictions.

**Section 11. Trust Funds.** The entire amount of all regular and special assessments collected by the Association shall be held by the Association in trust for the Owners of all Lots, as their interest may appear, until disbursed as contemplated herein for the purposes for which the assessments were collected. As provided under Florida Homeowners law and not for profit corporate law, the Board of Directors acting for the Association has a fiduciary duty to all Lot Owners.

**Section 12. Special Taxing Districts.** In the event that a Special Taxing District ("STD") or Community Development District ("CDD") is established to provide any services currently rendered by, or which are the responsibility of the Association, these covenants and conditions shall no longer be of any force and effect as to any such services provided by said STD or COD, provided, however, the covenants and conditions set forth herein shall continue to bind and run with the lands as to all of the Property for services not provided by said STD or CDD. If said STD or CDD is terminated for any reason, these covenants and conditions shall thereupon apply in full force and effect as if said STD or COD had never been created.

## **ARTICLE VII Architectural Control**

**Section 1. Architectural Control Committee.** In order to assure that the residences and other buildings, structures, and improvements in the subdivision covered by this Declaration will be constructed in a manner to preserve a uniformly high standard of construction quality, and in order to create, maintain and preserve an attractive, unique and exclusive residential subdivision, with harmony in design and location in relation to surrounding buildings, improvements and topography, and with homogeneity in density, size, and materials of the structures, and appearances of all buildings, structures and improvements on any Lot, there is hereby created an Architectural Control Committee (the "ACC"). The ACC shall exist as a committee of the Association under the control of the Association's Board of Directors.

**Section 2. Purpose and Powers of the ACC.** The ACC shall have the power to regulate those matters described in this Article VII. The power to regulate shall include the power to prohibit those buildings, structures or improvements deemed inconsistent with the provisions of the Declaration, or the aesthetic scheme, design or quality intended to be created and preserved hereby, or in maintaining the value and desirability of the Property, as a residential community with exclusive, unique and desirable aesthetic qualities.

No building, structure or improvement shall be erected, constructed, placed on or under, or altered on any Lot until the Owner of the Lot shall submit in duplicate complete plans and specifications for such building, structure or improvement and a detailed site plan showing its proposed location, and ACC shall have approved such plans and specifications and detailed site plan, in writing. The approval of said plans and specifications by the ACC may be withheld not only because of the noncompliance with any of the specific easements, covenants, conditions and restrictions of this Declaration, but also by reason of the reasonable dissatisfaction of the ACC with any other aspect of such plans and specifications, including but not limited to compliance with this Declaration, life safety issues, the landscaping or grading plan, the proposed location of the structure with respect to topography and finished grade elevations, the quality of workmanship and materials, the type of materials, the color scheme, finished design, proportions, architecture, style, shape, height, size, style or appropriateness of the proposed buildings, structures or improvement located or to be located upon the Property, including the height, kind and appearance of fences, walls, and excavation or fill, change in appearance, drainage or terrain, planting, utility installation and any other physical change or improvement to any Lot, the size, location and materials to be used in

the construction of the walks and drives, and the sizes and species of landscaping. Materials, all of which are included within the definition of "improvements" as such word is used herein. One set of plans and specifications and detailed site plan as finally approved shall be retained by the ACC for its permanent records.

It is the intention of this provision to vest in the ACC the right, power and authority to regulate, among other things, the appearance and installation of the buildings, structures or improvement to be located upon each Lot, for the purposes herein set forth. Upon completion of any building, structure or improvement in accordance with the plans and specifications and detailed site plan as approved by the ACC, no changes, alterations, additions, reconstruction or attachments of any nature including that portion thereof not actually occupied by the improvements thereon, unless the same are identical to the original work without the ACC's prior written approval in the manner above provided.

All of the foregoing approvals of the ACC shall not be unreasonably withheld so long as such original plans, specification and detailed site plans of such change, alteration, addition, reconstruction or attachment, as the case maybe, conforms substantially to, and is in harmony with, the creation and preservation of the general plan of development intended to be created and preserved by this Declaration. As provided under Florida law, the ACC shall be responsible for publishing and providing upon Lot Owner's request the specifications for the location, size, type, or appearance of any structure or other improvement or the Association's standards for external appearance of any structure. Neither the Association nor the ACC shall enforce any policy or restriction that is inconsistent with the rights and privileges of a Lot Owner, which is set forth in either the Declaration or the published guidelines. The guidelines may explain and clarify any noted restrictions for improvements as set forth in the Declaration. If the guidelines provide for options that Owner's may use as to material, size of the structure, the design or location as provided by Statute, the Owner alone shall be able to exercise any such option and no restriction shall be applicable by the ACC or the Association.

The ACC's approval, disapproval or conditional approval shall be endorsed upon the plans and specifications submitted by the Owner, and shall be further evidenced by a written instrument executed and acknowledged by the ACC. Such written instrument shall be returned, accompanied by one set of the submitted documents, to the applicant within thirty (30) calendar days after submission. If the ACC does not take action to either approve or disapprove the submission within thirty (30) calendar days after receipt of the plans and specifications, the request shall be deemed approved. In the event the ACC does not approve the plans or the request submitted, but provides guidance as to the actions that can be taken to receive approval, the Lot Owner shall be required to resubmit said modified plans or request for approval by the ACC and all time frames as noted herein apply.

**Section 3. Exculpation of ACC.** Members of the ACC cannot and shall not be held responsible, or be liable to any person whomsoever. In any manner whatsoever, for any loss or damages arising out or resulting from the approval, the failure or refusal to approve or the disapproval of any plans and specifications or site plans, or for any errors in structure, design or any non-conformance with applicable building codes or local laws or regulations in the plans and specifications or site plan, not for any defect in design or construction of any building, structure or improvement constructed in accordance with any such plans, specifications or site plan.

**Section 4. Submission of Plans and Specifications for Review by ACC.** No plans and specifications shall be considered to have been accepted for review by the ACC unless evidenced by a written and dated receipt of such plans and specifications by the ACC. The obligation to obtain such written receipt or acknowledgment is the Lot Owner's; however, the Board or ACC shall provide same upon the Owner's or Owner's contractor's request. The time frames set forth in this section do not begin to run until the date of the receipt or acknowledgment. The contact information for the ACC shall be provided to a Lot Owner upon Owner's request to the Board or the Association's management company.

## ARTICLE VIII Operation and Extension

**Section 1. Effect Upon Platted Property.** From and after the date this Declaration is recorded, all of the Property shall be held, sold and conveyed subject to the provisions of this Declaration, which are for the purpose of protecting the value and desirability of and which shall run with, the Property and be binding upon all parties having any right, title or interest therein, or any part thereof, their respective heirs, successors and assigns, and shall inure to the benefit of the Association and each Owner.

**Section 2. Annexation Without Approval of Class A" Members.** So long as Declarant owns any of the Property, Declarant shall have the unilateral right privilege and option, but not the obligation, from time to time, to subject to the provisions of this Declaration and the jurisdiction of the Association any lands other than the Property. Such annexation shall be accomplished by filing a supplemental declaration in the public records of Sarasota County, Florida, annexing such lands. Such supplemental declaration shall not require the consent of the Owners, but shall require the consent of the owner of such lands, if other than Declarant. Any such annexation shall be effective upon the filing for record of such supplemental declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the Property or the lands to be annexed and that such transfer is memorialized in a written recorded instrument executed by the Declarant.

**Section 3. Other Extensions.** Except for the annexation of lands initiated by the Declarant as provided in Section 2 hereof, the extension of the provisions of this Declaration to any lands other than the Property requires the approval of the Association and the Declarant, so long as the Declarant owns any of the Property. Any such extension shall first be approved by sixty-seven percent (67%) of the Class "A" Members of the Association present in person or by proxy voting at a meeting duly convened for such purpose. Such extension shall become effective upon recording an amendment to this Declaration, executed by the Association, the Declarant or the Declarants approval is required by this Section 3) and the owners of all interests in the lands to which the provisions of this Declaration are extended.

**Section 4. Acquisition of Additional Common Area.** Declarant may convey to the Association additional real property, improved or unimproved, located within the Property which, upon conveyance or dedication to the Association, shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all of the Owners.

**Section 5. Withdrawal of Property.** Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired right to unilaterally annex additional lands as provided in this Article, without prior notice and without the consent of any person for the purpose of removing certain portions of the Property then owned by Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or to remove certain portions of the Property then owned by the Declarant or its affiliates, but not property owned by the Association, as a result of any changes whatsoever in the plans for the Property desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property.

**Section 6. Amendment.** This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any of the Property.

## ARTICLE IX Conveyances, Leases and Transfers

In order to insure a community of congenial residents and occupants of the Lots and to protect the value of the Lots and further continuous harmonious development of the Property, the sale, leasing and other transfer of a Lot by any Owner other than the Declarant or a Builder shall be subject to the following provisions:

**Section 1. Conveyances, Sales and Transfers.** There shall be no restrictions upon the sale, conveyance or other transfer of any Lot. In order to enable the Association to keep its records current for assessment and other notice purposes to Owner, the transferring Owner shall notify the Association,

within five (5) days of the date of any transfer of the name, telephone number, and address of the transferee.

**Section 2. Leases.** Each Lot shall be used and occupied for single-family, private residential purposes only. No residence/Lot may be rented until at least two (2) years have passed from the date of the last transfer of title of the Lot arising from a Sale. For the purposes of this section, a Sale means a transfer of the entire ownership of a Lot to another party for valuable consideration. Any question as to whether any transfer falls outside the restriction set forth herein shall be determined by the Board of Directors, whose decision shall be binding. No Lot may be rented for less than four (4) consecutive months and no more than two (2) rentals per calendar year per Lot are allowed. Rental or lease agreements in effect as of the date of adoption of this amendment and recorded in the public records are hereby exempted from the rental restriction. However, any new or renewal lease or occupancy agreements shall be bound by this provision. Any occupancy of a Lot/residence without the Lot Owner's presence is considered a rental, except for occupancy by an Owner's parent, child, grandchild or grandparent.

For purposes of this Section, "single family" shall mean five or fewer persons, whether related or not, unless each person in residence within the Lot is related to every other person within two (2) degrees of kindred, in which there shall be no restriction upon the number of persons considered to be a "family." A lot shall not be rented without prior written approval by the Association, which approval shall not be unreasonably withheld. The Association shall have the right to require that a uniform form of lease be used by all Owners. The approval of any lease shall not release the Owner from any obligations under this Declaration. All lessees shall be fully bound by all of the terms and conditions of this Declaration.

No portion of a Home or residence upon a Lot (other than an entire Home) may be rented. No Lot Owner may lease or rent or allow occupancy of a Home or residence until the Association has approved of same. While the Association shall have the right to approve any lease or occupancy of a residence, the only grounds upon which the Association will not approve a prospective tenant or occupant will be as a result of evidence of a criminal record of a felony crime, whether committed by any occupant, owner, tenant or applicant.

In conjunction with said transfer process, the occupant or prospective tenant must submit a fully completed and executed application form to be supplied by the Association with payment for the background check and must also provide a copy of the lease at least ten (10) business days prior to the effective date. For minor children who will be occupants of the property, no background check will be required; however, the parents or legal guardians of said minors must execute a statement verifying they have no knowledge of any criminal felony record for said minor. Said statement may be included in the application.

All leases shall provide that the Association shall have the right to terminate upon default of the tenant in observing any of the provisions of this Declaration, the Articles, the Bylaws, applicable rules and regulations, or any other agreement, document or instrument governing the homes and if not expressly set forth in the lease shall be deemed to be included therein. The Owner of a lease home shall be jointly and severally liable with his or her tenant for compliance with the Association Documents. Every lease shall be subordinated to the lien filed by the Association whether before or after such lease was entered into.

**Section 3. Transfer or Lease to Corporate Entity.** If the purchaser, transferee or lessee of a Lot is a corporation, partnership, or other legal entity, the occupants of the Lot shall be bound by this Declaration, as if they were the Owner of the Lot.

**Section 4. Unauthorized Lease Void.** Any lease not authorized pursuant to this Article shall be void, unless subsequently approved by the Association.

**Section 5. Association Held Harmless.** The Association and its agents or employees, shall not be liable to any person whomsoever for the approving or disapproving of any person pursuant to this Article, or for the method or manner of conducting the investigation.

**Section 6. Application Fee.** The Association may charge a reasonable fee for the review of any application for a lease, in an amount which may be established from time to time by the Association and which shall be related solely to the cost of reviewing such application. In no event shall any transfer fee exceed \$100 or as otherwise provided by Florida law. No charge shall be made in connection with the extension or renewal of an existing lease to the same lessee.

## **ARTICLE X Insurance Casualty Losses; Condemnation**

**Section 1. Insurance.** Insurance, other than title insurance, which shall be carried The Association, shall be covered by the following provisos

**(a) Authority to Purchase.** The Association for the benefit of the Association shall purchase all insurance policies upon the Common Area. It shall not be the responsibility or the duty of the Association to obtain insurance coverage upon the personal liability, personal dwelling unit personal property or living expenses of any Owner but the Owner may obtain such insurance at his own expense provided such insurance may not be of a nature to affect policies purchased by the Neighborhood Association.

**(b) Coverage.** The Association shall purchase the following insurance coverage:

- (i) **Casualty.** All buildings and improvements in the Common area and all personal property included in the Common Area shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined by the Board of Directors of the Association. Such coverage shall afford protection against:
  - (1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and
  - (2) Such other risks as from time to time shall be customarily covered with respect to building similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.
- (ii) **Public Liability.** In such amounts and such coverage as may be required by the Board.
- (iii) **Worker's Compensation Policy.** To meet the requirements of the law.
- (iv) **Other.** Such other insurance as the Board shall determine from time to time to be desirable.

**(c) Premiums.** Premiums for the described insurance shall be a common expense, collected from Owners as part of the annual assessment. The Association shall pay premiums.

**(d) Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and its mortgages as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association.

**(e) Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed and used by the Association as the Board of Directors may determine.

**Section 2. Reconstruction or Repair After Casualty.** The Board of Directors, in its sole discretion, shall determine whether or not any damaged portion of the Common Area shall be repaired or replaced.

**Section 3. Condemnation.** In the event that any portion of the common Area shall be made the subject of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the taking of any portion of the Common Area by condemnation shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Association and shall be distributed to the Association and to any Owner who is directly, adversely affected by the condemnation, as their respective interests may

appear.

**Section 4. Insurance on Lots.** Each Owner of a Lot shall obtain Insurance coverage upon the Lot insuring the dwelling unit located thereon in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs. Such coverage shall afford protection against:

(a) Loss or damage by fire, hurricane, tornado, windstorm, lightning, and other hazards covered by a standard extended coverage endorsement, and

(b) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.

The Owner shall furnish proof of such Insurance to the Association at time of purchase of a Lot and shall furnish proof of renewal of such insurance on each anniversary date thereof.

## **ARTICLE XI General Provisions**

**Section 1. Duration.** The covenants and restrictions of this Declaration, and any supplemental declaration, shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the ACC, the Association, or the Owner of any land subject to this Declaration or any supplemental declaration, and their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated at the end of any such period by a vote of at least seventy-five percent (75%) of the voting members. This and any Supplemental Declarations may be amended as provided in Section 5.

**Section 2. Notice.** Any notice required to be sent to any Member or owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

**Section 3. Enforcement.** These covenants and restrictions may be enforced by the ACC, the Association or any Owner of property which is subject to these covenants and conditions. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person violating or attempting to violate any covenant or restriction, either to restrain the violation or to recover damages and against the land to enforce a lien created by these covenants. Prior to filing any lawsuit by either the Owner or the Association said party shall comply with the requirements set forth in the Homeowners Association Act, Chapter 720, Florida Statutes, as amended. Failure of the Association or any Owner to enforce any covenant or restriction herein contained shall, in no event, be deemed to be a waiver of the right to do so thereafter. In the event legal action is taken to enforce the covenants and restrictions provided herein, the prevailing party shall be entitled to recover the costs of such action, including attorneys' fees, and appellate costs and attorneys' fees, if necessary. If any such action is brought by any Owner against any other Owner, the Association shall have no obligation to indemnify or reimburse either party to such action.

**Section 4. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

**Section 5. Amendment.** This Declaration may be amended during the first twenty (20) year period by an instrument signed by the Association in accordance with Florida law with the approval of not less than two-thirds (2/3) of the voting members. No amendment shall affect the drainage provisions hereunder without the consent of the Southwest Florida Water Management District ("SWFWMD"). Any such amendment shall be recorded in the public



records of Sarasota County, Florida. Any amendment to this Declaration, which would affect the storm water management system, must have the prior written approval of the Sarasota County Engineer or his authorized designee

**Section 6. FNMA/FHA/VA Approval.** As long as there is a Class B membership and any loans upon the Property or any portion thereof are insured or guaranteed by any of the following agencies, the following actions will require the prior approval of the United States Department of Housing and Urban Development (HUD), Federal National Mortgage Association (FNMA), Federal Housing Administration (FHA) or Veterans Administration (VA) as determined necessary by the Class B membership:

- (a) Mortgaging of Common Area;
- (b) Dedication and conveyance of Common Area;
- (c) Annexation of additional Property;
- (d) Amendment of this Declaration (of Covenants Conditions and Restrictions); or
- (e) Merger, consolidation and/or dissolution of the Association.

This Declaration is being submitted to the HUD, FNMA, the FHA, and the VA for approval. Notwithstanding anything to the contrary contained In Section 8 of this Article, Declarant shall have the right from time to time, without the necessity of joinder or consent by any Owners, to amend, add to change, modify or derogate from, the provisions of this instrument In the manner and to the extent required by HUD, FNMA, the FHA or the VA in order for such organizations to approve financing of residential houses on Lots within the Property. HUD, FNMA, FHA or VA approval of any such documents or amendments executed by the Declarant shall be conclusive evidence that the amendment or other change was required by the HUD, FNMA, the FHA, or the VA pursuant to this provision.

**Section 7. Notice to Lenders.** Upon written request to the Association, identifying the name and address of the mortgage holder, insurer or guarantor and the lot number and address, any such mortgage holder, insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which adversely affects a material portion of the Property or any Lot on which there is a first mortgage held insured or guaranteed by such mortgage holder, insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a lot subject to a first mortgage held, insured or guaranteed by such mortgage holder, insurer or guarantor which remains delinquent for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action that would require the consent of a specified percentage of mortgage holders.

**Section 8. Association Information.** Upon request during normal business hours or under other reasonable circumstances, the Association shall make available to Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, the Articles of incorporation and By-Laws of the Association, any rules and regulations concerning the Property, and the books, records and financial statements, for the immediate proceeding fiscal year of the Association.

**Section 9. Effective Date.** This Declaration shall become effective upon its recordation in the Sarasota County Public Records.

**Section 11. Interrelationship of Documents.** In the event of a conflict between the terms and provisions of this Declaration (of Covenants, Conditions and Restrictions) and the Articles of Incorporation and/or By-Laws of the Association, the Declaration shall control over the Articles, and the Articles shall control over the By-laws.

**Section 12. Interpretation.** When the context in which the words are used in this Declaration indicates that such is the intent, words in the singular shall include the plural and vice versa. The table of contents, article or section title, captions and abbreviations contained in this Declaration are for convenience only and shall not be deemed a part of this Declaration.

**Section 13. Mortgage or Conveyance of Common Area.** The Common Area, or any part of the Common Area, cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Members.

**Section 14. Meeting Requirements.** Wherever any provision of this Declaration, the Articles of Incorporation, or the By-Laws requires any action to be approved by two-thirds (2/3) or more of the voting interests or members at a meeting duly convened for such purpose, written notice of such meeting must be given to all members not less than fourteen (14) calendar days in advance, setting forth its purpose. The required vote in these instances is 118 votes (2/3 of 177). At all other meetings the presence in person or by proxy of members entitled to cast at least thirty (30%) of the votes, constitutes a quorum and business may be conducted as otherwise permitted or set forth in this Declaration or Bylaws.

## ARTICLE XII

### Operation, Maintenance and Monitoring of Drainage Facilities and Wetlands

**Section 1.** The Association shall maintain, as part of the Common Area, or as may be necessary pursuant to the Shared Use Agreement, any and all drainage structures for the Property and comply with conditions of the permits from the Southwest Florida Water Management District (SWFWMD) for the drainage system. The Association, shall, when requested by Declarant, accept transfer of the SWFWMD permit for the development. The conditions may include monitoring and record keeping schedules, and maintenance. The Association is responsible for maintenance, repair and replacement of Common Areas and drainage facilities in perpetuity.

**Section 2.** The Association shall maintain, as part of the Common Areas, or as may be necessary pursuant to the Shared Use Agreement, any areas designated on the Properties as mitigation areas for wetlands. The Association shall comply with all applicable permit conditions for such areas, including monitoring and maintenance of wetland vegetation, and the replanting of wetland vegetation to meet required survival rates.

**Section 3.** It shall be the responsibility of each Lot Owner within the Property at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40D-4, FAC., approved and on file with SWFWMD.

**Section 4.** It is the Lot Owner's responsibility not to remove native vegetation (including cattails) that becomes established within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicide and cutting and the introduction of grass carp. Lot Owners should address any question regarding authorized activities within the wet detention ponds to SWFWMD, Sarasota County Permitting Department and all other appropriate governmental entities, including Sarasota County.

**Section 5.** Lot Owners are notified that the Property is subject to the requirements of a permit issued by the Southwest Florida Water Management District. In addition, the Owner is required to obtain a Surface Water Management Permit in accordance with Chapter 40D-4, F.A.C. from SWFWMD prior to initiating any construction or alteration of a Surface Water Management System on this Property.

**Section 6. Ponds, Cypress Trees and Conservation Areas.** Any ponds or other water retention areas on Lots or otherwise within the Property are for the exclusive use of the Owners and occupants of those Lots on which such ponds are located. The area(s) shown as wetland conservation easement on any recorded plat of the Property shall be left to remain and survive intact in its present (created or natural) condition, character and state. The disturbance in any manner of the existing (created or natural) condition, character and state of such areas, or the vegetation thereon, or the ecology, topography or bionomics thereof is hereby prohibited. It is the Intention of Declarant that these areas shall not be changed, disturbed, used, affected or molested in any manner whatsoever, except as permitted by law. Notwithstanding the foregoing, Declarant may change, disturb and affect such areas as permitted or required

by law in the course of the development of the Property or Declarant's other property, and upon completion of any such change, the then existing state and condition shall be deemed for the purposes of this section, to be the present and existing condition, character and state thereof.

**Section 7. Additional Requirements of Sarasota County Regarding the Storm Water Management System and Wetlands.**

(a) In the event the Association, or any successor organization, shall fail to adequately maintain the storm water management system in accordance with Sarasota County Standards, Sarasota County shall have the right, but not the obligation, to enter the Property for the purpose of maintaining the storm water management system. All expenses incurred by Sarasota County in maintaining the storm water management system shall be assessed prorate against the Lots and shall be payable by the Owners of the Lots within sixty (60) days after receipt of a statement. Therefore, if any Owner fails to pay such assessment within such sixty (60) day period, the assessments shall become a lien on such Owner's Lot which may be foreclosed by Sarasota County. The rights of Sarasota County contained in this restriction shall be in addition to any other right Sarasota County may have in regulating the operation and development of the Property.

(b) It is the Lot Owner's responsibility not to remove any littoral zone vegetation unless authorized by the Sarasota County Resource Protection Services. 'Removal' includes cutting, dredging, and herbicide application. Littoral zone vegetation is to be maintained in perpetuity. Lot Owners should address any questions regarding authorized activities within the wet detention areas to the Southwest Florida Water Management District. Sarasota County Resource Protection Services and all other appropriate governmental agencies.

(c) All wetland preserve areas within the Property shall be left in their natural state. No filling, excavating, removing native vegetation (trees or under story vegetation) or storing materials shall be allowed within the designated wetland preserve areas, unless written approval is first obtained from the Sarasota County Resource Protection Services.



