

UPON RECORDING, PLEASE RETURN TO:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BENT PINE PRESERVE

TABLE OF CONTENTS

	<u>Page</u>
BACKGROUND STATEMENT	1
DECLARATION OF BINDING EFFECT	1
PART ONE: INTRODUCTION TO THE COMMUNITY	2
Chapter 1 - Governing Documents	2
1.1. Scope and Applicability	2
1.2. Additional Covenants	3
1.3. Conflicts and Ambiguities	3
1.4. Definitions	4
1.5. Interpretation of Certain References	4
Chapter 2 - Community Administration.....	6
2.1. The Declarant	6
2.2. The Association and its Board	7
2.3. The Owners	7
2.4. Builders.....	7
2.5. Mortgagees.....	8
2.6. Neighboring Properties.....	8
Chapter 3 - Community Structure and Organization.....	10
3.1. Designations of Properties Comprising the Community	10
3.2. Shared Properties and Services	10
Chapter 4 - Association Membership and Voting Rights.....	12
4.1. Membership.....	12
4.2. Voting.....	12
PART TWO: COMMUNITY STANDARDS	13
Chapter 5 - Architecture, Landscaping, and Aesthetic Standards	13
5.1. General	13
5.2. Design Review Authority	14
5.3. Guidelines and Procedures.....	15
5.4. No Waiver of Future Approvals.....	17
5.5. Variances	17
5.6. Limitation of Liability	17
5.7. Certificate of Compliance	18
Chapter 6 - Maintenance, Repair, and Replacement	19
6.1. Maintenance by Owners.....	19
6.2. Responsibility for Repair and Replacement; Insurance	19

TABLE OF CONTENTS
(continued)

	<u>Page</u>
Chapter 7 - Use and Conduct.....	21
7.1. Use, Occupancy, and Transfer of Interests in Units	21
7.2. Rulemaking Authority and Procedures	24
7.3. Protection of Owners and Others	25
7.4. Owners' Acknowledgment and Notice to Purchasers	26
Chapter 8 - Compliance and Enforcement	27
8.1. Compliance	27
8.2. Remedies for Non-Compliance	27
8.3. Board Decision to Pursue Enforcement Action	29
8.4. Attorneys' Fees and Costs	29
8.5. Enforcement of Ordinances.....	29
8.6. Enforcement of BP Covenants.....	29
PART THREE: ASSOCIATION OPERATIONS	30
Chapter 9 - Property Management	30
9.1. Acceptance and Control of Association Property	30
9.2. Maintenance of Area of Common Responsibility	30
9.3. Reduction or Discontinuation of Operation or Service	31
9.4. Restoring Damaged Improvements.....	32
9.5. Storm Water and Surface Water Management; Wetlands Mitigation and Monitoring	32
9.6. Community Irrigation.....	33
9.7. Relationships with Other Properties	34
Chapter 10 - Provision of Services	35
10.1. Provision of Services to Units	35
10.2. Community Technology.....	35
Chapter 11 - Association Insurance	37
11.1. Required Coverages	37
11.2. Deductibles	38
11.3. Policy Requirements	38
11.4. Insurance Premiums.....	39
Chapter 12 - Association Finances	40
12.1. Association Expenses.....	40
12.2. Budgeting for and Allocating Association Expenses	40
12.3. Special Assessments	42
12.4. Specific Assessments.....	42
12.5. Authority to Assess Owners; Time of Payment.....	43
12.6. Obligation for Assessments	43
12.7. Lien for Assessments	45

TABLE OF CONTENTS
(continued)

	<u>Page</u>
12.8. Exempt Property	46
12.9. Mailbox Kiosk Fee and Capitalization Fee.....	46
12.10. Use and Consumption Fees	47
PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY	48
Chapter 13 - Easements	48
13.1. Easements in Common Area	48
13.2. Easements of Encroachment	49
13.3. Easements for Utilities and Other Infrastructure	49
13.4. Easements to Serve Additional Property	50
13.5. Easements for Maintenance, Emergency, and Enforcement	50
13.6. Easement for Fence and Landscape Maintenance	51
13.7. Easements for Maintenance of Wetlands, Water Bodies and Flooding	51
13.8. Easements for Stormwater Drainage and Runoff.....	51
13.9. Easements over Private Streets.....	52
Chapter 14 - Private Amenities	53
14.1. General	53
14.2. Ownership and Operation of Private Amenities	53
Chapter 15 - Disclosures and Waivers	54
15.1. Access to the Community	54
15.2. Safety and Security.....	54
15.3. Changes in Development Plan.....	54
15.4. View Impairment	55
15.5. Notices and Disclaimers as to Community Systems	55
15.6. Construction Activities	55
15.7. Hurricane Preparedness	56
15.8. Water Management	56
15.9. Entry Upon and Use of Water Bodies.....	57
15.10. Natural Conditions	57
15.11. Use of Chemicals.....	57
Chapter 16 - Rights of Lenders.....	58
16.1. Statement of Delinquencies and Violations	58
16.2. Right to Examine Books and Records	58
16.3. No Priority	58
16.4. Notice to Association	58
16.5. Failure of Mortgagee to Respond	58

TABLE OF CONTENTS
(continued)

	<u>Page</u>
PART FIVE: COMMUNITY DEVELOPMENT	59
Chapter 17 - Expansion of the Community	59
17.1. Expansion by the Declarant	59
17.2. Expansion by the Association	59
17.3. Additional Covenants and Easements	59
17.4. Effect of Filing a Supplement	59
Chapter 18 - Additional Rights Reserved to the Declarant.....	61
18.1. Special Development Rights	61
18.2. Marketing and Sales Activities	61
18.3. Access for Development Purposes.....	62
18.4. Right to Approve Changes in Community Standards	63
18.5. Additional Covenants and Restrictions	63
18.6. Rights to Use Names; License Agreements	63
18.7. Community Systems	63
18.8. Easement to Inspect and Right to Correct	64
18.9. Right to Notice of Design or Construction Claims	64
18.10. Right to Transfer or Assign the Declarant's Rights	65
18.11. Termination of Rights.....	65
PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS	66
Chapter 19 - Dispute Resolution and Limitation on Litigation.....	66
19.1. Agreement to Encourage Resolution of Disputes Without Litigation.....	66
19.2. Dispute Resolution Procedures	67
19.3. Initiation of Litigation by Association	68
Chapter 20 - Changes in the Common Area.....	69
20.1. Condemnation.....	69
20.2. Judicial Partition	69
20.3. Transfer, Mortgaging, or Dedication of Common Area	70
Chapter 21 - Termination and Amendment of Declaration	71
21.1. Term and Termination.....	71
21.2. Amendment.....	71

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>
A	Initial Property
B	Expansion Property
C	Initial Rules
D	Articles of Incorporation of Bent Pine Preserve Homeowners Association, Inc.
E	By-Laws of Bent Pine Preserve Homeowners Association, Inc.
F	Development and Construction Guidelines
F-1	Architectural Planning Criteria

INDEX TO DEFINED TERMS

Act, 1
Additional Covenants, 3
Amendment Notice, 72
Approval, 4
Area of Common Responsibility, 10
Articles of Incorporation, 2
Association, 1
Base Assessment, 41
Bent Pine Community, 8
Bent Pine Preserve, 1
Board, 4
Bound Parties, 66
BP Covenants, 8
BPCA, 8
BPCA Declaration, 8
Builders, 7
By-Laws, 2
Central Irrigation System, 33
Claim, 66
Claimant, 67
Club, 8
Club Facility, 8
Common Area, 10
Common Expenses, 40
Community, 1
Community Systems, 35
Community-Wide Standard, 4
Consent, 4
Cost-Sharing Agreement, 11
County, 4
Declarant, 1
Declarant Affiliate, 6
Declarant Control Period, 6
Declarant Rights, 6
Declaration, 1
Defect, 64
Design Review Board or DRB, 13
Development and Construction Guidelines, 2
Development and Sale Period, 6
Discretion, 4
Easement Agreement, 11
Easements or Shared Property Agreements, 11
Excess Operating Expenses, 44
Governing Documents, 3
Improved Units, 35
Improvements, 13
Individual Irrigation System, 34
Initial Construction, 14
Interested Mortgagee, 58
Lease and Leasing, 22
Living Unit, 10
Maintenance, 4
Maximum Allowable Units, 6
Members, 12
Modifications, 14
Mortgage, 8
Mortgagee, 8
Notice, 67
Owner, 7
Permit, 32
Person, 5
Private Amenities, 53
Private Amenity, 53
Private Street, 52
Recorded, 5
Respondent, 67
Rules, 2
Shared Properties, 11
Shared Services, 11
SJWMD, 14
Special Assessments, 42
Specific Assessments, 42
Supplement, 2
Surface Water Management System Facilities, 33
Units, 10

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BENT PINE PRESERVE**

This Declaration of Covenants, Conditions and Restrictions for Bent Pine Preserve (as it may be amended or supplemented from time to time, the "**Declaration**") is established by DIVERSTURES, LLC, a Minnesota limited liability company authorized to do business in Florida, on behalf of itself, its successors, successors-in-title and assigns ("**Declarant**").

BACKGROUND STATEMENT

Bent Pine Preserve is a residential planned community located in Indian River County, Florida. This Declaration establishes a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the residential properties and common areas within Bent Pine Preserve. A key component of the governance structure is Bent Pine Preserve Homeowners Association, Inc. ("**Association**"), a Florida corporation not-for-profit, which the Declarant has established to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration and to own, operate, and/or maintain such common areas and community improvements as the Declarant may designate in accordance with this Declaration.

This document provides for automatic and mandatory membership in a homeowners association subject to the Florida Homeowners Association Act, Florida Statutes Section 720.301, *et seq.* (the "**Act**").

DECLARATION OF BINDING EFFECT

The Declarant, as the owner of the property described in Exhibit "A" to this Declaration, hereby declares that this Declaration shall run with the title to the real property described in Exhibit "A" and any additional property made subject to this Declaration in the future by amendment or supplement (referred to collectively in this Declaration as the "**Community**" or "**Bent Pine Preserve**." This Declaration shall govern the development and use of the Community and shall be binding upon and benefit the Declarant, the Association, the future owners of any portion of the Community, their respective heirs, successors, successors-in-title and assigns, and every other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Community.

PART ONE: INTRODUCTION TO THE COMMUNITY

Chapter 1 - Governing Documents

The governing documents for the Community set forth the rights and obligations of the owners and occupants of property in the Community as well as the rights and responsibilities of the Declarant and the Association. The governing documents also contain certain limitations on the owners' property rights for the benefit of the Community as a whole.

1.1. Scope and Applicability

[Development of Bent Pine Preserve is subject to Land Development Permit No. 96010108-74-45 issued by Indian River County on July 6, 2015, as it may be amended from time to time in accordance with this Section (the

"LDP"); the Land Development Permit Construction Plans approved by Indian River County on July 6, 2015 in conjunction with such LDP, as revised by those plans approved by Indian River County Community Development Department on December 19, 2018, and as they may be further revised or amended in accordance with this

GOVERNING DOCUMENTS	
Declaration: (recorded)	this Declaration of Covenants, Conditions and Restrictions for Bent Pine Preserve, which creates obligations that are binding upon the Association and all present and future owners of property in the Community
Supplement: (recorded)	a recorded Supplement to this Declaration, which may submit additional property to this Declaration, impose additional covenants, restrictions and easements over the property described in the Supplement, create exceptions to this Declaration to reflect the different character or use of such property, or any of the foregoing
Articles of Incorporation: (filed with Department of State and copy attached as Exhibit "D")	the Articles of Incorporation of Bent Pine Preserve Homeowners Association, Inc., as they may be amended, which establish the Association as a corporation not-for-profit under Florida law
By-Laws: (attached as Exhibit "E")	the By-Laws of Bent Pine Preserve Homeowners Association, Inc. adopted by its board of directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc.
Development and Construction Guidelines: (attached as Exhibit "F")	the design standards and architectural and aesthetic guidelines, as they may be amended, which govern development activities, new construction and modifications to property in the Community, including structures, landscaping, and other items constructed or installed
Rules: (initial Rules attached as Exhibit "C")	the rules of the Association, which regulate use of property, activities, and conduct within the Community and other matters as authorized in this Declaration, as they may be amended, expanded and repealed pursuant to Chapter 7
Board Resolutions: (corporate record book)	the resolutions which the Association's board of directors adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of property that the Association owns or controls

Table 1.1 - Governing Documents

Governing Documents

Section ("LDP Plans"), and restrictions and requirements contained on recorded plats of the Community, as they may be amended in accordance with this Section ("Plats"). Any amendments to the LDP, LDP Plans or Plats shall be subject to such approvals as required by Indian River County, Florida; however, no amendment shall be permitted without the written approval of the Club and BPCA (as defined in Section 2.6) if such amendment would be inconsistent with the BP Covenants (as defined in Section 2.6), or the Cost-Sharing Agreement or Easement Agreement to which the Club and BPCA are parties (as referenced in Section 2.3).]

In addition, the Community is subject to and administered pursuant to this Declaration and various other documents that are legally binding on all owners and occupants of property in the Community and on each person or entity that may now or in the future hold an interest in any portion of the property comprising the Community. Such documents, referred to in this Declaration as the "Governing Documents," include this Declaration and the other documents described in Table 1.1, as they may be amended and supplemented. All owners and occupants, as well as their tenants, guests, and invitees, are obligated to comply with the Governing Documents.

Portions of the Governing Documents are enclosed in brackets to indicate that they are "BP Covenants," as described in Section 2.6.

1.2. Additional Covenants

The Owner of any property within the Community may impose additional covenants and restrictions on its property with such approval as may be required pursuant to Section 18.5 ("Additional Covenants"). The Association shall have standing and the power, but not the obligation, to enforce any Additional Covenants.

1.3. Conflicts and Ambiguities

If there are conflicts between any of the Governing Documents and Florida law, Florida law shall control. If there are conflicts between the LDP Plans or Plats and the Governing Documents, the LDP Plans and Plat shall control over the Governing Documents. If there are conflicts between or among any of the Governing Documents, then those provisions of the Governing Documents referred to as the "BP Covenants" (defined in Section 2.6) shall control over conflicting provisions. Otherwise, the Articles, this Declaration, the By-Laws, Development and Construction Guidelines, and Rules shall control, in that order, to the extent not inconsistent with Florida law. If there is a conflict between the Declaration and any additional provisions set forth in a Supplement and applicable only to the property described in such Supplement, the Supplement shall control as to such property. If there is a conflict between the Governing Documents and any Additional Covenants (or the rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control.

For purposes of this Section, a "conflict" shall exist when (a) provisions in two or more documents establish different rights and/or obligations, and (b) they are either mutually exclusive, or honoring or complying with a right, power, privilege, exemption, prohibition, or obligation established by one document would be inconsistent with the intent of a right, power, privilege, exemption, prohibition, or obligation established by another document. Where provisions in two documents address the same subject in a different manner, but both could be honored without interfering with any exemption, right, or privilege otherwise granted by the documents, they shall not be considered in conflict and both shall be given effect.

The Governing Documents use diagrams, tables, and keynotes (text set apart in boxes with "key" icons) to emphasize or explain concepts

Governing Documents

and highlight certain key points. If there is a conflict between any diagram, table or keynote and the text of the Governing Documents, the text shall control.

If any court determines that any provision of this Declaration or other Governing Documents is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

The Association's board of directors ("**Board**") may, by resolution, resolve any ambiguities in the Governing Documents, and the Board's reasonable interpretation of an ambiguous provision shall be determinative, except that the Board's interpretation of any BP Covenant shall not be binding on the Club or BPCA (as defined in Section 2.6).

1.4. Definitions

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms follows the Table of Contents and Table of Exhibits at the beginning of this Declaration. All other terms used in the Governing Documents have their usual, commonly accepted definitions.

1.5. Interpretation of Certain References

Community-Wide Standard. Where the Governing Documents require compliance with the "**Community-Wide Standard**," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing among similar land uses in the Community, or (b) the minimum standards described in this Declaration, the Development and Construction Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance

requirements, and subjective elements, such as matters subject to the discretion of the Board or the DRB (as defined in Chapter 5). All elements of the Community-Wide Standard may or may not be set out in writing. The Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Community matures.

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the person or entity whose consent or approval is required.

County. All references in the Governing Documents to the "**County**" or to Indian River County shall refer to Indian River County, Florida.

Discretion and Determination. All references in the Governing Documents to "**discretion**" or to the right to "**determine**" any matter shall mean the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Maintenance. Unless otherwise expressly limited, any reference in this Declaration to "**maintenance**" shall refer to maintenance, repair, and replacement.

Notice. All references in this Declaration to "**notice**" shall refer to notice delivered in accordance with the provisions for notice set forth in the By-Laws, unless the context authorizes or requires notice to be delivered in a different manner.

Governing Documents

Person. References in the Governing Documents to a "Person" or "Persons" shall refer to an individual, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.

Recording. All references in the Governing Documents to a "recorded" legal instrument, or to "recordation" or the "recording" of a legal instrument, shall refer to a legal instrument filed or the filing of a legal instrument in the official public records of Indian River County, Florida, or such other place designated as the official location for filing documents affecting title to real estate in Indian River County in order to make them a matter of public record.

Chapter 2 - Community Administration

Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Declarant, the Association, the Owners, the Builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This Chapter identifies these stakeholders and describes their roles in administering the Community.

2.1. The Declarant

The Declarant has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the development and administration of Bent Pine Preserve during the initial period of development and sale and thereafter.

The Declarant has reserved in the Governing Documents various rights that may be exercised by the Declarant and "Declarant Affiliates" (collectively, "**Declarant Rights**"), including rights with respect to expansion, development and administration of the Community and the Association. A "**Declarant Affiliate**" is any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

Certain of the Declarant Rights may be exercised throughout the "**Development and Sale Period**," which is the period of time between the recording of this Declaration and the date as of which all of the following have occurred: (i) the Declarant and Declarant Affiliates no longer own any real property in the Community for development and/or sale in the ordinary course of business; (ii) the Declarant's right to unilaterally expand the Community pursuant to Section 17.1 has expired; and (iii) every "Unit" (as defined in Section 3.1) has been improved with a dwelling for which a certificate of occupancy has been issued by the applicable governmental authority and is owned by a Person other than a Builder (as defined in Section 2.4) holding title for resale in the ordinary course of its business.

Other Declarant Rights may be exercised during the "**Declarant Control Period**," a period of time during which the Declarant is entitled to appoint a majority of the members of the Association's Board, which begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

(a) 90 days after 90% of the maximum number of dwelling units that may be developed within the property described on Exhibits "A" and "B" of this Declaration ("**Maximum Allowable Units**") have been conveyed to Persons other than the Declarant;

(b) December 31, 2040;

(c) any of the circumstances entitling members other than the developer to elect a majority of the directors under Florida Statutes §720.307(c), (d), (e), or (f); or

(d) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

During the Declarant Control Period, the Declarant has the right to elect at least a majority of the members of the Board as provided in Article 3 of the By-Laws, subject to the limitations set forth in Florida Statutes §720.307. After the termination of the Declarant Control Period, the Declarant has certain approval rights over Association actions for a limited period as provided in the By-Laws.

The Declarant may assign its rights and status as the Declarant to others in accordance with Section 18.10 of this Declaration, as may any Person

Community Administration

who succeeds to the status of Declarant hereunder.

2.2. The Association and its Board

The Association is the primary entity responsible for administering the Community in accordance with the Governing Documents. On most matters, the Association acts through the Board, which is selected as provided in Section 2.1 and the By-Laws. However, in some instances the Governing Documents or applicable laws limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Florida law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers that the Governing Documents and Florida law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents and Florida law. It may also take any action reasonably necessary to effectuate any such right or privilege.

Although the Association has the power to institute, defend, and settle lawsuits pertaining to the Area of Common Responsibility (as defined in Section 3.1) and enforcement of the Governing Documents, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances), and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards for directors and officers set forth in the Articles and By-Laws and Florida law.

2.3. The Owners

Each Person that holds record title to a Unit, (as defined in Section 3.1) is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract for deed (sometimes referred to as an "installment land sale contract"), and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner so long as such contract remains in effect, notwithstanding that the deed has not yet been delivered. If a Unit has more than one Owner, all co-Owners shall share the benefits to which Owners are entitled and are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a duty to comply with the Governing Documents and uphold the community standards described in Part Two of this Declaration. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in other committee and leadership roles, as described in the By-Laws.

2.4. Builders

The Declarant intends to sell property in the Community to Persons engaged in the business of constructing dwellings for resale in the ordinary course of their business ("Builders"). Builders are subject to approval as provided in Section 5.1. Builders are considered Owners during the time that they own property in the Community and, except as otherwise specifically provided in this Declaration or the Act, have the same privileges and responsibilities as other Owners for each Unit that they own, including the privileges and obligations of membership in the Association. In addition, the Declarant may extend any of the

Community Administration

rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate, without relinquishing its rights or status as the Declarant or the power to exercise such rights on its own behalf, as described in Section 18.10. The Declarant shall have no liability arising from activities of Builders within the Community. Each Builder shall be fully responsible for its own activities and those of its contractors, subcontractors, agents, vendors, and invitees within the Community, as well as any improvements which they construct or install within the Community.

2.5. Mortgagees

If a Unit (as defined in Section 3.1) is made subject to a mortgage or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 16.

2.6. Neighboring Properties

[(a) Bent Pine Preserve is located in close proximity to Bent Pine Golf Club (the "**Club Facility**"), a golf club owned and operated by Bent Pine Golf Club, Inc., a Florida not for profit corporation (the "**Club**"), and also in close proximity to a residential community known as Bent Pine (the "**Bent Pine Community**"), which is administered by Bent Pine Community Association, Inc., a Florida not for profit corporation ("**BPCA**"), pursuant to that Declaration of Covenants and Restrictions recorded on April 20, 2011, in the Official Records of Indian River County in Book 2492, Page 597, *et seq.* (as it may be amended from time to time, the "**BPCA Declaration**").]

[Various provisions of this Declaration and its exhibits are included for the express benefit of

BPCA and/or the Club and/or included pursuant to the terms of an agreement between the Declarant, the Club, and BPCA. Such provisions are enclosed in brackets to indicate that they are "**BP Covenants**," as such term is used in the Governing Documents. Some BP Covenants give the Club and/or BPCA approval rights over certain matters relating to Bent Pine Preserve and rights to enforce the BP Covenants. BPCA and the Club, and their respective successors and assigns, are expressly made third party beneficiaries of the BP Covenants and have the right to enforce the BP Covenants, as further provided in Section 8.6.

Notwithstanding the above, there shall be only one entity entitled to exercise the rights of BPCA and one entity entitled to exercise the rights of the Club at any time, it being the intent that the phrase "successors and assigns," as used in this Declaration with reference to successors and assigns of BPCA or the Club, shall refer only to a successor or assign that assumes the role of BPCA or the Club with respect to the Bent Pine Community or the Club Facility, respectively.]

[Unless otherwise expressly stated in this Declaration, whenever the Club or BPCA have approval rights under this Declaration, such approval shall not unreasonably be withheld (and it shall be presumptively unreasonable not to grant approval if approval for a comparable matter has previously been granted within the Bent Pine Community) and shall be granted within a reasonable period of time, not to exceed seven days from the date of receipt of the written request for approval, so as to avoid delays in the development of the property described in Exhibits "A" or "B."]

[(b) Within five years from the date this Declaration is recorded, the Association and BPCA shall consider a merger of the two associations and, if approved by BPCA and consistent with Florida law, the Association shall merge into BPCA. Each Owner, by accepting title to a Unit or entering into a recorded contract to purchase a

Community Administration

Unit, shall be deemed to have consented to such merger. Upon approval of such merger, the Association and BPCA will attempt to integrate the two associations as soon as reasonable and prudent and agreeable to both parties, and the same, equal, pro rata treatment shall be accorded to lots or Units in the respective subdivisions, including, without limitation, assessment of vacant as opposed to occupied Units.]

[The merger shall be conditioned upon approval by BPCA, and if that approval is not obtained, the two associations shall thereafter continue to exist as freestanding associations and continue to cooperate with one another regarding the use of certain common facilities as described herein.]

Chapter 3 – Community Structure and Organization

The Community consists of Units intended for the use of the Owner and other occupants of the Unit, as well as property that is intended for common use and property that may be owned by others that benefits the Community.

3.1. Designations of Properties Comprising the Community

Units. The Governing Documents refer to the homes and home sites in the Community as "Units." A Unit is a portion of the Community, whether improved or unimproved, which (i) is depicted as a separately identified lot or parcel on a recorded subdivision plat or as a separate unit on a condominium plat or plan, (ii) may be independently owned and conveyed, and (iii) is zoned or otherwise intended for development, use, and occupancy as a residence for a single household (together with any garage apartment, guest house, or similar accessory dwelling approved pursuant to Chapter 5). The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit.

In addition, a parcel of land under single ownership is considered a single Unit until a subdivision plat, survey, or condominium instrument is recorded subdividing it into more than one Unit in accordance with this Declaration and applicable law. The term "Unit" does not include Common Areas, as defined below, or property dedicated to the public.

A platted lot shall be treated as a single Unit notwithstanding that it contains a primary dwelling and an accessory dwelling, if such accessory dwelling is permitted by applicable zoning and approved pursuant to Chapter 5 of this Declaration. Nothing herein shall be construed to grant any Owner the right to construct an accessory dwelling on any Unit and, if such right is granted, rights of the occupants of the accessory dwelling to use and enjoy recreational facilities within the Common Area shall be subject to the provisions of Section 13.1.

The subdivision and combination of Units is subject to Section 7.1(d).

[Living Units. Where this Declaration intends to refer specifically to a building or portion thereof which is designed and intended for use and occupancy as a residence by a single family, "Living Unit."]

Common Area. Any property and facilities which the Association owns or in which it holds possessory or use rights for the common use or benefit of more than one Unit are referred to in this Declaration as "Common Area." The Common Area also includes easements in favor of the Association and any property that the Association holds under a lease. The Declarant, Declarant Affiliates and others may establish and convey Common Area to the Association as provided in Section 9.1.

Area of Common Responsibility. All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "Area of Common Responsibility," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include property adjacent to the Community and property dedicated to the public, such as public rights-of-way adjacent to the Community and shared amenities, systems, or infrastructure serving the Community. The initial Area of Common Responsibility is described in Chapter 9.

3.2. Shared Properties and Services

The Declarant and/or the Association may execute and record declarations of easements,

Community Structure and Organization

cost sharing agreements, or similar instruments affecting all or any portion of the Community ("**Easements or Shared Property Agreements**") which provide for any of the following:

(a) the maintenance and operation of landscaping, community signage, infrastructure, facilities and improvements ("**Shared Properties**") and/or the provision of various services ("**Shared Services**") which benefit all or any portion of the Community and property outside of the Community;

(b) the sharing of costs of maintaining, operating, and insuring such Shared Properties and providing any Shared Services;

(c) easements over any portion of the Common Area, or over any other portion of the Community with the consent of the Owner thereof, for the benefit of any real property outside the Community; and/or

(d) easements over any other property for the benefit of all or portions of the Community.

Such Easements or Shared Property Agreements shall specifically include, without limitation, that Construction, Maintenance and Cost-Sharing Agreement ("**Cost-Sharing Agreement**") and that Agreement Concerning Easements ("**Easement Agreement**") executed by the Declarant, the Club and BPCA and recorded in the Public Records. All Easements and Shared Property Agreements executed by the Declarant or the Association shall be binding upon the Association and the Owners.

Chapter 4 - Association Membership and Voting Rights

The Association is the entity primarily responsible for governance and administration of the Community. While many powers and responsibilities of the Association are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

4.1. Membership

Every Owner is automatically a Member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any Common Area recreational facilities available for use by Owners.

The Association initially has three classes of Members:

(a) Class A, which is comprised of all Owners except Owners holding Class B or Class C Memberships, while there are Class B and Class C Members;

(b) Class B, which is comprised of Builders, each of whom shall hold a Class B membership for each Unit which the Builder acquires and owns for the purpose of constructing a dwelling for resale in the ordinary course of its business; and

(c) Class C, which consists solely of the Declarant and is not dependent on ownership of a Unit. The Class C membership shall terminate two years after expiration of the Declarant Control Period or on such earlier date as the Declarant

ant determines and declares in a recorded instrument.

All persons holding a membership in the Association are referred to in this Declaration and the By-Laws as "**Members**" and collectively comprise the Association's "membership."

4.2. Voting

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.8.

If there is more than one Owner of a Unit, any co-Owner or any proxy duly appointed by a co-Owner may cast the vote for such Unit or consent to any action requiring approval of the Owners on behalf of all co-Owners of the Unit; however, no single vote may be split and no more than one vote may be cast for any Unit. If two or more co-Owners or their proxies seek to exercise the Unit's vote independently, neither shall be recognized except that the Unit's vote may be counted as an abstention for purposes of establishing a quorum.

PART TWO: COMMUNITY STANDARDS

Chapter 5 - Architecture, Landscaping, and Aesthetic Standards

The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This Chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on property within the Community.

5.1. General

[Except as otherwise specifically authorized by Florida Statutes §720.304 with respect to certain flags and flagpoles, all site work, landscaping, dwellings, garages, outbuildings, and other structures, improvements, or appurtenances of any kind (including additions or substantial alterations thereto) placed or stored on any property in the Community, or any portion thereof, in a manner or location visible from outside of any existing structure ("Improvements") are subject to standards for design, construction, landscaping, and aesthetics adopted pursuant to this Chapter ("Development and Construction Guidelines") and the approval procedures set forth in this Chapter, except as this Chapter or the Development and Construction Guidelines may otherwise specify.]

[No Improvements shall be erected, placed, or maintained on any property in the Community that does not conform to applicable governmental regulations and to the Development and Construction Guidelines, and all such construction or development shall be performed, completed, erected, placed, and maintained only in accordance with plans and specifications required herein as approved by the Design Review Board ("Design Review Board" or "DRB") described in Section 5.2.] Nothing in this Chapter or the Development and Construction Guidelines shall authorize the DRB to preclude an Owner from displaying a portable, removal United States flag in a respectful manner, consistent with Title 36 U.S.C. Chapter 10, or to prohibit an Owner from implementing xeriscape or Florida friendly

landscape, as defined in Florida Statutes §373.185(1), on his or her Unit, or prohibit solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings as permitted by Florida Statutes §153.04; however, the Owner shall first comply with the application and review procedures set forth in this Chapter and such application shall be subject to review and approval or disapproval as to number, location, size, manner of installation and other matters described in Section 5.3(b) and the Development and Construction Guidelines. Approval of applications for installation of landscaping may be conditioned upon the Owner's execution and recording of an agreement to maintain such landscaping at the Owner's expense.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with plans and specifications prepared, signed and sealed by a licensed architect or a professional residential designer, unless otherwise approved by Declarant. [Only Builders approved by the Club and the DRB may undertake initial construction of

Architecture, Landscaping, and Aesthetic Standards

dwellings on Units, which approval shall not unreasonably be withheld. Unless otherwise approved by the Club and DRB, such Builders shall have a history of building homes valued at \$500,000.00 or more.]

[All construction on Units shall comply with all applicable building codes and requirements.] In addition, each Owner, at the time of construction of a building, residence, or structure on the Unit, shall comply with the construction plans for the surface water management system for the Community, as approved and on file with the St. John's River Water Management District ("SJRWMD").

Approval under this Chapter shall be in addition to, not in lieu of, any approvals or reviews required by Indian River County or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters. Approval under this Chapter shall be obtained prior to applying for any building permit and prior to submitting any documentation to any governmental authority whose review or approval may be required for the proposed work. The Declarant and BPCA shall have the right and standing to take action to suspend or enjoin processing of any request for review or approval by a governmental authority submitted prior to any necessary approval being granted hereunder.

5.2. Design Review Authority

[(a) *Design Review Board.* The DRB for all Improvements proposed to be made to a Unit prior to issuance of a certificate of occupancy for a dwelling on the Unit and conveyance by the Builder and thereafter any proposed addition or replacement of a pool and/or screen enclosure (collectively, "Initial Construction") is the committee of the BPCA established in accordance with Article VI of the BPCA Declaration. The DRB for all modifications to a Unit other than Initial Construction ("Modifications") shall be: (i) during the Development and Sale Period, such person or persons as the Declarant may appoint

from time to time, who shall serve and may be removed and replaced in the Declarant's discretion; and (ii) after the Development and Sale Period, or upon earlier written delegation of the Declarant's authority to so appoint, a committee of at least three persons whom the Association's Board shall appoint and who shall serve and may be removed and replaced in the Board's discretion. All references to the "DRB" herein shall be deemed to refer to the DRB having jurisdiction over a particular application, except as otherwise specified. The DRB shall have authority to review and act upon all applications for review of proposed Improvements,] and, except as otherwise provided in this Declaration, the Association shall have no jurisdiction over such matters.

Notwithstanding the foregoing, the DRB shall notify the Declarant, during the Development and Sale Period, and the Association thereafter, in writing within three business days of any approval or partial approval the DRB grants under this Chapter. A copy of the application and any additional information submitted with such application shall accompany the notice. The Declarant, during the Development and Sale Period, and the Association thereafter, shall have the right to veto any approval granted by the DRB under this Chapter 5 by delivering written notice to the DRB and the applicant of its veto within 10 days after receipt of notice of the DRB's approval by the Declarant or Association, as applicable.

(b) *Application Fee.* The DRB may charge and collect a fee in the amount of \$500 for its review of applications and may require that such fees be paid in advance.

(c) *Construction Deposit.* As a condition of approval of any application hereunder, the Declarant, during the Development and Sale Period, and the Association thereafter, may require the Owner to post a construction deposit. The Association shall be entitled to draw upon the construction deposit to cover costs which it incurs:

Architecture, Landscaping, and Aesthetic Standards

(i) to clean up dirt or debris and/or repair damage to any subdivision improvements or Common Areas, or any portion of Bent Pine Preserve which the Board reasonably determines is attributable to the construction activities of the Owner or its contractors, subcontractors, suppliers, or others providing goods or services in conjunction with the construction activities on the Owner's Unit; provided, the Association shall provide notice to the Owner and an opportunity for a hearing as provided in the By-Laws, prior to drawing on any Owner's construction deposit;

(ii) to complete any improvements to the Owner's Unit, or correct or cure any conditions on the Owner's Unit which the Board reasonably determines necessary to conform the Unit to the plans approved pursuant to Section 5.3(b) or to correct drainage or other conditions on the Unit which fail to meet the Community-Wide Standard or which cause or are likely to cause damage to property outside the Unit, if the Owner fails to do so within a reasonable period of time as set forth in written notice from the Board specifying the action required.

The Owner shall provide funds to restore the construction deposit to its original amount within 10 days after written request from the Board notifying the Owner of the amount of any disbursement from the Owner's construction deposit. Upon final inspection and approval of the completed construction, the Association shall refund to the Owner or applicant who originally paid the construction deposit the amount of such construction deposit, less any funds expended by the Association pursuant to this subsection (c) and not restored by the applicant.

5.3. Guidelines and Procedures

(a) *Development and Construction Guidelines.* [Construction of Improvements is subject to the initial Development and Construction Guidelines set forth in Exhibit "F."] The Development and Construction Guidelines are intended to provide guidance to Owners and contrac-

tors regarding matters of particular concern to the DRB. The Development and Construction Guidelines are not the exclusive basis for the DRB's decisions, and compliance with the Development and Construction Guidelines does not guarantee approval of any application hereunder.

Amendments to the Development and Construction Guidelines shall be governed by Section 21.2 of this Declaration and shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Development and Construction Guidelines as amended. There shall be no limitation on the scope of amendments to the Development and Construction Guidelines, and such amendments may impose new or more restrictive requirements, eliminate requirements previously imposed or otherwise make the Development and Construction Guidelines less restrictive.

The DRB shall make the Development and Construction Guidelines, as they may be amended, available to Owners and their contractors upon request and may charge a reasonable fee to cover reproduction costs.

(b) *Procedures.* Unless the Development and Construction Guidelines provide otherwise, no activities within the scope of this Chapter (as described in Section 5.1) may begin on any portion of the Community until a written application is submitted to and approved by the DRB having jurisdiction pursuant to Section 5.2(a). The application must be accompanied by plans and specifications and such other information as the DRB or the Development and Construction Guidelines require.

In reviewing each application, the DRB (and the Declarant or Association in exercising veto power over any DRB approval) may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design

Architecture, Landscaping, and Aesthetic Standards

with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. [Notwithstanding the foregoing or any other provision of this Declaration or the Development and Construction Guidelines, the Initial Construction DRB's approval shall not be unreasonably withheld (and it shall be presumptively unreasonable not to approve an application if approval for a comparable matter has previously been granted within the Bent Pine Community,) but the existence of comparable Improvements within the Bent Pine Community shall not require approval of any application by the Modifications DRB or prevent the Declarant or the Association from exercising its veto power in accordance with Section 5.2(b).

The DRB shall make a determination on each application after receipt of a completed application with all required information and fees. The DRB may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The DRB may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The DRB shall notify the Declarant or the Association, as applicable, in writing of its decision on any application no later than 30 days after its receipt of a completed application and all required submissions. The Declarant or the Association, as applicable, shall have 10 days after receipt of such notice to exercise its veto power under Section 5.2. Upon expiration of such 10 day period or receipt of notice that its decision has been disapproved, the DRB shall promptly notify the applicant of the final determination on such application. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, fac-

simile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant. If the DRB fails to respond within the time period required above, then approval shall be deemed given, but only to the extent that the application is in conformance with the Development and Construction Guidelines.

No approval, whether expressly granted or deemed granted, shall be inconsistent with the Development and Construction Guidelines unless a written variance has been granted pursuant to Section 5.5.

The DRB may exempt certain activities from the application and approval requirements of this Chapter, if such activities are undertaken in compliance with the Development and Construction Guidelines and the Community-Wide Standard.

(c) *Inspections.* The DRB or its representative may conduct inspections at any time during the course of construction to verify progress of the work and conformance with the approved plans, construction rules, and other Development and Construction Guidelines. If such inspection reveals any matter of non-compliance, the DRB may notify the Owner, in which event the Owner shall immediately take action to correct such non-compliance and all other work shall cease until such non-compliance is corrected, unless otherwise agreed by the DRB. Nothing herein shall create any duty on the part of the DRB or the BPCA conduct inspections and failure to detect or discover any matter of noncompliance shall not create any liability for the DRB or the or relieve the Owner of its duty to cure any matter of noncompliance and conform the work to the approved plans.

Upon completion of all work for which approval has been granted, the applicant shall notify the DRB in writing that construction is complete. The DRB may conduct an inspection within 30 days thereafter and notify the applicant in writing as to any deviations or deficiencies noted from


Architecture, Landscaping, and Aesthetic Standards

the approved plans. If deviations or deficiencies are noted, the applicant shall promptly take such action as the DRB has specified in such notice to conform the work to the approved plans.

5.4. No Waiver of Future Approvals

The people reviewing applications under this Chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Development and Construction Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the DRB may elect not to require changes to objectionable features. However, the DRB may refuse to approve similar proposals in the future, except to the extent such refusal would be unreasonable as described in Section 5.3(b). Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances

 *When unusual circumstances exist that make it difficult or impossible to comply with a particular requirement of the Development and Construction Guidelines, the Owner may file a request with the DRB to be excused from complying with such requirement. The DRB has the discretion to determine when a variance is appropriate.*

The DRB may authorize variances from compliance with any of the Development and Construction Guidelines and any procedures set forth in this Chapter or in the Development and Construction Guidelines when, in its judgment, circumstances such as topography, natural obstructions, or aesthetic or environmental considerations justify a variance. No variance shall (a) be effective unless in writing; (b) be contrary to the provisions of this Declaration other than the terms set forth in Exhibit "F"; or (b) prevent the

DRB from denying a variance in the future under the same or other circumstances; [provided, the DRB shall grant a variance from the Development and Construction Guidelines where variances or waivers from the same standard or requirement has been granted within the Bent Pine Community under the same circumstances.]

5.6. Limitation of Liability

This Chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; it does not create any duty to any Person. Except as otherwise provided in this Declaration, review and approval of any application pursuant to this Chapter may be based purely on aesthetic considerations. The DRB is not responsible for the structural integrity or soundness of approved construction or modifications, for material used, for compliance with zoning and subdivision ordinances, building codes, and other governmental requirements, for ensuring that structures are fit for their intended purpose, or for ensuring that all dwellings are of comparable quality, value, size, or design or are aesthetically pleasing or otherwise acceptable to other Owners.

Neither the DRB nor any member of the DRB shall have any liability for approving plans that are inconsistent with the Development and Construction Guidelines provided that such person acted in good faith in approving such plans.

The Declarant, Declarant Affiliates, the BPCA, the DRB, and members of any of the foregoing, shall not be liable for: (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor, or its subcontractors, employees, or agents, whether or not the Declarant or the DRB approved or featured such contractor as a Builder in the Community; (d) view preservation; (e) construction delays or schedule modifications resulting from any Per-

Architecture, Landscaping, and Aesthetic Standards

son's failure to obtain, or delay in obtaining, approvals required hereunder; or (f) any injury, damages, or loss arising out of the manner or quality or other circumstances of construction or modifications to any Unit, whether or not approved hereunder.

5.7. Certificate of Compliance

Any Owner may request in writing that the Association and/or the DRB issue a certificate of compliance certifying that the Association or the DRB, as applicable, is not aware of any violations of this Chapter or the Development and Construction Guidelines except as specifically identified in such certificate. The Association and DRB shall issue such certificate within 30 days after receipt of such a request, or such shorter period as may be required by Florida law, and may charge a reasonable administrative fee for doing so. Nothing herein shall obligate the Association or the DRB to inspect for violations prior to issuance of such a certificate. Issuance of such a certificate shall prevent the issuer (or BPCA in the case of a certificate issued by the DRB) from taking enforcement action against the party to whom the certificate was issued or any successor-in-title to the Unit for any violation within the scope of the certificate that was known to the issuer on the date of such certificate and not identified in such certificate.

Chapter 6 - Maintenance, Repair, and Replacement

One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat and attractive condition to enhance the overall beauty and aesthetic appeal of the community. This Chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.

6.1. Maintenance by Owners

[Each Owner shall maintain his or her Unit, including all structures, buildings, outbuildings, walls, driveways, fences, landscaping, the "Individual Irrigation System" described in Section 9.6, and other improvements comprising the Unit, in good condition and repair, in a clean, neat and attractive condition], and in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplement, other recorded covenants, written agreement, or by law; provided, each Owner shall be responsible for maintaining landscaping within any portion of such Owner's Unit which is subject to a drainage easement and/or access easement notwithstanding anything to the contrary on any recorded plat creating, depicting, or dedicating such easements [unless such landscaping is maintained by the Club as provided below].

[All landscaping approved by the DRB and installed on a Unit, or between the boundary of the Unit and the pavement of any street within the right-of-way abutting the Unit, shall be maintained by the Owner. The Owner shall not be responsible for maintaining any landscaping installed by the Club. All grass, hedges, shrubs, vines and mass planting of any type on a Unit shall be kept trimmed and shall at regular intervals be mowed, trimmed, and cut so as to maintain the same in a neat and attractive manner.]

If the Owner fails to perform such maintenance, the Association may enter upon the Unit and perform such maintenance on behalf of the Owner and shall be entitled to assess the Owner

and such Owner's Unit for, or otherwise recover from the Owner, all costs which it reasonably incurs in so doing.

In addition, Owners of Units adjacent to Common Area containing any lake or pond shall be responsible for landscaping and maintaining the area between the Unit boundary and the shoreline of any such lake or pond lying within 20 feet of the Unit boundary, unless the Board or the Club otherwise provides for such maintenance. However, Owners may not remove or install trees or shrubs in such area without prior approval pursuant to Chapter 5.

6.2. Responsibility for Repair and Replacement; Insurance

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. This requirement is for the benefit of all Owners and failure to maintain required insurance shall subject an Owner to disciplinary action by the Association pursuant to Chapter 8; however, nothing in this section shall obligate the Association to monitor compliance or ensure that Owners maintain the required insurance on Units.

Within 90 days after any damage to or destruction of a structure on a Unit, the Owner

Maintenance, Repair, and Replacement

shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Chapter 7 - Use and Conduct

This Chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.

7.1. Use, Occupancy, and Transfer of Interests in Units

(a) *Residential and Related Uses.* [Except as otherwise authorized in this Section, no Unit shall be used in whole or in part for anything other than residential and related purposes. Other than permitted business activities described below in connection with the sale of Units and business activities related to residential use, no trade, traffic, or business of any kind, whether professional, commercial, industrial, manufacturing, or other non-residential use, shall be engaged in or carried on upon any Unit or part thereof, nor shall anything be done thereon which may be or become an annoyance or nuisance to other residents in Bent Pine Preserve or to adjacent properties within the Bent Pine Community or the Club's property.]

A business activity within a Unit shall be considered "related" to a residential use and thus permitted under this subsection (a) only if conducted by a person or persons residing in the Unit and only if the business activity:

- (i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;
- (ii) complies with applicable zoning requirements;
- (iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community;

(iv) does not involve use of the Unit for overnight lodging of persons who do not regularly reside in the Unit; and

(v) is consistent with the Community's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

[Notwithstanding the above:

(i) the Declarant may authorize other business uses of a Unit in connection with marketing and sale activities of the Declarant and Builders it designates, including maintaining model homes and offices on Units]; and

(ii) leasing a Unit for residential purposes in a manner consistent with Section 7.1(b) shall not be considered a "business" within the meaning of this subsection (a), provided that such leasing is conducted in full compliance with subsection (b) and the Owner and any other Owners with whom such Owner is affiliated, individually or collectively, do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following

Use and Conduct

foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure.

(b) *Leasing.* For purposes of this Declaration, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner and the members of the Owner's household. Leasing of Units is prohibited except in strict compliance with the following:

(i) A Living Unit that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a Living Unit may not be separately leased or subleased;

(ii) The Owner and any other Owners to whom such Owner is related or with whom such Owner is affiliated, shall not individually or collectively lease or offer for lease more than one Unit at the same time, except that this subsection (b)(ii) shall not apply to any preclude an institutional lender from leasing more than one Unit while owned by such lender following foreclosure of its security interest in such Units or acceptance of a deed in lieu of foreclosure;

(iii) No signs shall be posted on the Unit, elsewhere in the Community, or on right-of-way adjacent to the Community, advertising the availability of the Unit for rent or for lease, except as may be permitted by the Development and Construction Guidelines;

(iv) The lease shall provide for an initial term of at least 30 days or such longer term as may be required by any Supplement applicable to a Unit. In the event of termination of the lease after the tenant has taken occupancy and prior to the end of such minimum initial term, the Owner may not enter into a new lease with a term commencing prior to the date on which the previous lease would have expired without prior approval of the Board, which shall not be granted unless the Board determines, after consideration of the facts and circumstances, that the Owner acted in good faith, with no intent to circumvent the re-

quirements of this subsection (b), and could not reasonably have anticipated the early termination of the previous lease at the time the lease was signed.

(v) **All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.**

Prior to a tenant taking occupancy under a lease or rental agreement of any kind, the Owner of the leased Unit shall give the tenant copies of the Governing Documents and shall notify the Board or the Association's managing agent of the lease and provide an alternate mailing address for the Owner, a copy of the lease, and any additional information the Board may reasonably require. The Association or the Board may adopt Rules governing leasing and subleasing in accordance with Sections 7.2 and 7.3, consistent with this subsection (b).

If a Unit is occupied by a tenant and the Owner is delinquent in paying any monetary obligation due to the Association, the Association may demand that the tenant pay to the Association the rental payments due as of the date of such demand and thereafter continue to pay all rent due under the lease to the Association as it comes due until all the monetary obligations of the Owner related to the Unit have been paid in full to the Association and the Association releases the tenant or until the termination of the lease, whichever occurs first. Any such demand shall be in substantially the form required by Florida Statutes §720.3085 and shall be delivered to the tenant by hand or by United States mail. The tenant shall be entitled to a credit against rents due to the Owner under the terms of the lease in the amount of all rent paid by the tenant to the Association pursuant to this paragraph.

Use and Conduct

(c) *Transfer of Title; Administrative Fee.* Any Owner other than the Declarant desiring to sell or otherwise transfer title to his or her Unit shall give the Association or its manager at least 10 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including the obligation to pay assessments pursuant to Chapter 12, until the date upon which the Association receives such notice, notwithstanding the transfer of title.

Upon acceptance of title to a Unit, the new Owner of the Unit shall pay to the Association an administrative transfer fee to cover the administrative costs incurred by the Association to update its records to reflect the change in ownership. Such fee shall be in such amount as the Board may determine necessary to cover its costs, including, but not limited to, a reasonable fee charged by a management company retained by the Association for updating its records.

(d) *Subdivision and Combination of Units.* [Except as otherwise permitted in the Development and Construction Guidelines with respect to condominiums, no Unit or dwelling shall be subdivided or split by any means whatsoever into any greater number of residential plots or units nor into any residential plot or unit of smaller size. This prohibition, however, shall not preclude the division of a Unit in order to convey portions of the divided Unit to an adjacent property owner for the purpose of enlarging the adjacent property owner's holdings, provided that no additional dwellings are permitted thereby.]

No Person other than the Declarant or a Declarant Affiliate shall subdivide or change the boundary lines of any Unit or combine Units without the Declarant's prior written approval during the Development and Sale Period and the Board's prior written approval thereafter. Any

such action shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single Living Unit.

(e) *Transient Lodging; Timesharing.* No Person shall advertise or operate any Unit as a hotel, inn, bed and breakfast, or other short-term lodging, nor shall any Unit be used for lodging of persons other than the Owner or a tenant who resides in the Unit pursuant to a lease complying with Section 7.1(b), members of their respective households, and their occasional, non-paying guests. No Unit shall be used for operation of a timesharing, fraction-sharing, residence club, vacation club, or similar program whereby the right to exclusive use of the Unit is shared among participants in the program on a fixed or floating time schedule or on a reservation basis over a period of years.

(f) *Occupancy Before Completion.* [No building or structure within Bent Pine Preserve shall be occupied until it is completed in compliance with the provisions of Chapter 5 and has received a certificate of occupancy from Indian River County.]

(g) *Temporary Buildings.* [No tent, shack, house trailer, garage, or other outbuilding shall at any time be used on any Unit as a residence, temporarily or permanently, and no building or dwelling of a temporary character shall be permitted, except as follows: buildings necessary for construction taking place on the Unit and not intended to be used as living accommodations during the course of construction and sales or leasing offices during the course of sales, provided that DRB approval is given.]

Use and Conduct

7.2. Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants, conditions, and restrictions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Declarant, the Board, and the membership are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

(a) *Declarant Authority.* So long as the Declarant has the right unilaterally to amend this Declaration pursuant to Chapter 21, the Declarant may unilaterally amend Exhibit "C" to add new Rules or to modify or rescind existing Rules, subject to the rights of BPCA and the Club under subsection (d).

(b) *Board Authority.* Subject to the notice requirements in Section 7.2(e), the rights of BPCA and the Club under subsection (d) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval.

(c) *Membership Authority.* Subject to the notice requirements in Section 7.2(e) and the rights of BPCA and the Club under subsection (d), Members entitled to cast a majority of the votes in the Association may, at any meeting of the Association duly called for such purpose, adopt new Rules and modify or rescind existing Rules relating to use of and conduct on Units, regardless of the manner in which the original Rule was adopted. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval. The

membership shall have no authority to adopt, modify, or rescind Rules relating to the operation or use of and conduct on the Common Area.

(d) *Club and BPCA Approval.* [Notwithstanding any other provision of this Declaration or the Rules, the approval of the Club and BPCA shall be required to modify or rescind those portions of the Rules which are denoted as BP Covenants in Exhibit "C", but shall not be required to amend other Rules or adopt new Rules which are not inconsistent with the BP Covenants.]

(e) *Notice.* The Board shall send notice to all Owners or publish notice in a community newsletter or on a community intranet or website concerning any Rule change proposed under subsections (b) or (c) above at least five business days prior to the meeting of the Board or the membership at which such action is to be considered. At any such meeting, Members shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(f) *Effective Date.* A Rules change adopted under this Section shall be reflected in an amendment to Exhibit "C" executed by the Declarant or the Association, or both, as applicable, and any other party whose consent is required, and recorded. Any such amendment shall take effect upon the later of: (i) the date of recording; (ii) 15 days after the date on which written notice of the Rules change is given to the affected Owners, unless a later effective date is specified in the resolution adopting the Rules change.

(g) *Administrative and Operating Policies.* The procedures set forth in this Section 7.2 do not apply to Rules that the Board may adopt establishing administrative policies or operating policies relating to the Common Areas, such as hours of operation of a recreational facility, safety regulations, use fees for use of Association property, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the

Use and Conduct

Rules. The posting of such operating policies and fees in a conspicuous manner and location within the Community or the publication in a community newsletter of general circulation within the Community shall be deemed sufficient notice to all users.

In addition, the Board shall have discretion, without the necessity of complying with such notice requirement, to enact such Rules as are necessary or appropriate to comply with the terms of any order, permit, or approval of any governmental or quasi-governmental body which is applicable to the Community (*e.g.*, a development order).

(h) Conflicts. No action taken under this Section 7.2 shall have the effect of modifying or repealing the Development and Construction Guidelines or any provision of this Declaration other than the Rules. In the event of a conflict between the Development and Construction Guidelines and the Rules, the Development and Construction Guidelines shall control. In the event of a conflict between the Rules and any provision of this Declaration (exclusive of the Rules), the Declaration shall control.

7.3. Protection of Owners and Others

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Units shall be treated similarly; however, the Rules may vary by housing type, location within the Community or other distinct characteristics of areas within the Community. For example, the Supplement for any area consisting of attached dwellings may contain standards, restrictions, or requirements which are stricter than, or otherwise different from, the Rules applicable to areas containing single family detached dwellings.

(b) Flags and Flagpoles. No Rule shall abridge the right of the Owner or occupant of a Unit to display the official flag of the United States of America on the Unit owned or occupied by such Owner, except that Rules may restrict the display or use of the flag in a manner that is inconsistent with any provision of Chapter 1 of Title 4 of the United States Code or any other applicable provision of law, and the Association may adopt reasonable restrictions pertaining to the time, place, size, and manner of displaying the flag of the United States necessary to protect a substantial interest of the Association.

(c) Other Displays. Except as otherwise provided in Exhibit "C," no Rule shall abridge an Owner's right to display on his or her Unit religious or holiday symbols and decorations of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs. Nothing in this subsection (c) shall restrict the adoption or enforcement of Development and Construction Guidelines regulating the size, materials, components, and location of such symbols and displays as are visible from outside structures on the Unit, or Rules imposing reasonable limitations on number and the time period within which they may be displayed, consistent with Florida law.

(d) Household Composition. No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may enforce restrictions on transient occupancy and impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area, so long as in compliance with applicable fair housing laws.

(e) Activities Within Dwellings. No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property and may adopt rules to further define, clarify, and implement the restrictions in Section 7.1. It also may restrict or prohibit activ-

Use and Conduct

ities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area in a manner which discriminates against any Owner or group of Owners over such Owner(s)' objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12 or amend this Declaration for any purpose.

(g) Leasing and Transfer of Units. Except as set forth in Section 7.1(b) and (e), no Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit. The Rules may require that Owners use Board-approved lease forms (or include specific lease terms) and may impose a reasonable review or administrative fee in connection with the Board's review of a lease. Nothing in this Section shall affect the validity of any Supplement to this Declaration which imposes additional restrictions regarding leasing of Units subject to that Supplement.

(h) Abridging Existing Rights. No Rule shall require the Owner or tenant of any Unit to dispose of personal property or pets kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners

who take title to the Unit after adoption of the Rule.

(i) Reasonable Rights to Develop. No Rule may unreasonably interfere with the ability of the Declarant, any Declarant Affiliate, or any Builder to develop, market, and sell property in the Community.

(j) Interference with Easements. No Rule may unreasonably interfere with the exercise of any easement, except as set forth in Section 13.1(d).

(k) Compliance with Governmental Requirements. The Association may not enact any Rule or take any action, which is in violation of, or which prevents actions required to comply with, the terms of any order, permit, or approval of any governmental or quasi-governmental body which is applicable to the Community (*e.g.*, a development order).


7.4. Owners' Acknowledgment and Notice to Purchasers

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

Chapter 8 - Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by each Owner and occupant of a Unit to comply with them, and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This Chapter sets forth the obligation to comply and the remedies available to the Association in the event of noncompliance.

8.1. Compliance

 *All Owners and occupants of Units, as well as their tenants, guests, and other visitors, must abide by the Governing Documents. If any of them fail or refuse to comply with the Governing Documents, they may be subject to various penalties, including fines and the loss of the right to use the Common Areas.*

Every Owner, occupant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants or visitors to their Units, and for any damage to the Area of Common Responsibility that occupants or visitors may cause.

8.2. Remedies for Non-Compliance

The Association, the Declarant, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents, subject to the requirements of Chapter 19, as applicable. The Declarant's rights of enforcement shall continue so long as it owns any property subject to, or holds any other rights under, this Declaration. In addition, the Board may impose sanctions for violation of the Governing Documents, including those listed below and any others described elsewhere in the Governing Documents. Any entry upon a Unit pursuant to this Section 8.2 shall not be deemed a trespass. All costs which the Association incurs in curing any violation of, obtaining compliance with, or otherwise exercising its remedies under and enforcing the Governing Documents, including rea-

sonable attorneys' fees, whether or not suit is filed, may be assessed against the Unit of the violator as a Specific Assessment pursuant to Section 12.4 and shall be secured by the Association's lien against the Unit under Section 12.7.

(a) Sanctions Requiring Prior Notice and Hearing. After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, not to exceed \$100.00 for a single violation or \$100 per day in the case of a continuing violation; provided, in the case of a continuing violation, only a single notice and opportunity for hearing is required. The Board may adopt a schedule of fines establishing a range of fines for particular types of violations, which range may vary depending on the nature of the violation. There is no limit on the aggregate amount of any fine for a continuing violation;

(ii) suspend the right of any Owner and the occupants of any Unit to use any Common Area facilities (other than as required to provide vehicular and pedestrian access and utilities to the Unit which they own or occupy) for a reasonable period of time for failure to comply with the Governing Documents;

(iii) suspend services the Association provides to the Unit if the Owner is more than 90 days delinquent in paying any assessment or other charge owed the Association, which suspension may continue until such assessments or other charges have been paid in full; provided, nothing herein shall authorize the Board to sus-

Compliance and Enforcement

pend essential utilities (*i.e.*, electricity, natural gas, or potable water);

(iv) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents), except that no prior notice or hearing opportunity shall be required in any situation within the scope of Section 8.2(b)(iii);

(v) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents, or in repairing damage to any portion of the Area of Common Responsibility resulting from actions of any Owner or occupant of a Unit, their contractors, subcontractors, agents, employees, or invitees; and

(vi) record a notice of violation with respect to any Unit on which a violation exists.

If, within 12 months after the date of written notice providing an opportunity to cure the violation without sanctions and an opportunity for a hearing in accordance with the By-Laws, the violation continues or recurs, the Board may impose any of the above sanctions without further notice or opportunity for another hearing.

(b) Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing, provided they are approved at a properly noticed Board meeting and, upon approval, the Owner (and occupant, if applicable) is notified by mail or hand delivery:

(i) suspend the vote allocated to any Unit if the Owner is more than 90 days delinquent in paying any monetary obligation to the Association pursuant to Chapter 12, which suspension may continue until all of such Owner's monetary obligations to the Association are paid in full;

(ii) suspend the right of any Owner and occupants of a Unit to use any Common Area facilities (other than as required to provide vehicular and pedestrian access and utilities to the Unit which they own or occupy) if the Owner is more than 90 days delinquent in paying any monetary obligation to the Association, which suspension may continue until all of such Owner's monetary obligations to the Association are paid in full;

(iii) exercise self-help or take action to abate a violation in any situation that requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(iv) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(v) require an Owner, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(vi) enter the property and exercise self-help to remove or cure a violating condition if an Owner fails to take action as required pursuant to Section 8.2(b)(v) within 10 days after receipt of written notice to do so; or

(vii) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both, subject to the requirements of Chapter 19, if applicable.

(c) Declarant's Right to Impose Sanctions. In the event that the Association fails or refuses to take action or impose sanctions under this Chapter after notice from the Declarant of a violation of the Governing Documents, the Declarant shall have the right to levy monetary fines

Compliance and Enforcement

on behalf of the Association after notice and hearing in the same manner as the Association under Section 8.2(a). In addition, the Declarant may exercise self-help or take action to abate a violation or bring suit at law or in equity in the same manner as the Association under Section 8.2(b).

(d) *Powers Related to Owners of Multiple Units.* Notwithstanding any other provision of the Governing Documents, in the case of an Owner who owns more than one Unit, the Owner's voting rights and rights to use any Common Area facilities may be suspended with respect to all of such Owner's Units, regardless of the fact that the reason for the sanction relates to less than all of the Owner's Units.

8.3. Board Decision to Pursue Enforcement Action

The Association's decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or pre-

vent the enforcement of any other covenant, restriction, or rule.

8.4. Attorneys' Fees and Costs

In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action, in addition to such other amounts as may be authorized by Florida law.

8.5. Enforcement of Ordinances

The Association, by contract or other agreement, may enforce applicable laws, regulations, ordinances, and governmental requirements. In addition, Indian River County, and other governmental entities having jurisdiction, may enforce laws, regulations, ordinances, and governmental requirements within the Community.

8.6. Enforcement of BP Covenants

[Notwithstanding anything to the contrary in the Governing Documents, the BP Covenants are for the benefit of and shall be enforceable by action for specific performance, injunctive relief or damages by BPCA and/or the Club, the Declarant, and their respective successors and assigns, subject to Section 2.6. The prevailing party in any litigation relating to the BP Covenants shall be entitled to recover attorneys' fees and costs at all levels of litigation from the party(ies) who do not prevail. Invalidation of any one of the BP Covenants by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect. Failure of BPCA, the Club, or the Declarant to take action to enforce any BP Covenant shall not be deemed a waiver of the right to do so thereafter.]

PART THREE: ASSOCIATION OPERATIONS

Chapter 9 - Property Management

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of the Community. This Chapter establishes the Association's obligation to accept property that the Declarant designates as Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of the Community.

9.1. Acceptance and Control of Association Property

(a) *Transfers and Conveyances by Declarant.* The Declarant and its designees, any Declarant Affiliate, and with the Declarant's written consent, any Builder, may transfer, grant or convey to the Association interests in and assign ongoing inspection, maintenance and operating responsibilities with respect to real or personal property within or for the benefit of the Community, and the Association shall accept such transfers, grants, and conveyances, assume and hold the Declarant harmless from such obligations, and cooperate with and support any effort by the Declarant, Declarant Affiliates, or their designees to be released from any such responsibilities. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Declarant's written request, the Association shall reconvey, or convey to a third party whom the requesting party may designate, any real property which the Declarant originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines, accommodate changes in the Declarant's development plans, or to satisfy requirements set forth in Article I of the Development and Construction Guidelines.

The Declarant shall have the right to convey any property to the Association as Common Area subject to easements permitting persons who are not Members of the Association to use and enjoy such Common Area upon such terms and condi-

tions as may be specified in the instrument creating the easement.

(b) *Management and Control.* The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area for payment or no payment, as the Board deems appropriate, subject to the requirements of Florida law. The Association may permit use of Common Area facilities and Association property by persons other than Owners and occupants of Units and may charge rent or use fees, in such amount as the Board may establish, for such use.

9.2. Maintenance of Area of Common Responsibility

[The Association shall maintain the Area of Common Responsibility in good condition and repair] and in accordance with the Community-Wide Standard and the terms of any Easements or Shared Property Agreements applicable to any portion of the Area of Common Responsibility. Except to the extent that a governmental entity is responsible therefor, or another entity is assigned responsibility pursuant to any recorded Easements or Shared Property Agreements or assumes such responsibility by agreement with the Association, [the Area of Common Responsibility includes, but is not limited to]:

(a) the Common Area, including any structures, buildings, outbuildings, walls, driveways

Property Management

and fences located therein, except for landscaping within any drainage and access easements on Units, which landscaping is to be maintained by the Unit Owner pursuant to Section 6.1;

(b) any private streets within the Community;

(c) community signage, entry features, monumentation, and landscaping installed by the Declarant at entrances to the Community and along roadways running through or adjacent to the Community, whether located on Common Area or in public rights-of-way;

(d) any retaining wall constructed by the Declarant or the Association on one or more Units which retaining wall runs along the common boundary between such Unit(s) and adjacent Common Area;

(e) any mailbox kiosks containing mailboxes serving multiple Units, whether such kiosks are located on Common Area, right-of-way, or property of the Declarant;

(f) such other property as may be dictated by this Declaration, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association;

(g) any property and facilities that the Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. The Declarant shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Declarant revokes such privilege of use and enjoyment by written notice to the Association;

(h) any wetlands located on Common Area or on property designated to be Common Area on a recorded plat of any portion of the Community, including ongoing monitoring and maintenance of the same in accordance with the rules and requirements of the SJRWMD;

(i) the Surface Water Management System Facilities described in Section 9.5; and

(j) [the Central Irrigation System described in Section 9.6.]

All costs which the Association incurs in performing its responsibilities under this Section shall be a Common Expense, except as otherwise specified in this Declaration or any applicable Supplement.

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, and with appropriate easements or permission of the owner, property owned by others adjacent to the Community, if so provided in any Easement or Shared Property Agreement or if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. However, except as otherwise specifically provided herein or in other legal documents binding on the Association, the Association shall have no duty to perform maintenance on property it does not own.

9.3. Reduction or Discontinuation of Operation or Service

After termination of the Declarant Control Period, the Board shall not materially reduce the level of or discontinue the maintenance or operation of the Common Area facilities during such regular or seasonal operating hours as the Board may adopt or provision of any services provided to the Community as a Common Expense unless the Declarant, during the Development and Sale Period, and thereafter Members entitled to cast 67% of the total votes in the Association, consent in writing to such action.

This Section shall not apply during the Declarant Control Period and shall not restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to preclude temporary closures or interruptions in operation,

Property Management

as the Board may determine appropriate to perform maintenance or repairs.

9.4. Restoring Damaged Improvements

In the event of damage to or destruction of any portion of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements, unless:


(a) this Declaration has terminated pursuant to Section 21.1;

(b) repair or restoration would be illegal under any state or local statute or ordinance; or

(c) Members representing at least 75% of the total votes in the Association decide within 60 days after the loss not to repair or reconstruct, and, during the Development and Sale Period, the Declarant approves such decision in writing; [provided, if the damaged Common Area improvements include any portion of Bent Pine Drive or any Private Street (as defined in Section 13.9) necessary to provide reasonable and direct ingress and egress between Bent Pine Drive and 61st Street, or any portion of the perimeter walls, berms and landscaping along 61st Street, Kings Highway (58th Avenue) and Bent Pine Drive, or the gatehouse or gates within the right-of-way of Bent Pine Drive, any such decision shall also require approval of the Club and BPCA].

If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether

the damage or destruction to the Common Area shall be repaired or reconstructed.

 *This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible not to repair or rebuild if the Owners who benefit from the Common Area prefer not to rebuild.*

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain and place in a capital improvements account for the benefit of all Owners any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a membership vote, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

9.5. Storm Water and Surface Water Management; Wetlands Mitigation and Monitoring

(a) A copy of the environmental resource permit issued by the SJRWMD and the conditions of such permit (the "Permit"), as well as copies of all further permitting actions, shall be maintained by the Association's registered agent or at its principal office and shall be made available for review upon request.

(b) Except to the extent that such responsibility is assigned to and assumed by an entity which complies with Rule 62-330.310, F.A.C.

Property Management

and is approved by the SJRWMD, the Association shall be responsible for maintenance and operation of the surface water management system described in the Permit and located within the Common Areas, land designated as Common Area on recorded plats, or easements in favor of the Association, including, but not limited to, all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas comprising such system (collectively, the "Surface Water Management System Facilities"). Such responsibility shall include maintenance, repair, and replacement of the Surface Water Management System Facilities as needed, reinspection reporting, and the exercise of practices which allow the Surface Water Management System Facilities to provide drainage, water storage, conveyance or other storm water capabilities, all in accordance with the terms and conditions of the Permit.

(c) If the Permit requires wetland mitigation and monitoring, the Association shall also be responsible for ensuring that all wetlands mitigation and monitoring required by the Permit is completed successfully and that all conditions associated with wetland mitigation, maintenance, and monitoring are met. The Association shall allocate sufficient funds in its budget for monitory and maintenance of any wetland mitigation area(s) each year until the SJRWMD determines that the area(s) is successful in accordance with the Permit.

(d) All costs incurred by the Association in performing its responsibilities under this Section 9.5 shall be a Common Expense to be assessed and collected pursuant to Chapter 12, subject to the right to collect a portion of such costs from any other property owners association having jurisdiction over property which is served by or uses the Surface Water Management System Facilities in accordance with any Easements or Shared Property Agreements or maintenance agreement applicable to the same.

(e) In the event that the Association ceases to exist, all Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water Management System Facilities unless and until such responsibility is transferred to and assumed by another entity which complies with Rule 62-330.310, F.A.C., and is approved by the SJRWMD in accordance with the Articles of Incorporation. The Association shall have the power to demonstrate that the land on which the Surface Water Management System Facilities are located is owned or otherwise controlled by the Association to the extent necessary to operate and maintain such facilities and to transfer or convey its responsibilities under this Section 9.5 to another entity.

(f) This Section 9.5 is for the express benefit of the SJRWMD, which shall have the right to enforce this Section and other provisions of the Governing Documents relating to the maintenance and operation of the Surface Water Management System Facilities by a proceeding at law or in equity, or by other means, including, without limitation, the right to perform any required maintenance and recover from the Association all costs incurred in so doing. Such right shall include the right to bring a civil action for an injunction and penalties to compel the Association to correct any outstanding problems with the Surface Water Management System Facilities or any mitigation or conservation areas under the responsibility or control of the Association.

9.6. Community Irrigation

(a) *Irrigation Systems.* The Association shall be responsible for maintaining and operating a wet detention, stormwater harvesting, and underground irrigation distribution system located within the Common Areas designed to provide irrigation for the Common Areas and Units (the "Central Irrigation System"). The Central Irrigation System shall also include any wells located within the Common Areas designed to supplement the water supply to the Central Irrigation System.

Property Management

{Each Owner shall be responsible for installing within his or her Unit underground irrigation pipes, lines, and facilities to serve the Unit (a "Individual Irrigation System"), which shall be connected to the Central Irrigation System] and may not be connected to a potable water supply. Each Owner is responsible for maintaining, repairing, and replacing the Individual Irrigation System serving his or her Unit.

(b) *Irrigation Service.* In order to provide some level of irrigation service to all portions of the Community, the Association has the right, in its sole discretion, to control the amount of irrigation water delivered to particular parts of the Community. In particular, the Association may limit outdoor watering and/or impose an outdoor watering ban.

The Association shall not be liable to any Person for any interruption in irrigation service, the quantity or quality of the irrigation water, or the source of irrigation water, specifically including, but not limited to, any damage to landscaping or sod caused by providing too much or too little irrigation water.

9.7. Relationships with Other Properties

The Declarant may prepare, execute, and record Easements or Shared Property Agreements as described in Section 3.2 by which the Owners of Units in the Community and the owners of properties located adjacent to or in the vicinity of the Community will be obligated to share costs of maintaining certain mutually beneficial properties and/or providing certain mutually beneficial services.

Chapter 10 - Provision of Services

In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This Chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

10.1. Provision of Services to Units

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Declarant or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or only to Units improved with a completed Living Unit that is occupied or has been conveyed by the Builder for residential occupancy ("**Improved Units**"), or to particular Units upon request of each Owner, or any of the foregoing, subject to the provisions of Florida Statutes §720.309, if applicable. By way of example and not limitation, bulk services provided to all Units or all Improved Units might include such things as cable television, technology services, utilities, fire protection, security, and trash collection.

Services provided to all Units shall be a Common Expense assessed pursuant to Section 12.1(a). Services provided only to Improved Units shall be assessed as a Specific Assessment pursuant to Section 12.4(b). The Association shall charge a separate use fee, in such amount as the Board may determine appropriate in its discretion, for any services offered at the option of an Owner, which fee shall be assessed against the benefited Unit as a Specific Assessment pursuant to Chapter 12.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of

services provided to such Unit. Any such termination and any failure or refusal to participate shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

10.2. Community Technology

(a) **Community Systems.** Without limiting the generality of Section 10.1, the Declarant or any Declarant Affiliate may provide, or may enter into and assign to the Association or cause the Association to provide or to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software to serve the Community ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Declarant or Board determines appropriate.

The Declarant specifically reserves for itself and Declarant Affiliates, and their respective successors and assigns, the right to establish a community intranet for the Community, the right to contract with third parties to provide service,

Provision of Services

software, and support; the right to grant access to the community intranet to the Association and its members on such terms and conditions as the Declarant or Declarant Affiliate determines appropriate, the right to sell advertising on such community intranet and retain all revenues from the sale of such advertising, and all rights to any domain name established or obtained by the Declarant in connection with any such intranet or other website relating to the Community.

(b) *Opportunities for Community Interaction.* The Association, alone or in conjunction with other associations, may make use of technology to facilitate community interaction and encourage participation in activities within Bent Pine Preserve. For example, the Association may, as a Common Expense, sponsor a community cable television channel, create and maintain a community intranet or website, publication of an "online" newsletter, maintenance of an online bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent Florida law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices electronically, hold Board or Association meetings and permit attendance and voting by electronic means, and electronically send and collect assessment and other invoices.

Chapter 11 - Association Insurance

The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This Chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

11.1. Required Coverages

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "all risks of direct physical loss" (or comparable coverage by whatever name denominated), on a replacement cost basis, for all insurable improvements on:

(i) the Common Area and any other property owned by the Association, including any Units owned by the Association following foreclosure of its lien under Article 12;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty;

provided, if such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. If necessary, coverage for wind damage may be by separate policy, including any policy issued by a joint underwriting association or company or any company writing wind coverage exclusively or predominantly. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(b) Flood insurance on the properties described in subsection (a) above, to the extent located in a flood zone as indicated by flood insurance rate maps issued by the U.S. Department of Homeland Security's Federal Emergency Man-

agement Agency (FEMA), in such amounts as the Board may determine advisable, appropriate and affordable;

(c) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for property damage or personal injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

(d) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(e) Directors and officers liability coverage; and

(f) Commercial crime insurance, including fidelity insurance covering the President, Secretary and Treasurer of the Association, any other Persons authorized to sign checks on behalf of the Association, the Association manager, if any, and any other Persons responsible for controlling, disbursing, or handling Association funds, in an amount sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any time; provided, this requirement may be waived in whole or in part if such waiver is approved annually by the affirmative vote of persons entitled to cast a majority of


Association Insurance

the votes represented in person or by proxy at a duly called meeting of the Association. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

Unless otherwise required by an applicable Supplement, Association property and liability insurance does not cover individual Units, and it is the responsibility of each Owner to insure its Unit and the contents of its Unit as provided in Section 6.2.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Indian River County, Florida area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

11.2. Deductibles

 *The Board may hold any Persons who cause damage to insured improvements responsible for the insurance deductible payable on any insurance claim related to such damage.*

The Association's insurance policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense; however, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess up to the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment, but the right to do so shall not affect or

impair any waiver of subrogation provision of any policy.

11.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner and Mortgagee. The Association may charge to any Owner requesting such a certificate any costs which the Association incurs in obtaining and delivering it to the Owner, which charges may be collected at the time of such request or delivery or may be levied as a Specific Assessment pursuant to Section 12.4.

To the extent available at reasonable cost and terms, all Association insurance shall:

- (a) be written with a company authorized to do business in Florida that satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its Members;
- (c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (d) contain an inflation guard endorsement;
- (e) include a co-insurance waiver or an agreed amount endorsement, if the policy contains a co-insurance clause;
- (f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;
- (g) provide a waiver of subrogation against any Owner or household member of an Owner;


Association Insurance

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation; and

(i) satisfy any insurance requirements established by the Federal Home Loan Mortgage Corporation applicable to planned unit developments.

In addition, the Board shall use reasonable efforts to secure insurance policies that identify the Owners as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

 *Subrogation is a legal concept by which one person is substituted in the place of another with respect to a lawful claim or right. For example, once they have paid a claim by an insured party, insurance companies generally have the right to step into the shoes of the insured party and sue anyone that the insured party could have sued.*

(b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees

having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

11.4. Insurance Premiums

Premiums for all Association insurance shall be a Common Expense.

Chapter 12 - Association Finances

This Chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments this Chapter authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this Chapter.

12.1. Association Expenses

Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, improvement, and operation of the Area of Common Responsibility, in performing its duties and exercising its authority under the Governing Documents, in fulfilling its obligations under any Easements or Shared Property Agreements (as defined in Section 3.2), and otherwise for the general benefit of the Owners, are considered "Common Expenses." Common Expenses shall specifically include, without limitation:

(a) such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate;

(b) the Association's proportionate share of the costs of maintaining, repairing, replacing, and operating any gatehouse limiting vehicular access from King's Highway (58th Street) to the Community and the Bent Pine Community, as described in the Cost-Sharing Agreement referenced in Section 3.2, and other costs incurred by the Association in fulfilling the Association's responsibilities thereunder; and

(c) all costs of performing the Association's responsibilities under Section 9.5 with respect to the Surface Water Management System Facilities, except that any expenses associated with any portion of the Surface Water Management System Facilities wholly contained within and serving only a single Unit may be assessed against only that Unit as a Specific Assessment pursuant to Section 12.4(f).

Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or original construction costs unless the Declarant, during the Development and Sale Period, and Members representing a majority of the total Class "A" votes in the Association approve such expenditure. This approval requirement shall not apply to payments due under leases of capital improvements which are commonly leased instead of purchasing, such as streetlights.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Declaration, any Supplement, any Easements or Shared Property Agreements, or any other recorded covenants or agreements.

12.2. Budgeting for and Allocating Association Expenses

(a) *Preparation of Budget.* At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. The estimated expenses in the budget may include operating reserves and reserves to fund insurance deductibles, landscape replacements, and damage to uninsurable structures on the Common Area.

The estimated expenses in the budget shall include a contribution to a reserve fund, in such amount as may be required by the funding formula set forth in Florida Statutes §720.303(6), for capital expenditures, deferred maintenance, and repair and replacement of any capital improve-

ments to be maintained as a Common Expense, unless the membership waives or reduces such reserves as provided in Florida Statutes §720.303(6). The budget shall designate the components for which the reserve accounts may be used. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost or deferred maintenance expense, and the contribution required to fund the projected needs by annual contributions (but not necessarily equal annual contributions) over the useful life of the asset, in accordance with the requirements of Florida Statutes §720.303(6), as amended. So long as the Board exercises business judgment, which may include relying in good faith on the advice of its accountants or other professional advisers in determining the amount or necessity of the reserve fund, the amount shall be considered adequate.

The budget shall separately set forth all fees or charges to be paid by the Association for recreational amenities, whether owned by the Association, the Declarant, or another Person.

The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units (including amounts to which the Association is entitled pursuant to any Easement or Shared Property Agreement), and the amount to be generated through the levy of Base Assessments pursuant to Section 12.2(b). The budget shall reflect the estimated surplus or deficit as of the end of the current year.

(b) Calculation of Base Assessments. The Board shall establish Base Assessments at a rate per Unit which it believes will be sufficient to fund the budget when levied: (i) equally against all Units subject to full assessment under Section 12.5; and (ii) at a discounted rate, as provided in Section 12.5, against other Units which are sub-

ject to assessment under Section 12.5; however, in establishing such assessment rate, the Board may also take into account any other anticipated sources of income during the year. The total assessment against each such Unit for its share of the budget shall be levied as a "Base Assessment," subject to the provisions of subsection (e).

(c) Declarant's Subsidy Option. The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Declarant under Section 12.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

(d) Notice of Budget and Assessment; Right to Disapprove. The Board shall send a copy of each budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days before the fiscal year begins.

Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations, after termination of the Declarant Control Period, any Base Assessment that is more than 10% greater than such assessment for the immediately preceding fiscal year is subject to disapproval at a meeting by Members representing at least 75% of the votes allocated to Units subject to such assessment.

An emergency situation is any one of the following:

(i) an extraordinary expense required by an order of a court;

(ii) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible where a threat to personal safety is discovered;

(iii) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible and which could not reasonably have been foreseen by the Board in preparing and distributing the pro forma budget. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Notice of the Board meeting at which such resolution is to be considered, explaining the nature of the assessment proposed, shall be provided to the Owners along with the notice of such assessment; or

(iv) to defend itself in litigation, arbitration, or other legal or administrative actions brought against it.

There shall be no obligation to call a meeting for the purpose of considering any budget except on petition of the Members as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment. In addition, if required by Florida law, Owners shall be given notice of and the opportunity to attend Board meetings at which assessments are to be considered and levied.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

(f) *Budget Revisions.* The Board may revise the budget and adjust the Base Assessment anytime during the year, subject to the same notice requirements and rights to disapprove set forth in Section 12.2(e).

12.3. Special Assessments

In addition to other authorized assessments, the Association may levy "Special Assessments" against all Units to cover non-routine or unanticipated expenses or expenses in excess of those anticipated by the applicable budget. During the Declarant Control Period, any Special Assessment shall require such approval as is required by Florida Statutes §720.315. Thereafter, except as otherwise specifically provided in this Declaration, any Special Assessment for Common Expenses may be adopted by the Board unless it would exceed, on a per Unit basis, 10% of the Base Assessment levied against each Unit for the year in which the Special Assessment is adopted, in which case it shall require the affirmative vote or written consent of Members entitled to cast at least 75% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units. In addition, during the Development and Sale Period, any Special Assessment shall also be subject to the Declarant's written consent.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

12.4. Specific Assessments

The Association may levy "Specific Assessments" against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services the Association may offer pursuant to Section 10.1. Specific As-

assessments for optional services may be levied in advance of the provision of the requested service; and

(b) in the case of an Improved Unit, to cover the charges for services provided to all Improved Units pursuant to any bulk service or similar agreement entered into by the Association pursuant to Section 10.1;

(c) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws before levying any Specific Assessment under this subsection;

(d) to cover any deductible assessed against the Owner of Unit pursuant to Section 11.2; and

(e) to cover any other amounts that the Governing Documents authorize the Association to charge to a particular Owner or levy against any particular Unit, including, without limitation, the fees described in Section 12.9.

12.5. Authority to Assess Owners; Time of Payment

The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the later of: (a) the date on which the Association first adopts a budget and levies assessments; or (b) the date on which the Unit is made subject to this Declaration; however, until a Unit is conveyed to a Person other than the Declarant, it shall be assessed a discounted rate which excludes that portion of the full Base Assessment which the budget allocates to funding of reserves. The first annual Base Assessment levied on each Unit shall


be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may permit assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

12.6. Obligation for Assessments

(a) *Personal Obligation.* By accepting title or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 18% per annum), late charges as determined by Board resolution, not to exceed the greater of \$25.00 or 5% of the amount of each installment not paid by the due date thereof, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable with the previous Owner for any assessments and other charges due at the time of conveyance, without prejudice to any right the grantee may have to recover from the prior Owner the amounts paid by the grantee, except that for purposes of this provision the term "previous Owner" shall not include the Association if the Association acquired title to the Unit through foreclosure or deed in lieu of foreclosure of its lien on the Unit. However, the liability of a Mortgagee who obtains title to a Unit by foreclosure or deed in lieu of foreclosure of its Mortgage

for unpaid assessments that accrued prior to such acquisition of title shall be limited as provided in Florida Statutes §720.3085.

 *By buying a Unit in the Community each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, that Owner will be charged late fees on all past due amounts. Owners may not claim a reduction in their assessments due to action or inaction by the Association.*

Notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying the payment, all payments accepted by the Association on the account of any Owner shall be applied first to interest accrued, then to any late charge, then to any costs and reasonable attorney's fees incurred in collection, and then to the principal amount of the delinquent assessment.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall pay Base Assessments at the applicable rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Within 10 business days after receipt from an Owner or Mortgagee or its designee of a written request for an estoppel certificate, the Association shall provide a certificate in writing signed by an officer or authorized agent of the Association setting forth the amount of any unpaid assessments or other charges owed to the Association with respect to the Unit and such other information required by Florida Statutes §720.30851. If so authorized by Board resolution, the Association may require the payment of a reasonable fee for the preparation and issuance of such certificate, not to exceed the amount allowed by Florida Statutes §720.30851, as amended from time to time, and the amount of such fee shall be stated in the certificate. If the Association maintains a website, it shall designate on such site a person or entity with a street address or email address to whom requests for estoppel certificates shall be delivered.

(b) Declarant's Financial Obligations to Association. The Declarant shall be liable for assessments on any Units it owns that are subject to assessment under Section 12.6, except that from the date of recording of this Declaration through the termination of the Declarant Control Period, the Declarant shall be excused from its obligation to pay Base Assessments and Special Assessments on Units it owns so long as it is obligated to pay operating expenses (exclusive of reserve contributions) incurred by the Association pursuant to the budget in excess of the assessments receivable from other members plus other income of the Association, if applicable, which may be used to offset any such excess ("Excess Operating Expenses"). That portion of the Base Assessment and any Special Assessment received from each Member other than the Declarant which represents such Member's share of budgeted contributions to reserves shall be applied to fund reserves and shall not be used to reduce Excess Operating Expenses.

The Declarant shall be obligated to pay Excess Operating Expenses under this subsection (b) during any fiscal year for which it has given the

Board written notice of its commitment to pay such Excess Operating Expenses in lieu of paying regular assessments and during each successive fiscal year, unless and until the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of the next fiscal year. After termination of the Declarant Control Period, the Declarant shall pay assessments on any Units it owns that are subject to assessment under Section 12.5 in the same manner as any other Owner liable for such assessments.

Regardless of the Declarant's election under this Section, any of the Declarant's financial obligations to the Association may be satisfied in the form of cash, by "in kind" contributions of services or materials, or by a combination of these.

12.7. Lien for Assessments

(a) *Existence of Lien.* Subject to Florida law, as it may be amended, the Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Florida law), and costs of collection (including attorneys' fees and expenses), except that a Specific Assessment for monetary fines of less than \$1,000 in the aggregate shall not be secured by the Association's lien against the Unit unless and until they exceed \$1,000 in the aggregate. Subject to the limitations of Florida law, such lien shall be effective from and relate back to the date on which this Declaration was recorded, except that as to any first Mortgage of record, it shall be effective from and after recording of a claim of lien in accordance with Florida Statutes §720.3085. Such lien shall be superior to all other liens except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) except to the extent provided in Florida Statutes §720.3085, the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit and recorded prior to the recording of the Association's claim of lien.

Prior to filing a claim of lien or otherwise taking any action to enforce its lien, the Association shall provide the delinquent Owner with written notice or demand for the past due assessments and any other amounts which the Owner owes to the Association pursuant to the Governing Documents. Such notice shall give the Owner at least 45 days within which to pay all amounts due, including, but not limited to, any attorneys' fees and actual costs which the Association has incurred in connection with the preparation and delivery of such notice. Such notice may inform the Owner of the Association's intent to file a claim of lien and to foreclose such lien and collect the amounts due if not paid within such 45-day or longer period. The notice shall be sent by registered or certified mail, return receipt requested, and by first class mail, to the last address of the Owner reflected in the Association's records and to the address of the Unit, if different from the address in the Association's records. If the Owner's address as reflected in the Association's records is located outside the United States, sending the notice to such address by first class United States mail shall be sufficient.


(b) *Enforcement of Lien.* The Association may take action to foreclose its lien in the same manner as the foreclosure of a mortgage under Florida law and may also bring an action to recover a money judgment for the amounts due without waiving its claim of lien; however, no such action shall be brought until 45 days after the Owner has been provided with notice of the Association's intent to foreclose and collect the unpaid amount as provided in subsection (a).

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit, subject to the Owner's right of redemption, if any, under Florida law. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have

been charged such Unit had it not been acquired by the Association.

The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) *Effect of Sale or Transfer.* Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit and the subsequent owner thereof from the personal obligation for assessments due at the time of transfer of title, except that the liability of a holder of a first Mortgage who acquires title to a Unit pursuant to foreclosure of the Mortgage or a deed in lieu of such foreclosure for assessments due prior to such acquisition of title shall be limited as provided in Florida Statutes §720.3085. Any unpaid assessments for which such holder is not liable shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

 *If an Owner does not pay his or her assessments on time, the Association may foreclose its lien on the Owner's Unit, causing it to be sold to pay the past due assessments. The Association also may sue an Owner in court to recover past due assessments.*

12.8. Exempt Property

The following property shall be exempt from payment of Base Assessments and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant or a Declarant Affiliate as are included in the Area of Common Responsibility; and

(b) Any property dedicated by recorded plat or conveyed to and accepted by any governmental authority or public utility, so long as owned and used for public purposes.

12.9. Mail Kiosk Fee and Capitalization Fee

(a) The first Owner of each Unit other than the Declarant, a Declarant Affiliate, or a Builder designated by the Declarant, shall pay to the Association a one-time, nonrefundable mail kiosk fee in the amount of \$350, or such lesser amount as the Board may determine appropriate and charge uniformly, which fee shall be payable by such Owner immediately upon taking title to the Unit.

(b) Upon each transfer of title to a Unit, except an "Exempt Transfer" as defined in this subsection (b), the new Owner shall pay a capitalization fee to the Association in an amount equal to \$650. This amount shall be due and payable to the Association immediately upon transfer of title to the Unit, and may be used as the Board determines appropriate to fund the Association's initial start-up expenses, operating expenses, reserves, and/or other expenses that the Association incurs pursuant to this Declaration and the By-Laws that provide a "direct benefit" to the Community, as the term "direct benefit" is defined in rules of the Federal Housing Finance Agency at 12 C.F.R. Part 1228.1, as it may be amended. Notwithstanding the above, no capitalization fee shall be levied upon transfer of title to a Unit:

(i) by or to the Founder or a Founder Affiliate;

(ii) by a Builder designated by the Founder who held title solely for purposes of development and resale;

(iii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;

(iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of

an ownership or beneficial interest in such entity, the capitalization fee shall become due;

(vi) to an institutional lender pursuant to the terms of its Mortgage or upon foreclosure of its Mortgage, and to the first purchaser of the Unit from such institutional lender;

(vii) to a person who purchased the Unit at the foreclosure sale upon foreclosure of a Mortgage held by an institutional lender; or

(vii) to the Association upon foreclosure of its lien for assessments under Section 12.7, or to another purchaser at such foreclosure sale;

(viii) under circumstances which the Board, in its discretion, deems to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes may be, but is not required to be, deemed exempt from payment of the capitalization fee).

(c) The fees required by this Section 12.9 shall constitute a Specific Assessment against the Unit to which title is transferred and shall be secured by the Association's lien for assessments under Section 12.7. They shall be in addition to, not in lieu of, the annual Base Assessment levied on the Unit and shall not be considered an advance payment of such assessments.

12.10. Use and Consumption Fees


The Association may offer services or facilities for which it does not recover its costs through assessments under this Chapter. The Board may charge use and consumption fees to any Person who chooses to use such services, equipment, or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Chapter 13 - Easements

The easements created in this Chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of owners, the Declarant, the Association, and others, over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property while others relate to the rights of the Association to come upon property of others to fulfill its responsibilities.

13.1. Easements in Common Area

 An easement is one person's right to go onto the property of another.

The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any recorded covenants, restrictions or easements applicable to such Common Area;
- (c) any other limitations, restrictions, rights or easements contained in the instrument of conveyance or in any Easement or Shared Property Agreement;
- (d) the Board's right to:
 - (i) adopt rules regulating Common Area use and enjoyment, including without limitation, rules limiting the hours of use and the number of guests who may use the Common Area and rules requiring an Association-issued pass to access any recreational facilities and requiring payment of a fee for issuance of passes to occupants of any accessory dwelling on a Unit; however, no rule shall unreasonably restrict an Owner's right to peaceably assemble on the Common Area or to invite public officers or candidates for public office to appear and speak on the Common Area;

(ii) charge reasonable admission, participation, or other use fees and guest fees for use of Common Area facilities for purposes (other than access to and from a Unit) and for participation in any programs, activities, or events offered or sponsored by the Association or by such Persons as it may authorize to use the Common Area for such purpose;

(ii) suspend an Owner's or occupant's right to use Common Area facilities (other than for access to and from a Unit) for nonpayment of assessments or other violations of the Governing Documents;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area, which fees may vary by class of user as provided in Section 7.2(b);

(v) require execution of an assumption of risk and waiver and release of liability in favor of the Association as a condition of using any facility or participating in any Association-sponsored activity or any activity taking place on the Common Area;

(vi) rent all or a portion of any Common Area facility on an exclusive or non-exclusive short-term basis to any Person;

Easements

(vii) permit use of any Common Area facility by persons other than Owners and occupants of Units, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and


(viii) permit use of any Common Area facilities, at such charge or no charge as the Board may determine appropriate, for the purpose of offering and conducting classes or other activities for interested Owners and occupants, whether offered on a fee basis for profit or otherwise; and

(ix) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to Section 20.4; and

(e) the right of the Declarant and its designees to use the Common Area pursuant to Section 18.2 and easements reserved herein and in separately recorded documents.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

13.2. Easements of Encroachment

 *An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, inadvertent encroachments to remain.*

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than one foot, as measured from any point on the common boundary

along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3. Easements for Utilities and Other Infrastructure

(a) *Installation and Maintenance.* The Declarant reserve for itself, its successors, assigns, and designees, and grants to the Association, its successors, assigns, and designees, perpetual non-exclusive easements throughout the Community (but not through a structure) for the purpose of:

(i) designing, engineering, and installing utilities and Community Systems, the Central Irrigation System, security and similar systems, drainage systems, and other infrastructure to serve any property within or adjacent to the Community;

(ii) installing walkways, pathways and trails, streetlights, and signage on property the Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspecting, studying, servicing, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described above; and

(iv) access to read utility meters.

(b) *Specific Easements.* The Declarant also reserves for itself the non-exclusive right and power to grant and assign, in whole or in part, any of its easement rights under Section 13.3(a) to utility providers and others, upon such terms and conditions as Declarant deems appropriate, and to record such grant or assignment of specific easements consistent with Section 13.3(a) as it deems necessary or appropriate to develop the property described in Exhibits "A" and "B." The

Easements

location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) *Minimal Interference.* All work associated with the exercise of the easements described in Section 13.3(a) and (b) shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.


13.4. Easements to Serve Additional Property

The Declarant reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," regardless of whether such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property. This easement shall also include, without limitation, the right to make any or all of the Common Area facilities available on a temporary or permanent basis to owners of any portion of the property described on Exhibit "B."

If, pursuant to the above easement, the Declarant grants permanent access or permanent use privileges to the owners of any property that is

not submitted to this Declaration, the Declarant or its successors or assigns shall enter into a reasonable agreement with the Association by which the owners of the benefited property or any mandatory membership owners association having jurisdiction over such property shall (a) share on a reasonable basis the costs which the Association incurs in connection with the ownership, maintenance, repair, replacement, operation, and insurance, of the Common Area facilities of which use is shared, and/or (b) provide reciprocal rights to the Association's Members to use comparable facilities owned or controlled by the owner of the other property, or (c) a combination of (a) and (b). The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property. [This paragraph shall not apply to any access or use privileges granted pursuant to any Easements or Shared Property Agreements entered into with the Club or BPCA.]

13.5. Easements for Maintenance, Emergency, and Enforcement

 *The Association may come onto the exterior portions of a Unit to do maintenance or to address violations of the covenants but will give prior notice unless there is an urgent need to enter the property before notice can be given.*

By this Declaration, the Declarant grants to the Association easements over such portions of the Units as necessary to enable the Association to exercise its authority and fulfill its maintenance responsibilities under this Declaration and the terms of any order, permit, or approval of any governmental or quasi-governmental body which is applicable to the Community and to exercise its enforcement rights under Chapter 8. The Association also shall have the right, but not the obligation, to enter upon exterior portions of any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member

Easements

of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

13.6. Easement for Fence and Landscape Maintenance

The Declarant reserves for itself, the Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and easement over portions of the Community lying within 20 feet of the perimeter boundary of the Community, and within 15 feet of the back-of-curb of any public or private street within or adjacent to the Community, for the purpose of constructing, installing, maintaining, repairing, and replacing perimeter fencing or walls and landscaping along the perimeter boundary of the Community, or within or immediately adjacent to the right-of-way of any public or private streets adjacent to or within the Community. Nothing in this Section shall obligate the Declarant, the Association, or any Builder to install fencing, walls, or landscaping, the installation of such items being in the sole discretion of the Declarant and the Association.

13.7. Easements for Maintenance of Wetlands, Water Bodies and Flooding

The Declarant reserves for itself, the Association, and their respective successors, assigns, and designees, the nonexclusive right and easement, without obligation, to enter upon bodies of water, wetlands, upland buffers, and conservation areas located within the Community, and to enter upon exterior portions of Units lying within 20 feet of such bodies of water, wetlands, upland buffers, and conservation areas, to (a) construct, install, operate, maintain, and replace pumps to supply irrigation water as part of the Central Irrigation System to the Area of Common Responsibility; (b) construct, install, maintain, and repair

fountains, aeration devices, and structures and equipment for retaining and pumping water; (c) temporarily flood and back water upon and maintain water over such property; and (d) perform such maintenance and repair as may be required by the Permit or the Board may deem appropriate, which may include maintenance of shorelines, bulkheads, and water quality, algae control, removal of silt and debris, removal of exotic or nuisance vegetation or dead or diseased trees, shrubs, and plants; and taking action to control any condition or remove any thing that constitutes a potential health or safety hazard.

The Declarant, the Association, and their respective successors, assigns, and designees shall have an access easement over and across any portion of the Community that abuts or contains bodies of water, wetlands, upland buffers, or conservation areas, to the extent reasonably necessary to exercise their rights under this Section. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make the Declarant, the Association, or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.

13.8 Easements for Stormwater Drainage and Runoff

Each portion of the Community is hereby burdened with a perpetual, non-exclusive easement for the benefit of each other portion of the Community for the discharge of stormwater into those Surface Water Management System Facilities constructed on the benefited property or in rights-of-way adjacent to the benefited property, for the flow of stormwater through and retention of stormwater in those Surface Water Management System Facilities located on the burdened property, all subject to and in accordance with the regulations of SJRWMD.

Easements

13.9. Easements over Private Streets

(a) Any private street depicted on a recorded plat of the Community ("Private Street") shall be subject to a perpetual, nonexclusive easement for access, ingress, and egress for the benefit of the the Association, its employees and invitees; each Unit and the Owner and occupants thereof, and their respective guests and invitees; and each other portion of the Community.

(b) The Declarant hereby reserves for itself, its successors and assigns, and their respective agents, employees, successors, assigns, and invitees, a non-exclusive easement for access, ingress and egress over all Private Streets during the Development and Sale Period.

(c) The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over all Private Streets for law enforcement, firefighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel acting in their official capacities; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage collection service to the Community.

(d) [The Declarant hereby grants a nonexclusive easement of ingress and egress to BPCA and the Club, their successors and assigns, over the paved roadways in Bent Pine Preserve, for the purposes of:

(i) secondary access by their respective members, employees, guests, and invitees and by residents of the Bent Pine Community, their guests and invitees, between Bent Pine Drive to 61st Street; provided, such persons may exercise the easement solely for the purposes of exiting the Community onto 61st Street unless the Association permits its members to use such access for both entry and exit;

(ii) ingress and egress by public safety and emergency vehicles between 61st Street and Bent Pine Drive; and

(iii) access by the Club's employees, contractors, and designees to maintain the lake within the golf course on the Club's property;

provided, such easement may not be exercised until such time as roads have been platted and completed within Bent Pine Preserve providing continuous vehicular access over paved roads between Bent Pine Drive and 61st Street].

Chapter 14 - Private Amenities

Various recreational and other facilities located in the vicinity of the Community are privately owned and operated by Persons other than the Association. Those facilities are not part of the Common Area of the Community, and ownership of property in the Community does not give any person the right to use them. This Chapter explains the right of the owners of those facilities to determine if and on what terms they wish to make their facilities available for use by Owners. It also establishes certain rights for the benefit of the owners of such facilities.

14.1. General

Any property and facilities located within, adjacent to, or near the Community, which Persons other than the Association own and operate for recreational and related purposes, are referred to in this Declaration as a "**Private Amenity**" or "**Private Amenities**."

Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as the owners of the Private Amenities may determine. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users and also shall have the right to reserve use rights and to terminate use rights altogether subject to the terms of any written agreements with their respective members.

14.2. Ownership and Operation of Private Amenities

All Persons, including Owners, are hereby advised that no representations or warranties have been or are made by the Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenities. No purported representation or warranty in such regard, either written or oral, shall

be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenities.

Ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenities by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenities or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenities; or (c) the conveyance of any Private Amenities to one or more Declarant Affiliates. Consent of the Association, the membership, or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenities, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

Chapter 15 - Disclosures and Waivers

This Chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this Chapter.

15.1. Access to the Community

Streets providing access to and within the Community are subject to easements in favor of adjacent properties and, in addition, there are multiple areas in which persons on foot could gain access to the Community. As such, unauthorized persons may be able to gain access to the Community and its Common Areas. The Association may, but shall have no obligation to, control access by, monitor for the presence of, or identify and eject unauthorized persons from the Community.

15.2. Safety and Security

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association, BPCA and/or the Club may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security that each person provides for himself or herself and his or her property. However, the Association, BPCA, the Club, the Declarant and Builders shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the

Community, cannot be compromised or circumvented, or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit and their guests that the Association and its Board and committees, BPCA, the Club, and their respective boards and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties. Owners shall include in each lease for any Unit or any portion thereof provisions informing and binding tenants to these provisions.

15.3. Changes in Development Plan

The Declarant reserves the right to make changes in its development plans for the Community, subject to such governmental approvals as may be required and recorded covenants and restrictions. Each Owner acknowledges that the development of the Community is likely to extend over many years, and agrees that the Association shall not, without the and Declarant's prior written consent, engage in or use Association funds to support any protest, challenge, or other form of objection to (a) changes in uses or density of property within the Community, or (b) changes in the Declarant's plans for development of the Community, so long as such changes are not inconsistent with applicable zoning, gov-

Disclosures and Waivers

environmental approvals and recorded covenants and restrictions applicable to the Community.

15.4. View Impairment

Neither the Declarant nor the Association guarantee or represent that any view over and across the Units, any open space within or adjacent to the Community, any ponds, wetlands or water features, or any Private Amenity will be preserved without impairment. The Declarant, Declarant Affiliates, the Association, and any Private Amenity owner shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) and Private Amenity owners (with respect to any Private Amenity) have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

15.5. Notices and Disclaimers as to Community Systems

Any Community System and its providers, managers, and operators may be subject to federal, state, or municipal regulations, laws, and ordinances. Such regulations, laws, and ordinances may have a significant impact on certain aspects of the system including, but not limited to, the fees charged, the method of delivery, the rights of the system users, as well as the rights of the system providers or operators. These regulations and their impact are beyond the control of the Association and the Declarant.

Interruptions in cable television and other Community Systems services may occur from time to time. The Declarant, Declarant Affiliates, and the Association, and their respective successors or assigns, shall have no liability for any interruption in Community Systems services.

The Owner of each Unit shall be responsible for ensuring that the dwelling on such Unit is pre-wired to connect to any Community System installed by or at the request of the Declarant pursuant to Section 18.7. If such wiring is installed by a party other than the provider of the Community System, the Owner shall contact the provider of the Community System upon completion of such installation and arrange for the provider of the Community System to inspect the wiring to ensure compatibility with the Community System. If authorized by the Declarant, the provider of the Community System may charge the Owner of the Unit a reasonable fee for such inspection. If it is determined that the wiring is not compatible, the Owner of the Unit shall promptly arrange for such wiring to be replaced with wiring that is compatible with the Community System.

Each Owner acknowledges and agrees that the Association, by virtue of contractual relationships with Community Systems providers, may gain access to information relating to individual use of the Community Systems, including account and content information. In recognition of this fact, each Owner waives any privacy rights he or she may have in such information and any claims against the Association, the Board, the Declarant, Declarant Affiliates, and the Builder of such Owner's Unit relating to the acquisition of such information. Further, each Owner acknowledges and agrees that the acquisition of such information by the Association shall not create any duty on the part of the Association, the Declarant, or Declarant Affiliates to any Person to act in any manner with respect to such information.

15.6. Construction Activities

All Owners, occupants, and users of Units are hereby placed on notice that the Declarant, Declarant Affiliates, and Builders, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, will be conducting development and construction activities within Bent Pine Preserve and that such

Disclosures and Waivers

activities may be conducted in phases and may cause disturbance and disruption that impact the use and enjoyment of a Unit.

By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest and by using any portion of a Unit or the Community generally, the Owners and all occupants and users of Units acknowledge and agree: (a) that such activities shall not be deemed nuisances or noxious or offensive activities under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise), any property within or in proximity to the Unit or any other portion of the Community where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that the Declarant, any Declarant Affiliates, and their respective agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Unit or any other portion of the Community has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to the Declarant or Declarant Affiliates to sell, convey, lease, and/or allow the use of Units and other facilities within the Community.

15.7. Hurricane Preparedness

The Community is located in a region that is vulnerable to the dangerous effects of hurricanes, including extremely high winds, flooding, flying debris, and lightning. Each Owner and occupant of a Unit shall be responsible for his or her own safety in the event of a hurricane and should take appropriate safety precautions (which may include evacuating the Community and/or the re-

gion) to avoid personal injury, including death, and property damage. Each Owner and occupant of a Unit shall be obligated to adhere to any established hurricane plan for Community residents.

15.8. Water Management

Wetlands, stormwater ponds, and other bodies of water within or adjacent to the Community are not designed as aesthetic features and, due to fluctuations in rainfall and groundwater elevations within the immediate area, may be wet or dry at various times and will not likely maintain a constant water level. The Declarant and the Association have no control over such rainfall fluctuations. Each Owner, by accepting title to or any interest in a Unit, agrees to release and discharge the Declarant, Declarant Affiliates, and the Association from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to the aesthetics of, the presence or absence of water in, or such fluctuations in water level in such areas, regardless of whether the water fluctuation was caused by the Declarant or the Association drawing water from the wetlands of bodies of water as part of the Central Irrigation System.

Except for construction and maintenance activities that are consistent with the design and permit conditions approved by the SJRWMD in the Permit, no person shall alter, modify, or expand, or deposit fill, debris, or any other material or item in, any part of the Surface Water Management System Facilities serving the Community, or remove, cut, trim, or apply herbicides to any vegetation within, dredge, or introduce grass carp into, any wetlands mitigation area or wet detention pond located within or in the vicinity of the Community, without the prior written approval of the Declarant and the SJRWMD, and any other local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

Disclosures and Waivers

15.9. Entry Upon and Use of Water Bodies

Any Person entering upon or near or otherwise using any wetlands, ponds, or other water bodies and related facilities within or adjacent to the Community, shall be responsible for his or her own personal safety in connection with such entry and use and shall assume all risks of personal injury, including death, relating to such entry or use. The Declarant, Declarant Affiliates, and the Association shall not in any way be a guardian or insurer of safety in connection with the presence, entry upon, or use of any water bodies or features within or adjacent to the Community and shall not be held liable or responsible for any personal injury or death, property damage, or any other loss due to, arising out of, or related to use of such water features for any purpose.

Some Units are located adjacent to lakes, ponds or stormwater detention or retention facilities that may from time to time contain water. Owners and occupants of such Units have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear, or otherwise disturb vegetation between the boundary of the Unit and such lakes, ponds, or other facilities.

15.10. Natural Conditions

The Community and surrounding areas contain wetlands and other manmade, natural and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including insects, venomous and non-venomous snakes, alligators and other reptiles, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and occupant of any Unit, and every person entering the Community or such surrounding areas (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or through the Community or such surrounding areas; and (ii) assumes all risk of personal injury

arising from the presence of such plants and wildlife. Neither the Association, the Declarant, any Builder, nor the members, partners, affiliates, officers, directors, agents or employees of any of them, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community or surrounding areas, nor shall they have any liability for any injury resulting from the presence, movement or propagation of any plant or wildlife within or through the Community.

The natural areas described in this Section may also contain creeks, ponds, or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Unit shall enter upon, or permit their guests or any other person acting on their behalf to enter upon or disturb, such areas in any way without the Association's or the Declarant's prior written approval.

15.11. Use of Chemicals

The Association may, but shall not be required to, dispense maintenance chemicals to the extent deemed necessary or desirable, in the Board's sole and absolute discretion, for the purpose of controlling insects, vermin, weeds and fungi in the Community, exclusive of the interior of buildings on the Units.

Chapter 16 - Rights of Lenders

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Community.

16.1. Statement of Delinquencies and Violations

Within 10 days after receipt of a written request from an institutional holder, insurer, or guarantor of a first Mortgage ("Interested Mortgagee") providing its name and address and the street address of the Unit to which its Mortgage relates, the Association shall provide a statement of any delinquency in the payment of assessments or charges owed for such Unit or any other violation of the Governing Documents relating to such Unit or the Owner or occupant thereof which has not been cured as of the date of the Association's response.

16.2. Right to Examine Books and Records

Upon written request of any Interested Mortgagee providing its name and address and the street address of the Unit to which its Mortgage relates, the Association shall provide the Interested Mortgagee with a copy of the Association's most recent financial statement and shall permit such Interested Mortgagee or its agent to inspect the books and records of the Association during normal business hours, subject to the terms of the By-laws.

16.3. No Priority

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.4. Notice to Association

Within 10 days of the Association's written request, each Owner shall furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit and the identifying number of the loan which such Mortgage secures.

16.5. Failure of Mortgagee to Respond

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 60 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

PART FIVE: COMMUNITY DEVELOPMENT

Chapter 17 - Expansion of the Community

The Community is expected to be developed in phases to accommodate market demand. This Chapter addresses the right of the Declarant or the Association to expand the Community beyond the initial property described in Exhibit "A" to this Declaration.

17.1. Expansion by the Declarant

From time to time, the Declarant may submit to the terms of this Declaration all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not the Declarant.

[The Declarant's right to expand the Community under this Section expires when all property described in Exhibit "B" has been submitted to this Declaration or 40 years after this Declaration is recorded, whichever is later.] Until then, the Declarant may transfer or assign this right, in whole or in part, and with respect to all or any portion of the Exhibit "B" property (reserving all rights as to any portion not included in such assignment), to any Declarant Affiliate or to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Declarant.

The Declarant may submit different parcels of property to this Declaration at different times. The Declarant gives no assurances as to the boundaries of the parcels that may be submitted to this Declaration, or as to the order in which the Declarant may submit parcels of property to this Declaration or as to whether buildings erected on any additional property submitted to this Declaration will be compatible with other buildings in the Community in terms of architectural style, quality of construction, principal materials employed in construction, size, or price.

17.2. Expansion by the Association

The Association also may submit additional property to this Declaration by recording a Supplement describing the additional property. Any Supplement that the Association records must be approved by Members representing more than 50% of the total votes in the Association and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Declarant's consent is required. The Association's President and Secretary, the owner of the property, and the Declarant, if the Declarant's consent is required, shall sign the Supplement.

17.3. Additional Covenants and Easements

Any Supplement that the Declarant records may impose additional covenants and easements on the property described in such Supplement. Such provisions may be included in a Supplement submitting additional property to this Declaration or may be set forth in a separate Supplement applicable to property previously submitted to this Declaration. If someone other than the Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent.

17.4. Effect of Filing a Supplement

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Declaration shall be assigned voting rights in the Association

Expansion of the Community

and assessment liability in accordance with the provisions of this Declaration.

Chapter 18 - Additional Rights Reserved to the Declarant

This Chapter reserves various rights to the Declarant, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Declarant's development and sale of property in the Community, to enable the Declarant to respond to Owners' concerns, and to protect various property rights and other interests of the Declarant.

18.1. Special Development Rights

In addition to the rights specifically reserved to the Declarant under Chapter 17 with respect to expanding the Community, the Declarant reserves the right, during the Development and Sale Period and subject to the limitations set forth herein, to:

- (a) create Units, Common Areas, and designate roadways within any property that it owns;
- (b) subdivide or combine any Unit or Units which it owns in order to create larger or additional Units and/or Common Areas, except to the extent limited by Section 7.1(d) and the Development and Construction Guidelines;
- (c) convert any Unit which it owns into Common Area, or roadways;
- (d) adjust the boundaries of any Units that it owns and any Common Area;
- (e) cause the Association to convey or re-convey any portion of any Common Area which is not improved with buildings as necessary to make minor adjustments in boundary lines between such Common Area and adjacent properties; and
- (f) amend this Declaration or any Supplement to withdraw property from the Community and the coverage of this Declaration, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

The foregoing rights shall specifically include the right, subject to the restrictions described in Exhibits "F" and "F-1" and subject to obtaining the requisite governmental approvals, to replat and record revised, amended, or additional plats affecting any property which it owns in the Community to accomplish any of the foregoing and/or to vacate right-of-way, eliminate open spaces, convert right-of-way or open space to Units, or convert Units to open space or right-of-way.

The exercise of the Declarant's rights under this Section shall not require the consent of the Association, the Members, any Owner, or any other Person except appropriate governmental authorities [and the Club and BPCA, to the extent that the proposed changes would be inconsistent with the BP Covenants, the LDP Plans, or Exhibit "F" or "F-1,"] and neither the Association nor any Owner shall have the right to object to any such exercise; however, no replat or revised or amended plat shall alter the boundaries of any property owned by a Person other than the Declarant without that owner's written consent. If a proposed replat or revised or amended plat would alter the boundaries of any property which the Declarant has conveyed to the Association as Common Area and such property has not been improved with recreational facilities, then the Association shall, upon the Declarant's request, execute such documents as may be necessary to grant its consent to such replat or revised or amended plat.

18.2. Marketing and Sales Activities

Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Declarant and its designees or assigns may construct, use, and main-

Additional Rights Reserved to the Declarant

tain such facilities and conduct such activities upon portions of the Common Area and other property they own, as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the construction, maintenance, repair, or sale of Units (including performance of any warranty work), subject to any limitations imposed by applicable zoning. Such permitted facilities and activities shall include business offices, parking facilities, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, information centers, parking facilities, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant and its employees, agents, and designees may park vehicles in designated parking areas. The Declarant, Declarant Affiliates, and Builders whom the Declarant may authorize shall have easements for access to and use of such facilities at no charge. The rights described in this Section 18.2 shall specifically include the right of the Declarant and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge during the Development and Sale Period and to restrict use or access to such facilities by the Association, its members and others as long as they are being used for any such purpose. There shall be no limit on the number or location of such facilities, except as otherwise restricted by state law or local ordinance or regulations.

After the Development and Sale Period, the Declarant shall continue to have a right of access to and the right to use all Common Area facilities for parties, special events, and marketing activities in connection with the marketing and sale of other communities being developed, marketed, or sold by the Declarant, its agents, or affiliates, subject to any limitations imposed by applicable zoning. Any such use after the Development and Sale Period shall be subject to reasonable notice to the Association and payment by the Declarant of all reasonable costs the Association directly incurs in connection with such use (*i.e.*, over and

above costs the Association would incur in the absence of such use).

The Declarant reserves for itself and its designees the right, without the consent of or payment of compensation to any Person, to take photographs and to capture, produce, and reproduce, by any method and in any format or media, images of any structures, streetscapes, landscapes, signage, public spaces, or other elements located on Units, Common Area, or public property within Bent Pine Preserve which are visible from public streets or Common Area, and to use such images in advertising, marketing materials, displays, presentations, and publications of any kind, including, without limitation, newspaper, internet, television, and other media. Each Owner, by accepting a deed to any Unit, shall be deemed to have consented to the exercise by Declarant and its designees of the rights described in this subsection (b) and to have waived any personal or proprietary right such Owner may have in connection with such images.

18.3. Access for Development Purposes

During the Development and Sale Period, the Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area, Private Streets and other roads within the Community for the purpose of:

- (a) exercising any rights reserved to the Declarant pursuant to this Declaration, including the rights set forth in Sections 18.1 and 18.2; and
- (b) making, constructing, and installing any improvements indicated on recorded subdivision maps or plats of the Community and such other improvements to the Common Area and to the Exhibit "B" property as it deems appropriate; and
- (c) making repairs or correcting any condition on the Common Area or any Unit.

Additional Rights Reserved to the Declarant

18.4. Right to Approve Changes in Community Standards

During the Development and Sale Period, no amendment to or modification of any Rules or Development and Construction Guidelines shall be effective without prior notice to and the written approval of the Declarant.

18.5. Additional Covenants and Restrictions

During the Development and Sale Period, no one other than the Declarant or Declarant Affiliate may record any Additional Covenants affecting any portion of the Community without the Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

18.6. Rights to Use Names; License Agreements

The name "Bent Pine Preserve," along with all logos associated with such name, are the proprietary trade names and/or service marks of the Declarant or Declarant Affiliates. No Person shall use the name "Bent Pine Preserve," or any associated logo or depiction, for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, in any signage, on any Internet website, or in any logo or depiction, without the prior written consent of the Declarant or the Person who owns such mark. In addition, due to the integrated nature of Bent Pine Preserve as a planned community and the public identification of the Units with Bent Pine Preserve, any name or "logo" to be used in connection with or displayed on any signage or in any sales or other materials or documentation related to any Unit, shall be subject to the Declarant's prior written consent. Such approval may be given or withheld in the Declarant's discretion and may be subject to such terms and conditions as the Declarant deems appropriate.

The Declarant or the mark or trademark owner may condition the Association's or any Owner's use of protected trade names or marks upon the signing of one or more license agreement(s), which are intended to protect the trade names and service marks from unauthorized use by others. Such license agreement(s) shall be non-exclusive, non-transferable, and in form and substance acceptable to the owner of the mark. Subject to such licensing agreements, the Association may use the word "Bent Pine Preserve" in its name. Other use by the Association or any Owner is subject to the restrictions set out in this Section or otherwise imposed by the Declarant.

Notwithstanding the above, Owners may use the name "Bent Pine Preserve" where such term is used solely to specify that particular property is located within Bent Pine Preserve (subject, however, to such terms and conditions as the Declarant may impose in order to protect its registered trade names and service marks).


18.7. Community Systems

The Declarant reserves for itself, Declarant Affiliates, and their respective successors and assigns, a perpetual right and easement over all property in the Community to install and operate such Community Systems as the Declarant, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The Declarant also has the right to charge individual users a reasonable fee, not to exceed the maximum allowable charge for such service, as defined from time to time by the laws, rules, and regulations of the governmental authority having jurisdiction.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

Additional Rights Reserved to the Declarant

18.8. Easement to Inspect and Right to Correct

 *The Declarant, or someone it designates, may enter onto any Unit to inspect and correct problems with the Unit. The Declarant must give the Owner of the Unit prior notice, and if entering an enclosed structure on the Unit, obtain the Owner's prior consent unless it is an emergency.*

The Declarant reserves for itself and others it may designate, the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition that may exist on any portion of the property within the Community, including Units, which they constructed, installed, or created, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

18.9. Right to Notice of Design or Construction Claims

Neither the Association, any Owner, or any other Person shall initiate the dispute resolution procedures under Article 19, nor retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Person(s) alleged to have responsibility for such design or construction have been first notified in writing, by certified mail, return receipt requested, and given an opportunity to meet with the Association and/or

the Owner of the property affected to discuss the owner's concerns, conduct their own inspection, and take action to remedy any problem in accordance with this Section. Any notice under this Section shall include a description of the nature and location of the alleged defect in design or construction ("Defect"), a description of any damage suffered as a result of the Defect, the date on which the Defect was discovered, and dates and times during ordinary business hours that the Person may meet with the Owner or occupant of the affected Unit or representative of the Association to conduct an inspection. This paragraph shall not apply to the Club or BPCA.

Nothing in this Section obligates any Person to inspect, repair, replace, or cure any alleged Defect. However, if the Person alleged to have responsibility for the design or construction elects to cure or repair any Defect, it shall so notify the Association (if the Defect involves Common Area) or the Owner of the affected Unit (if the Defect is in or on a Unit) within 30 days after conducting such inspection and the Association or Owner shall permit such Person, its contractors, subcontractors, and agents access as needed during ordinary business hours to make such repairs which, once begun, shall be completed within a reasonable time, subject to the nature of the repair and unforeseen circumstances and events. All applicable statutes of limitations shall be tolled during the period of inspection and cure under this Section, not to exceed the earlier of: (i) 120 days after the date the Person receives written notice of the Defect in accordance with this section; or (ii) the Person's delivery to the claimant of written notice that the Person does not intend to take any further action to remedy the Defect.

In the event there is any dispute as to the adequacy of the proposed repairs to resolve the problem or as to whether repairs that the Declarant, its contractors, or subcontractors have performed have remedied the Defect, the Declarant may appoint a third-party inspector who is knowledgeable and experienced in the type of

Additional Rights Reserved to the Declarant

construction involved to inspect the Defect and make a determination as to whether any proposed solution is adequate or as to whether the Defect has been remedied. The Association, the Declarant, and the Owner of any affected Unit agree to accept and abide by the decision of the inspector.

If the Association or any Owner fails to comply with this Section, neither the Declarant nor any Declarant Affiliate shall be liable for any general, special, or consequential damages, costs, or diminution in value that might have been avoided had they been given the notice and opportunity to repair described in this Section.

18.10. Right to Transfer or Assign the Declarant's Rights

The Declarant may assign its status as the Declarant and the Declarant Rights to any Person who takes title to any portion of the property described in Exhibits "A" or "B" to this Declaration and who agrees to assume the obligations of the Declarant under this Declaration as of the effective date of such assignment. There shall be no more than one Person holding the status of Declarant at any time; however, the Declarant may partially assign, or permit other Persons to exercise on a limited basis, any or all of the Declarant's Rights without transferring the status of the Declarant and without relinquishing the right to continue to exercise such Declarant Rights itself. For example, the Declarant may authorize a Builder to exercise, with respect to any property described on Exhibits "A" or "B" that such Builder owns, any right which the Declarant could exercise with respect to property which the Declarant owns.

Any assignment of Declarant Rights may impose such conditions upon the exercise of such Declarant Rights as the assignor deems appropriate and any assignment of the status of Declarant may reserve to the assignor the right to exercise such Declarant Rights as are specified therein. However, the Declarant may not assign a broader right than that which it has under the Declara-

tion, nor relieve itself of any obligations except to the extent such assignment states that such obligations are assumed by the assignee. No transfer or assignment of the Declarant's status as the Declarant shall be effective unless it is in a recorded instrument signed by the Declarant and the assignee. The foregoing sentence shall not preclude the Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Declarant's consent to such exercise.

18.11. Termination of Rights

If the term of any right contained in this Chapter is not specified, such right shall terminate upon the earlier of (a) termination of the Development and Sale Period; or (b) the Declarant's recording of a written statement, signed by the Declarant evidencing its approval thereof, terminating such right.

PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

Chapter 19 - Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between Owners or between an Owner and the Association, the Declarant, or others involved in the Community. This Chapter commits certain parties to any such dispute to work together in an attempt to resolve certain types of disputes without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

19.1. Agreement to Encourage Resolution of Disputes Without Litigation

(a) Bound Parties. The Declarant, the Association, and their respective officers, directors, and committee members, all Owners and other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Chapter (each a "Bound Party"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party, by accepting a deed or other interest in any portion of the Properties, is deemed to agree not to file suit in any court with respect to:

(i) any dispute subject to the dispute resolution process set forth in Florida Statutes §720.311, without first complying with that process; and

(ii) any Claim described in Section 19.1(b) which is not subject to Florida Statutes §720.311 without first complying with the dispute resolution procedures set forth in Section 19.2 of this Chapter;

all in a good faith effort to resolve such Claim or dispute.

Neither the Club nor BPCA shall be deemed to be a Bound Party unless it expressly agrees to submit to this Chapter.

(b) Claims. As used in this Chapter, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review and shall not be subject to this Chapter.

(c) Exceptions. Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);

Dispute Resolution and Limitation on Litigation

(iii) any suit that does not include the Declarant, a Declarant Affiliate, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 19.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a) unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter; and

(vi) any suit by the Association to enforce the Governing Documents where the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Association filing suit.

19.2. Dispute Resolution Procedures

(a) **Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person within 30 days after the Respondent's receipt of such notice and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Indian River County, Florida area and shall give written notice to the Claimant by mail or personal delivery identifying the mediator. The parties shall use good faith efforts to schedule the mediation to commence at a mutually convenient time and place within 21 days after the Respondent's receipt of such notice, but if they are unable to do so, the mediator shall schedule such mediation to occur during business hours on a date selected by such mediator within such 30 day period or reasonably close thereto. Each Bound Party shall present the mediator with a written summary of the Claim. The parties shall participate in good faith in all mediation proceedings. The venue of the mediation proceeding shall be determined by the mediator.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation or within such time as determined reasonable by

Dispute Resolution and Limitation on Litigation

the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, except as otherwise provided in Section 19.3.

The fees and expenses of the mediation proceeding (including the fee of the mediator) shall be shared equally by the Claimant and Respondent; provided, if there is more than one Claimant or more than one Respondent, 50% of the costs shall be shared equally by the Claimants and 50% of the costs shall be shared equally by the Respondents. Each party shall bear its own costs of the mediation, including attorneys' fees.

Notwithstanding the above, in any dispute as to which the Association is a party, the parties may waive mediation by mutual agreement and proceed to file suit or initiate other proceedings.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

19.3. Initiation of Litigation by Association

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any ju-

dicial or administrative proceeding unless first approved by a vote at a meeting of the membership by Members entitled to cast at least a majority of the total votes in the Association, except that no approval shall be required:

(a) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it; or

(b) to enforce the provisions of any Easement or Shared Property Agreement;

(c) for actions or proceedings where the amount in controversy is \$100,000 or less if initiated:

(i) during the Declarant Control Period;

(ii) to enforce the provisions of this Declaration or other Governing Documents, including collection of assessments and foreclosure of liens;

(iii) to challenge *ad valorem* taxation or condemnation proceedings; or

(iv) against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or


(v) in connection with damage to the Common Area.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Chapter 20 - Changes in the Common Area

Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Common Area. This Chapter explains the procedures for dealing with matters such as changing use rights in Common Area, judicial partition of the Common Area, and condemnation.

20.1. Condemnation

 *A public entity such as a town, county, or state has the power to condemn property for its own uses and generally has to pay the value of the property to do so.*


If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 20.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, during the Development and Sale Period, and Members representing at least 75% of the total votes in the Association shall otherwise agree; [provided, if the taking or conveyance involves Common Area containing a portion of Bent Pine Drive or any Private Street necessary to provide reasonable and direct ingress and egress between Bent Pine Drive and 61st Street, or any portion of the perimeter walls, berms and landscaping along 61st Street, Kings Highway (58th Avenue) and Bent Pine Drive, or the gatehouse or gates within the right-of-way of Bent Pine Drive, such decision shall also require approval of the Club and BPCA]. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sec-

tion 9.4 regarding funds for restoring damaged improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 20.4.

20.2. Judicial Partition

 *Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.*

Except as permitted in this Declaration, no Person shall bring any action for judicial partition of any portion of the Common Area without the written consent of all Owners and Mortgagees and, during the Development and Sale Period, the Declarant. In addition; [if any proposed action for judicial partition involves Common Area containing a portion of Bent Pine Drive or any Private Street necessary to provide reasonable and direct ingress and egress between Bent Pine Drive and 61st Street, or any portion of the perimeter walls, berms and landscaping along 61st Street, Kings Highway (58th Avenue) and Bent Pine Drive, or the gatehouse or gates within the right-of-way of Bent Pine Drive, such action shall also require the written consent of the Club and BPCA.] This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this

Changes in the Common Area

Declaration, with such approval as may be required under Section 20.4.

20.3. Transfer, Mortgaging, or Dedication of Common Area

In addition to the rights reserved to the Declarant under Sections 9.1 and 18.1, during the Development and Sale Period, the Declarant and Declarant Affiliates shall have the absolute right to transfer or dedicate portions of the Common Area which they own to Indian River County, Florida or to any other local, state, or federal governmental or quasi-governmental entity, and the Declarant may require the Association to do so with respect to Common Area it owns, and no membership approval shall be required. Other than as may be required by the Declarant pursuant to the foregoing sentence, the Association may subject Common Area to a security interest, or may dedicate, transfer or convey Common Area only upon the written direction of Members entitled to cast at least 75% of the total votes in the Association, and the Declarant during the Development and Sale Period.

Notwithstanding the above, no such approval shall be required: (i) to reconvey Common Area to the Declarant as required by Section 9.1(a); or (ii) to grant easements for access and utility purposes over the Common Areas so long as they are not inconsistent with the intended use of the Common Area.

The proceeds from the sale or mortgaging of Common Area shall be an asset of the Association to be used as the Board determines, unless otherwise directed by vote of the membership at the time such sale or mortgage is authorized pursuant to this Section.

Notwithstanding the above: (i) no conveyance or encumbrance of Common Area shall be permitted that would deprive any Unit of access between such Unit and public streets or deprive any Unit of physical support without the consent of the Owner of the affected Unit; and (ii) [no con-

veyance or encumbrance of Common Area containing a portion of Bent Pine Drive or any Private Street necessary to provide reasonable and direct ingress and egress between Bent Pine Drive and 61st Street, or any portion of the perimeter walls, berms and landscaping along 61st Street, Kings Highway (58th Avenue) and Bent Pine Drive, or the gatehouse or gates within the right-of-way of Bent Pine Drive, shall be permitted without the written consent of the Club and BPCA].

20.5. Acquisition of Common Area

The Association may enter into agreements to purchase or otherwise acquire leaseholds, memberships, and other possessory or use interests in lands or facilities, including, but not limited to, parking areas, conservation areas, and recreational facilities, whether or not contiguous to the Community. However, any such agreement entered into more than 12 months after recording of this Declaration shall be subject to approval of Members entitled to cast at least 75% of the total votes in the Association. This Section shall not apply to require approval of transfers of Common Area by the Declarant to the Association for no consideration pursuant to Section 9.1.

Chapter 21 - Termination and Amendment of Declaration

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan as well as changes in the needs and desires of the Community that inevitably will occur. This Chapter sets out procedures by which either the Declarant or the Owners as a group may amend this Declaration to address such changes.

21.1. Term and Termination

(a) [Except as otherwise provided in this Section, this Declaration shall be effective, subject to amendments adopted pursuant to Section 21.2, for a period of 50 years from the date it is recorded and thereafter shall be extended automatically for successive 10-year periods.] Within 30 years of the date of recording of this Declaration, and thereafter as needed, the Board shall take such action and file such notices or other instruments as may be necessary to preserve and protect this Declaration from extinguishment under the Marketable Record Title Act, Florida Statutes Chapter 712; provided, nothing herein shall be construed to give the Board or the Association the exclusive authority to take any such action.

This Declaration may be terminated at any time by a document so stating which is signed by at least 75% of the then Owners, the Club and BPCA or their respective successors or assigns (if any of them are then in existence), and the Declarant during the Development and Sale Period, and recorded in the Public Records. Such termination shall be effective on the date of recording unless a later effective date for termination is specified therein, in which case it shall terminate on the date so specified; however, any termination shall be subject to subsection (b) hereof. Prior to any such termination, the Association shall comply with the requirements of the Articles of Incorporation relating to transfer and assumption of the Association's responsibilities, if any, for the Surface Water Management System Facilities.

In any event, if any provision of this Declaration would be invalid under the Florida Uniform

Statutory Rule Against Perpetuities, that provision shall expire 90 years after this Declaration is recorded.

[Notwithstanding the foregoing, in conjunction with merger of the Association with BPCA in accordance with Section 2.6(b) and obtaining such approvals as required for amendment to this Declaration pursuant to Section 21.2, this Declaration may be amended and consolidated with the BP Declaration so that all of the property subject to the BP Declaration and all of the property subject to this Declaration are subject to a single declaration.]

(b) Notwithstanding the above, this Section 21.1 shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement, nor shall termination of this Declaration terminate any separate Easements or Shared Property Agreements, the amendment or termination of which shall be subject to the provisions of those instruments.

21.2. Amendment

(a) *By Declarant.* Except as provided in subsections (c) and (d), in addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, the Declarant may amend this Declaration for any purpose, except that no unilateral amendment by the Declarant shall be arbitrary, capricious, or in bad faith; destroy the general plan of development; prejudice the rights of Owners other than the Declarant to use and enjoy the Common Area; or materially shift economic burdens from the Declarant to Owners other than the Declarant.

Termination and Amendment of Declaration

After termination of the Declarant Control Period, the Declarant may unilaterally amend this Declaration if and to the extent permitted by Florida law.

(b) By Membership. Except as otherwise specifically provided above or elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members entitled to cast not less than 75% of the total votes in the Association, or by Owners of not less than 67% of the Units. In addition, during the Development and Sale Period, any such amendment shall also require the written consent of the Declarant. The approval requirements set forth in subsections (c) and (d) also shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Approval of St. John's Water Management District. Notwithstanding Section 21.2(a) and (b), any amendment to this Declaration that alters any provision relating to the Surface Water Management System Facilities or that materially affects the operation and maintenance of the Surface Water Management System Facilities (including any environmental conservation areas and water management portions of the Common Area), and any amendment to this Section 21.2(c), must have the prior written approval of SJRWMD and shall not be effective until any necessary permit modification is approved by SJRWMD, unless SJRWMD advises in writing that no permit modification is necessary.

[(d) Approval of BPCA and Club. Except as otherwise specifically provided in this Declaration, no amendment to the BP Covenants or Exhibits A, B, F, or F-1 attached hereto and no amendment to any other provision of this Declaration that would negate, undermine or conflict with the BP Covenants, the LDP Plans, the Plats,

the Cost-Sharing Agreement or Easement Agreement referenced in Section 3.2, shall be effective without the written approval of BPCA and the Club.

At least 30 days prior to recording of any amendment to this Declaration, the Declarant or the Association shall send written notice thereof and a copy of the proposed amendment (collectively, "Amendment Notice") to BPCA and the Club at their respective addresses as shown on the records of the Florida Department of State, Division of Corporations, requesting their approval thereof. If either BPCA or the Club fails to respond within 30 days after receipt of such Amendment Notice by either: (i) executing and delivering the proposed amendment to the address specified in the Amendment Notice; or (ii) delivering written notice to the address specified in the Amendment Notice identifying the objectionable provision(s) of the proposed amendment that would alter, negate, undermine or conflict with the BP Covenants, the LDP Plans, the Plats, or any Easements or Shared Property Agreements and describing the basis for such objection, then the proposed amendment shall be deemed approved by the party failing to respond and, upon certification of the foregoing facts by the Declarant or the Association in the amendment, the proposed amendment may be recorded without the nonresponding party's execution thereof. Any notice under this Section shall be sent via U.S. Postal Service or common commercial carrier, in either case using a level of service which requires a signature or provides other evidence of delivery. If sent via U.S. Postal Service using certified mail, return receipt requested, it shall be deemed received on the third business day following the date postmarked.]

(e) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class C Member without the written consent of the Declarant, except that if the Declarant's right or privilege has been assigned then such amendment

Termination and Amendment of Declaration

shall also require the written consent of the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. A copy of any amendment, or if permitted by Florida Statutes §720.306(1)(b), notice of the recording thereof, shall be provided to the Owners within 30 days after recording. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(f) *Exhibits.* Exhibits "A" and "B" are incorporated by this reference, and this Chapter shall govern amendment of those exhibits. Exhibit "C" is incorporated by this reference and may be amended under Chapter 7 or pursuant to this Section, but in either case subject to Section 21.2(d). Exhibits "D" and "E" are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Declaration that refer to such exhibits. Exhibit "F" is incorporated by this reference and may be amended pursuant to Chapter 5 or this Section 21.2, but in either case subject to Section 21.2(d).

EXHIBIT "A"

Property Initially Submitted

COMMENCING AT THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 32 SOUTH, RANGE 39 EAST, INDIAN RIVER COUNTY, FLORIDA, RUN SOUTH 89°58'54" EAST, ALONG THE NORTH LINE OF SAID SECTION 16, A DISTANCE OF 40.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF KING'S HIGHWAY (STATE ROAD 505-A, COUNTY ROAD 613, AN 80 FOOT WIDE RIGHT-OF-WAY) AND THE POINT OF BEGINNING; FROM SAID POINT OF BEGINNING CONTINUE SOUTH 89°58'54" EAST, ALONG SAID NORTH LINE, ALSO BEING THE SOUTH LINE OF INDIAN RIVER FARMS WATER CONTROL DISTRICTS 60 FOOT WIDE RIGHT-OF-WAY (COMMONLY KNOWN AS 61ST STREET AND PECAN GROVE ROAD) A DISTANCE OF 941.92 FEET; THENCE DEPARTING SAID NORTH LINE, RUN SOUTH 00°04'12" WEST ALONG A LINE THAT IS PARALLEL WITH THE EAST RIGHT-OF-WAY LINE OF AFORMENTIONED KING'S HIGHWAY, A DISTANCE OF 333.60 FEET TO A POINT OF CURVATURE; THENCE RUN 82.48 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 90.00 FEET, A CENTRAL ANGLE OF 52°30'20" AND CHORD OF 79.62 FEET WHICH BEARS SOUTH 26°10'58" EAST; THENCE RUN SOUTH 52°26'08" EAST, A DISTANCE OF 173.30 FEET TO A POINT OF CURVATURE; THENCE RUN 89.51 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 85.00 FEET, A CENTRAL ANGLE OF 60°20'03" AND A CHORD OF 85.43 FEET WHICH BEARS SOUTH 22°16'07" EAST; THENCE RUN SOUTH 07°53'55" WEST, A DISTANCE OF 247.95 FEET TO A POINT OF CURVATURE; THENCE RUN 63.45 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 215.00 FEET, A CENTRAL ANGLE OF 16°54'30" AND A CHORD OF 63.22 FEET WHICH BEARS SOUTH 00°33'21" EAST TO A POINT OF REVERSE CURVATURE; THENCE RUN 175.68 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 385.00 FEET, A CENTRAL ANGLE OF 26°08'40" AND A CHORD OF 174.16 FEET WHICH BEARS SOUTH 04°03'44" WEST; THENCE RUN SOUTH 69°08'28" EAST, ALONG A NON-RADIAL LINE, A DISTANCE OF 95.69 FEET; THENCE RUN 19.26 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 04°24'47" AND A CHORD OF 19.25 FEET WHICH BEARS SOUTH 66°56'05" EAST; THENCE RUN NORTH 25°16'18" EAST, A DISTANCE OF 60.36 FEET TO A POINT ON A CURVE; THENCE RUN 209.43 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 215.00 FEET, A CENTRAL ANGLE OF 55°48'43" AND A CHORD OF 201.25 FEET WHICH BEARS NORTH 87°21'57" EAST; THENCE RUN NORTH 59°27'37" EAST, A DISTANCE OF 72.98 FEET; THENCE RUN SOUTH 89°58'54" EAST ALONG A LINE THAT IS PARALLEL WITH THE NORTH LINE OF AFORMENTIONED SECTION 16, A DISTANCE OF 311.76 FEET; THENCE RUN SOUTH 24°42'15" EAST, A DISTANCE OF 100.65 FEET; THENCE RUN SOUTH 00°51'17" WEST, A DISTANCE OF 265.38 FEET; THENCE RUN SOUTH 08°25'36" WEST, A DISTANCE OF 88.72 FEET; THENCE RUN SOUTH 31°58'25" WEST, A DISTANCE OF 160.15 FEET; THENCE RUN SOUTH 08°56'24" EAST, A DISTANCE OF 138.68 FEET; THENCE RUN SOUTH 07°28'17" WEST, A DISTANCE OF 210.18 FEET; THENCE RUN SOUTH 21°07'21" WEST, A DISTANCE OF 344.47 FEET TO A POINT ON THE EASTERLY EXTENSION OF THE NORTH RIGHT-OF-WAY OF BENT PINE DRIVE (A 50 FOOT WIDE ACCESS RIGHT-OF-WAY RECORDED IN OFFICIAL RECORDS BOOK 756, PAGE 2529); THENCE RUN SOUTH 88°34'46" WEST ALONG SAID EASTERLY EXTENSION A DISTANCE OF 229.09 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF THE BENT PINE DRIVE ACCESS RIGHT-OF-WAY; THENCE, RUNNING ALONG SAID NORTH RIGHT-OF-WAY, CONTINUE SOUTH 88°34'46" WEST, A DISTANCE OF 85.32 FEET TO A POINT OF CURVATURE; THENCE RUN 257.09 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 354.74 FEET, A CENTRAL ANGLE OF 41°31'23" AND A CHORD OF 251.50 FEET WHICH BEARS SOUTH 67°49'04" WEST; THENCE RUN SOUTH 47°03'23" WEST, A DISTANCE OF 23.63

EXHIBIT "A"

Property Initially Submitted

(continued)

FEET TO A POINT OF CURVATURE; THENCE RUN 159.77 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 425.86 FEET, A CENTRAL ANGLE OF 21°29'44" AND A CHORD OF 158.83 FEET WHICH BEARS SOUTH 57°48'15" WEST TO A POINT OF COMPOUND CURVATURE; THENCE RUN 158.90 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 397.95 FEET, A CENTRAL ANGLE OF 22°52'40" AND A CHORD OF 157.84 FEET WHICH BEARS SOUTH 79°59'27" WEST; THENCE RUN NORTH 88°34'13" WEST, A DISTANCE OF 268.76 FEET TO A POINT OF CURVATURE, THENCE RUN 277.20 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 481.65 FEET, A CENTRAL ANGLE OF 32°58'30" AND A CHORD OF 273.39 FEET WHICH BEARS NORTH 72°04'58" WEST; THENCE RUN NORTH 55°35'43" WEST A DISTANCE OF 65.14 FEET TO A POINT OF CURVATURE; THENCE RUN 160.47 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 267.66 FEET, A CENTRAL ANGLE OF 34°21'04" AND A CHORD OF 158.08 FEET WHICH BEARS NORTH 72°46'15" WEST; THENCE RUN NORTH 89°56'47" WEST, A DISTANCE OF 34.46 FEET TO AFORMENTIONED EAST RIGHT-OF-WAY LINE OF KING'S HIGHWAY; THENCE RUN NORTH 00°04'12" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE OF KING'S HIGHWAY, A DISTANCE OF 2316.95 FEET TO THE AFORMENTIONED NORTH LINE OF SECTION 16 AND THE POINT OF BEGINNING;

THE ABOVE DESCRIBED PARCEL LYING AND BEING IN INDIAN RIVER COUNTY, FLORIDA AND CONTAINING 79.20 ACRES, MORE OR LESS;

LESS AND EXCEPT:

"Tract J" and "Tract I" as described on that final plat of Bent Pine Preserve Phase 1 prepared by David M. Taylor, PSM, of Masteller, Moler and Taylor, Inc. and recorded in the public records of Indian River County, Florida at Plat Book 30, Pages 67.

EXHIBIT "B"**Expansion Property****LEGAL DESCRIPTION:**

COMMENCING AT THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 32 SOUTH, RANGE 39 EAST, INDIAN RIVER COUNTY, FLORIDA, RUN SOUTH 89°58'54" EAST, ALONG THE NORTH LINE OF SAID SECTION 16, A DISTANCE OF 40.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF KING'S HIGHWAY (STATE ROAD 505-A, COUNTY ROAD 613, AN 80 FOOT WIDE RIGHT-OF-WAY) AND THE POINT OF BEGINNING; FROM SAID POINT OF BEGINNING CONTINUE SOUTH 89°58'54" EAST, ALONG SAID NORTH LINE, ALSO BEING THE SOUTH LINE OF INDIAN RIVER FARMS WATER CONTROL DISTRICTS 60 FOOT WIDE RIGHT-OF-WAY (COMMONLY KNOWN AS 61ST STREET AND PECAN GROVE ROAD) A DISTANCE OF 941.92 FEET; THENCE DEPARTING SAID NORTH LINE, RUN SOUTH 00°04'12" WEST ALONG A LINE THAT IS PARALLEL WITH THE EAST RIGHT-OF-WAY LINE OF AFORMENTIONED KING'S HIGHWAY, A DISTANCE OF 333.60 FEET TO A POINT OF CURVATURE; THENCE RUN 82.48 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 90.00 FEET, A CENTRAL ANGLE OF 52°30'20" AND CHORD OF 79.62 FEET WHICH BEARS SOUTH 26°10'58" EAST; THENCE RUN SOUTH 52°26'08" EAST, A DISTANCE OF 173.30 FEET TO A POINT OF CURVATURE; THENCE RUN 89.51 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 85.00 FEET, A CENTRAL ANGLE OF 60°20'03" AND A CHORD OF 85.43 FEET WHICH BEARS SOUTH 22°16'07" EAST; THENCE RUN SOUTH 07°53'55" WEST, A DISTANCE OF 247.95 FEET TO A POINT OF CURVATURE; THENCE RUN 63.45 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 215.00 FEET, A CENTRAL ANGLE OF 16°54'30" AND A CHORD OF 63.22 FEET WHICH BEARS SOUTH 00°33'21" EAST TO A POINT OF REVERSE CURVATURE; THENCE RUN 175.68 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 385.00 FEET, A CENTRAL ANGLE OF 26°08'40" AND A CHORD OF 174.16 FEET WHICH BEARS SOUTH 04°03'44" WEST; THENCE RUN SOUTH 69°08'28" EAST, ALONG A NON-RADIAL LINE, A DISTANCE OF 95.69 FEET; THENCE RUN 19.26 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 04°24'47" AND A CHORD OF 19.25 FEET WHICH BEARS SOUTH 66°56'05" EAST; THENCE RUN NORTH 25°16'18" EAST, A DISTANCE OF 60.36 FEET TO A POINT ON A CURVE; THENCE RUN 209.43 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 215.00 FEET, A CENTRAL ANGLE OF 55°48'43" AND A CHORD OF 201.25 FEET WHICH BEARS NORTH 87°21'57" EAST; THENCE RUN NORTH 59°27'37" EAST, A DISTANCE OF 72.98 FEET; THENCE RUN SOUTH 89°58'54" EAST ALONG A LINE THAT IS PARALLEL WITH THE NORTH LINE OF AFORMENTIONED SECTION 16, A DISTANCE OF 311.76 FEET; THENCE RUN SOUTH 24°42'15" EAST, A DISTANCE OF 100.65 FEET; THENCE RUN SOUTH 00°51'17" WEST, A DISTANCE OF 265.38 FEET; THENCE RUN SOUTH 08°25'36" WEST, A DISTANCE OF 88.72 FEET; THENCE RUN SOUTH 31°58'25" WEST, A DISTANCE OF 160.15 FEET; THENCE RUN SOUTH 08°56'24" EAST, A DISTANCE OF 138.68 FEET; THENCE RUN SOUTH 07°28'17" WEST, A DISTANCE OF 210.18 FEET; THENCE RUN SOUTH 21°07'21" WEST, A DISTANCE OF 344.47 FEET TO A POINT ON THE EASTERLY EXTENSION OF THE NORTH RIGHT-OF-WAY OF BENT PINE DRIVE (A 50 FOOT WIDE ACCESS RIGHT-OF-WAY RECORDED IN OFFICIAL RECORDS BOOK 756, PAGE 2529); THENCE RUN SOUTH 88°34'46" WEST ALONG SAID EASTERLY EXTENSION A DISTANCE OF 229.09 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF THE BENT PINE DRIVE ACCESS RIGHT-OF-WAY; THENCE, RUNNING ALONG SAID NORTH RIGHT-OF-WAY, CONTINUE SOUTH 88°34'46" WEST, A DISTANCE OF 85.32 FEET TO A POINT OF CURVATURE; THENCE RUN 257.09 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 354.74 FEET, A CENTRAL ANGLE OF 41°31'23" AND A CHORD OF 251.50 FEET WHICH BEARS SOUTH 67°49'04" WEST; THENCE RUN SOUTH 47°03'23"

EXHIBIT "B"

Expansion Property
(continued)

WEST, A DISTANCE OF 23.63 FEET TO A POINT OF CURVATURE; THENCE RUN 159.77 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 425.86 FEET, A CENTRAL ANGLE OF 21°29'44" AND A CHORD OF 158.83 FEET WHICH BEARS SOUTH 57°48'15" WEST TO A POINT OF COMPOUND CURVATURE; THENCE RUN 158.90 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 397.95 FEET, A CENTRAL ANGLE OF 22°52'40" AND A CHORD OF 157.84 FEET WHICH BEARS SOUTH 79°59'27" WEST; THENCE RUN NORTH 88°34'13" WEST, A DISTANCE OF 268.76 FEET TO A POINT OF CURVATURE, THENCE RUN 277.20 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 481.65 FEET, A CENTRAL ANGLE OF 32°58'30" AND A CHORD OF 273.39 FEET WHICH BEARS NORTH 72°04'58" WEST; THENCE RUN NORTH 55°35'43" WEST A DISTANCE OF 65.14 FEET TO A POINT OF CURVATURE; THENCE RUN 160.47 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 267.66 FEET, A CENTRAL ANGLE OF 34°21'04" AND A CHORD OF 158.08 FEET WHICH BEARS NORTH 72°46'15" WEST; THENCE RUN NORTH 89°56'47" WEST, A DISTANCE OF 34.46 FEET TO AFORMENTIONED EAST RIGHT-OF-WAY LINE OF KING'S HIGHWAY; THENCE RUN NORTH 00°04'12" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE OF KING'S HIGHWAY, A DISTANCE OF 2316.95 FEET TO THE AFORMENTIONED NORTH LINE OF SECTION 16 AND THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL LYING AND BEING IN INDIAN RIVER COUNTY, FLORIDA AND CONTAINING 79.20 ACRES, MORE OR LESS.

LESS AND EXCEPT that portion of the above property described in Exhibit "A".

Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described on this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 17.

