

**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
PALM GARDEN LAKES**

THIS DECLARATION is made and executed on the date hereinafter set forth by **Palm Gardens Development, LLC**, a Florida limited liability company (the "Developer").

WITNESSETH:

WHEREAS, Developer is the Owner of certain Property more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as "Property," "Community" or "Subdivision"); and

WHEREAS, Developer has established a land use plan for the Community and desires to provide for the preservation of the values and amenities hereby established and as may be established for the Community, and to this end does hereby subject the Property to these covenants and restrictions (herein "Declaration") as hereinafter set forth; and

WHEREAS, Developer intends to develop the Property into a planned single family residential community incorporating detached single family (each, a "Single Family Residence") and townhomes (each, a "Townhouse Unit") to be known as "Palm Garden Lakes Subdivision" consisting of 77 single family residential Lots (Lots 22 through 98 as depicted on the Plat), and 21 residential townhomes (Lots 1 through 21 as depicted on the Plat) (herein "Townhome Property"); and

WHEREAS, Developer intends to develop the Property in accordance the terms of that certain Development Agreement Between The City of West Melbourne and Palm Gardens Development, LLC dated February 16, 2016 which is recorded in Official Records Book 7555, Page 372, Public Records of Brevard County, Florida ("Development Agreement"); and

WHEREAS, the provisions of this Declaration shall encumber the Property which shall be bound by these covenants, conditions and restrictions and the other Governing Documents (as hereinafter defined); and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities established as aforesaid to create a corporation known as Palm Garden Lakes Community Association, Inc., a Florida corporation not-for-profit, to which there has been and will be delegated and assigned certain powers and duties of ownership, operation, administration, maintenance and repair, the enforcement of the covenants, restrictions and easements contained herein and the collection and disbursement of the assessments and charges hereinafter provided.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, Developer hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, burdens and liens hereinafter set forth.

ARTICLE I **DEFINITIONS**

The following words and terms when used in this Declaration or any Supplemental Declaration hereto shall have the following meaning (unless the context shall clearly indicate otherwise):

Section 1. "Architectural Committee" or "Committee" shall mean a group of representatives of the Board or the Developer established to designate architectural controls within the Community as provided in Article VIII of these Declarations.

Section 2. "Articles" shall mean and refer to the Amended and Restated Articles of Incorporation of the Association which have been filed with the Florida Department of State, a copy of which is attached hereto as Exhibit "B."

Section 3. "Association" shall mean **Palm Garden Lakes Community Association, Inc.**, a Florida corporation not-for-profit, its successors and assigns, which shall be governed by the Articles of Incorporation and Bylaws.

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

Section 5. "Builder" shall mean a party who is in the business of purchasing Lots for the purpose of constructing a Home thereon for immediate resale.

Section 6. "Bylaws" shall mean and refer to the Bylaws of the Association which are attached hereto as Exhibit "C."

Section 7. "City" shall mean the City of West Melbourne, Florida.

Section 8. "Common Areas" shall mean Tracts A, B, C, E and F as shown on the Plat, and all other real property owned, or to be owned, by the Association for the common use and enjoyment of the Owners.

Section 9. "Common Expenses" means all expenses of any kind or nature whatsoever incurred by the Association, including, but not limited to, the following:

(a) Expenses incurred in connection with the ownership, maintenance, repair, improvement or operation of the Common Areas, including Private Drives, or any other property to be maintained by the Association as provided in this Declaration, including, but not limited to, utilities, taxes, assessments, insurance, operation, maintenance, repairs, improvements, and alterations; and

(b) Expenses of obtaining, repairing or replacing personal property in connection with any Common Areas or the performance of the Association's duties; and

(c) Expenses incurred in connection with the administration and management of the Association; and

(d) Common water, sewer, trash removal, and other common utility, governmental, or similar services for the Homes and Townhomes which are not separately metered or charged to the Owners, or which the Association determines to pay in common in the best interest of the Owners; and

(e) Expenses declared to be Common Expenses by the provisions of this Declaration, the Articles or Bylaws of the Association; and

(f) Expenses incurred in the maintenance and repair of any drainage easements or other matters as required by any governmental entity; and

(g) Such other expenses as declared to be Common Expenses by the Board.

Section 10. "County" shall mean Brevard County, Florida.

Section 11. "Developer" shall mean Palm Gardens Development, LLC, a Florida limited liability company, its successors and assigns

Section 12. "District" shall mean the St. John's Water Management District, its successors or assigns.

Section 13. "Governing Documents" shall mean and collectively refer to these Declarations, the Articles, the Bylaws and any rules and regulations adopted by the Association.

Section 14. "Home" shall mean a completely constructed Single Family Residence or Townhome Unit which is designated and intended for use and occupancy as a residential dwelling and which is subject to assessments under this Declaration and which term shall include any interest in land, improvements and other appurtenances to such Home.

Section 15. "Institutional Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, or any other lender generally recognized as an institutional type lender, or the Developer, holding a first mortgage on a Home.

Section 16. "Lot" shall mean and refer to those parcels of land upon which exists or will exist a Single Family Residence or a Townhome Unit, more specifically reflected as Lots 1 through 98 on the Plat of Palm Garden Lakes.

Section 17. "Member" shall mean and refer to every person or entity who is an Owner, and as such is entitled to membership in the Association.

Section 18. "Model Home" shall mean a fully constructed Home or Townhome Unit that prior to its sale by Developer, will be used by Developer to show prospective purchasers model residences that will be available for purchase.

Section 19. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot but excluding those having such interest merely as security for the performance of an obligation.

Section 20. "Plat" shall mean the Plat of Palm Garden Lakes Subdivision, recorded in Plat. Book 166, Page 1346 Public Records of Brevard County, Florida.

Section 21. "Private Drives" shall mean and refer to any portion of the Common Areas owned, or to be owned, by the Association and used for pedestrian and/or vehicular ingress and egress.

Section 22. "Public Area" shall mean and refer to all lands owned by the State of Florida, Brevard County, or the City of West Melbourne which, to the extent required by such governmental authority, are to be maintained by the Association.

Section 23. "Recreation Parcel" shall mean and refer to any portion of the Common Area on which the Association may build recreation or park facilities. Recreation and park facilities may be created, expanded or reduced by Developer without the consent of Owners or the Association.

Section 24. "Surface Water", "Surface Water Management System" or "Stormwater Management System" shall include and shall comprise a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, 40C-42, F.A.C.

Section 25. "Turnover" shall mean the date as more particularly provided in Article III, Section 3 of this Declaration and the Bylaws of the Association, after which the Developer no longer shall have the right to appoint a majority of the Board, and the Members shall assume control of the Association.

ARTICLE II **PROPERTY RIGHTS**

Section 1. **Owner's Easements of Enjoyment.** Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot and Home constructed thereon, subject to the following:

(a) All provisions of this Declaration, the Plat, and the Articles and Bylaws of the Association; and

(b) Rules and regulations adopted by the Association governing the use and enjoyment of the Common Areas; and

(c) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility which may be situated upon the Common Areas; and

(d) The right of the Association to suspend the right to use all or a portion of the Common Areas by a Member and/or Member's tenants, guests and invitees for any period during which any assessment against Member's Parcel remains unpaid, and to fine and/or suspend such Member's right to use all or a portion of the Common Areas for a reasonable period of time for any infraction of its published rules and regulations; provided, however, that a Member may not be denied access, ingress or egress to such Member's Parcel and such fine and/or suspension is imposed in accordance with the Bylaws. In the event of such suspension, a Member shall not be entitled to any abatement or reduction in assessments due the Association; and

(e) The right of the Association to suspend the voting rights of any Owner for any period during which any assessment against his Lot, Home or Townhome remains unpaid and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations; and

(f) The right of the Association to dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed upon in an instrument approved by two-thirds (2/3) of each class of Members of the Association; and

(g) The right of the Association to borrow money, to mortgage, pledge or hypothecate all of its real and personal property as security for money borrowed or debts incurred; and

(h) The right of the Association to make additions, alterations or improvements to the Common Areas and to purchase any personal property as it deems necessary or desirable from time to time. The cost and expense of any such additions, alterations or improvements to the Common Areas, or the purchase of personal property, shall be a Common Expense. In addition, so long as the Developer owns any portion of the Community, Developer shall have the right to make any additions, alterations or improvements to the Common Areas as may be desired by Developer in its sole and absolute discretion.

Section 2. **Delegation of Use.** Any Owner may delegate, in accordance with the appropriate Bylaws, his right of enjoyment to the Common Areas, to the members of his family, his tenants or contract purchasers who reside on the Lot.

Section 3. **Permitted Uses.** The Common Areas shall be restricted to the following uses:

(a) The Common Areas shall be restricted to uses as set out on the Plat for the benefit of the Owners, including as and for easements and rights-of-way for the construction, operation and maintenance of utility services and drainage facilities and shall not be used for any commercial or industrial use except as herein described.

(b) The Private Drives, if any, now and forever, shall be restricted such that they shall be used solely for the benefit of the Owners, their tenants, invitees and guests as and for the common access, ingress and egress and as an easement and right-of-way for the construction, operation and maintenance of utility services and drainage facilities. The Private Drives shall be kept free and clear of obstructions, except as is reasonable for construction, operation and maintenance of traffic and speed controls.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; BOARD; DURATION OF THE ASSOCIATION

Section 1. **Membership and Voting Rights.** Membership in the Association shall be established and terminated as set forth in the Articles. Each Member shall be entitled to the benefit of, and be subject to, the provisions of the Governing Documents. The voting rights of the Members shall be as set forth in the Articles.

Section 2. **Board.** The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

Section 3. **Duration of Association.** The duration of the Association shall be perpetual, as set forth in the Articles. In the event of termination, dissolution or final liquidation of the Association, the responsibilities for the operation and maintenance of the Surface Water or Stormwater Management System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and must be approved by the Surface Water or Stormwater Management District prior to such termination, dissolution or liquidation. Notwithstanding anything herein to the contrary, the City of West Melbourne is not required to take title to or to operate any of the improvements in Palm Garden Lakes Subdivision upon dissolution of the Association and this provision cannot be amended or terminated without the written consent of the City.

ARTICLE IV

COVENANT FOR MAINTENANCE

Section 1. **Responsibility.** The Association shall at all times maintain: (i) the Common Areas; (ii) any entrance features constructed on the Common Areas or on easements granted to the Association that run through the Community; (iii) any landscape easements or buffer areas contiguous to public rights-of-way which are indicated on the Plat for maintenance by the Association (the maintenance of all grassed and landscaped area includes mowing and edging the grass, trimming the hedges and trees, and fertilization); (iv) any community message board located on the Common Areas (Developer, for so long as it owns a Lot or Home may use

said message board for advertising the Lots or Homes it has for sale); (v) all roadways located in the Community not otherwise dedicated as public roads; (vi) any easements granted to the Association; (vii) the boundary wall, buffer areas and landscaping around the perimeter of the Community; (viii) costs associated with any Recreation Parcels, including construction, maintenance, improvement, or other charge related to said Recreation Parcels; and (ix) the Surface Water or Stormwater Management Systems, including but not limited to work within retention areas, drainage structures and drainage easements.

Each Owner shall be responsible, at the owner's sole cost and expense, for (i) the construction of a sidewalk on the Lot in accordance with all governmental requirements within three (3) years of recordation of the Plat; (ii) the planting of trees on the Lot in accordance with that certain Agreement for Tree Replacement Palm Garden Lakes Subdivision recorded in Official Records Book 7915, Page 2239, Public Records of Brevard County, Florida, a copy being attached hereto as Exhibit "D" hereof and for the maintenance of trees as set out in Article XIII, Section 14 of this instrument; (iii) the maintenance of the Lot in a neat and attractive manner, including the regular mowing and edging of grass, weeding and trimming of trees and shrubs; and (iv) the irrigation and fertilization of the grass and other plant material on the Lot.

Section 2. **Access.** For the purpose of performing the maintenance authorized by this Declaration, the Association, through its duly authorized agents or employees, shall have the right to enter upon any Lot(s) or Common Areas at reasonable hours. In the case of emergency repairs, access will be permitted at any time with only such notice as, under the circumstances, is practical.

ARTICLE V

SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM

Section 1. **Surface Water or Stormwater Management System Easement.**

(a) The plan for the development of the Property includes the construction of a Surface Water or Stormwater Management System, which may include, without limitation, retention lakes, swales, conduits, weirs, pipes, and/or berms across the rear of certain Lots and access easements to the Surface Water or Stormwater Management System as may be shown on the Plat or otherwise dedicated. Developer hereby reserves for itself, its successors and assigns, and grants to the Association and its designees, a perpetual, nonexclusive easement over and across all areas of the Surface Water or Stormwater Management System for the drainage of stormwater from the Property. Portions of the Surface Water or Stormwater Management System may be located entirely within Lots.

(b) **Surface Water or Stormwater Management System Maintenance.** Except as specifically set forth herein to the contrary, the Association shall be responsible for the maintenance, operation, and repair of the Surface Water or Stormwater Management System. Such maintenance shall include the exercise of practices which allow the Surface Water or Stormwater Management System to provide drainage, water storage, conveyance, or other capabilities in accordance with all the permits, statutes, rules, and regulations pertaining to surface water management, drainage, and water quality promulgated by the District, Florida Department of Environmental Protection, and all other local, state and federal authorities having

jurisdiction. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the Surface Water or Stormwater Management System to provide drainage, water storage, conveyance and other stormwater management capabilities as permitted by the District.

The Association shall maintain and control the water level and quality of the Surface Water or Stormwater Management System and the bottoms of any retention lakes or drainage easements which retain or hold stormwater on a regular basis. The Association shall have the power, as may be required by any applicable governmental entity, to control and eradicate plants, fowl, reptiles, animals, fish, and fungi in and on any portion of the retention lakes or drainage easement. The Owners of Lots adjacent to or containing any portion of the Surface Water or Stormwater Management System, shall maintain all shoreline vegetation and the grade and contour of all embankments to the water's edge (as it may rise and fall from time to time) irrespective of ownership of such land, keep the grass, plantings, and other lateral support of the embankments in a clean and safe manner and to prevent erosion and shall remove trash and debris as it may accumulate in the system, from time to time. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the Surface Water or Stormwater Management System to provide drainage, water storage, conveyance or other surface water capabilities as permitted by the District. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be consistent with the District Permit as originally issued or any modification that may be approved by the District. In order to provide adequate assurance that the Surface Water or Stormwater Management System will adequately function, the following maintenance procedures shall be followed:

(1) The Association shall inspect or cause to be inspected all inlets and control structures for vandalism, deterioration or accumulation of sand and debris.

(2) The Association shall assure that all debris or sand shall be removed from the inlets and control structures and any orifice system.

(3) The Association shall inspect and repair or cause to be inspected and repaired all skimmer boards around control structures as necessary.

(c) Surface Water or Stormwater Management System Maintenance Easement. The Association is granted a perpetual, nonexclusive easement for ingress and egress, at all reasonable times and in a reasonable manner, over and across the Surface Water or Stormwater Management System and over any portion of a Lot which is a part of the Surface Water or Stormwater Management System, or upon which a portion of the Surface Water or Stormwater Management System is located to operate, maintain, and repair the Surface Water or Stormwater Management System as required by the District Permit. Such right expressly includes the right to cut any trees, bushes or shrubbery, to make any gradings of soil, construct or modify and berms placed along the rear of any Lots as part of the Surface Water or Stormwater Management System, or take any other action reasonably necessary, following which Developer or the Association shall restore the affected property to its original condition as nearly as practicable; provided, however, that Developer or the Association shall not be required to replace or repair fences, walks, structures, landscaping, or other improvements which are removed or damaged. Developer or the Association shall give reasonable notice of its intent to take such

action to all affected Owners, unless, in the opinion of Developer or the Association, an emergency exists which precludes such notice. The right granted herein may be exercised at the sole option of Developer or the Association and shall not be construed to obligate Developer or the Association to take any affirmative action in connection therewith. The Owners of Lots adjacent to or containing a portion of the retention areas are granted a perpetual, nonexclusive easement for ingress and egress over and across the Surface Water or Stormwater Management System for the purpose of providing maintenance and erosion control to the embankments of such retention areas.

(d) Improvements. No docks, bulkheads, or other structures, permanent or temporary, shall be constructed on, over, or under any portion of the Surface Water or Stormwater Management System without the prior written consent of the Association and the approval of the Association or Developer, which consent or approval may be withheld for any reason. Any improvements to the Surface Water or Stormwater Management System permitted by the Association and installed by the Owner shall be maintained by such Owner in accordance with the maintenance provisions of this Declaration. All improvements to the Surface Water or Stormwater Management System may also require the prior written approval of the District. After receiving the approval of the Association, Owner shall be solely liable for obtaining all governmental permits necessary or convenient to construct such Improvement.

(e) Use and Access. Developer and the Association shall have the right to adopt reasonable rules and regulations from time to time in connection with the use of the surface waters of any portion of the Surface Water or Stormwater Management System, and shall have the right to deny such use to any person who, in the opinion of Developer or the Association, may create or participate in a disturbance or nuisance on any part of the Surface Water or Stormwater Management System. The use of such surface waters by the Owners shall be subject to and limited by the rules and regulations of Developer and the Association, all permits issued by governmental authorities, and any rights granted to other persons pursuant to the rules and regulations of Developer and the Association. No gas or diesel driven watercraft shall be operated on any portion of the Surface Water or Stormwater Management System, including retention lakes. Swimming is strictly prohibited in the retention lakes, if any.

(f) LIABILITY. NEITHER DEVELOPER NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY WHATSOEVER TO OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE RETENTION LAKES (IF ANY) AND DRAINAGE FACILITIES OR ANY PART OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM. EACH OWNER, FOR ITSELF AND ITS GUESTS, TENANTS, OR INVITEES, RELEASES DEVELOPER AND THE ASSOCIATION FROM ANY LIABILITY IN CONNECTION THEREWITH.

(g) Wetlands, Jurisdictional Land Swales. This Declaration is subject to the rights of the State of Florida over portions of the Property that may be considered wetlands, marshes, sovereignty or jurisdictional lands, and every Owner shall obtain any permit necessary prior to undertaking any dredging, filling, mowing, improving, landscaping, or removal of plant life existing on his Lot.

Further, certain Lots may be improved with swales constructed within Lots that are contiguous to any jurisdictional lands. The Owners thereof shall not remove or modify the swales without the consent of the applicable governmental entities. Any Owner who alters or otherwise modifies any swale, including mowing, shall repair and restore any such swale to be in full compliance with the applicable District Permits, at such Owner's sole cost and expense and shall indemnify and hold the Developer and the Association harmless from such violation.

(h) Rights of the District. Notwithstanding any other provisions contained elsewhere in this Declaration, the District shall have the rights and powers enumerated in this paragraph. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, and repair of the Surface Water or Stormwater Management System. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved in writing by the District. No person shall alter the drainage flow of the Surface Water or Stormwater Management System, including any buffer areas, swales, treatment berms or swales, without prior written approval of the District. Any amendment to this Declaration that alters the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have prior written approval of the District. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the Surface Water or Stormwater Management System must be assigned to and accepted by an entity approved in writing by the District.

(i) Indemnity. Developer may be required to assume certain duties and liabilities for the maintenance of the Surface Water or Stormwater Management System or drainage system within the Property under the Plat, permits, or certain agreements with governmental agencies. The Association further agrees that subsequent to the recording of this Declaration, it shall hold Developer harmless from all suits, actions, damages, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising out of any occurrence in, upon, at or from the maintenance of the Surface Water or Stormwater Management System occasioned in whole or in part by any action, omission of the Association or its agents, contractor, employees, servants, or licensees but not excluding any liability occasioned wholly or in part by the acts of the Developer, its successors or assigns. Upon completion of construction of the Surface Water or Stormwater Management System or drainage system Developer shall assign all its rights, obligations and duties thereunder to the Association. The Association shall assume all such rights, duties and liabilities and shall indemnify and hold Developer harmless therefrom.

(j) Developer's Rights. Developer, its successors and assigns shall have the unrestricted right, without approval or joinder of any other person or entity: (i) to designate the use of, alienate, release, or otherwise assign the easements shown on the Plat of the Property or described herein, (ii) to plat or replat all or any part of the Property owned by Developer, and (iii) to widen or extend any right of way shown on the Plat of the Property or convert a Lot to use as a right of way, provided that Developer owns the lands affected by such change. Owner of Lots subject to easement shown on the Plat of the Property shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under the easement area. The Owners of Lots subject to any

easements shall not construct any improvements on the easement areas, alter the flow of drainage, or landscape on such areas with hedges, trees, or other landscaping items that might interfere with the exercise of the easement rights. Any Owner who constructs any improvements or landscaping on such easement areas shall remove the improvements or landscape items upon written request of Developer, the Association, or the grantee of the easement.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. **Creation of a Lien and Personal Obligation for Assessments.** Each Owner of any Lot, Home or Townhome Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments to be established, together with interest, costs and reasonable attorneys' fees; provided however, annual and special assessments for any Lot owned by a licensed general contractor shall commence upon issuance of a Certificate of Occupancy for any Home constructed thereon and not upon acceptance of a deed for such Lot. Assessments, whether designated annual, special or otherwise, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with costs and reasonable attorneys' fees, shall also be the personal obligation of the person who is the Owner of such Lot, Home or Townhome at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

Section 2. **Establishment of Assessments.** Prior to the beginning of each fiscal year, the Board shall adopt a budget for such fiscal year which shall estimate all of the Common Expenses to be incurred by the Association during the fiscal year. The Board shall establish the assessment for Common Expenses for each Lot and shall notify each Owner in writing of the amount, frequency, and due dates of the assessment for Common Expenses. From time to time during the fiscal year, the Board may modify the budget, and pursuant to the revised budget or otherwise, the Board may, upon written notice to the Owners, change the amount, frequency and/or due dates of the assessments for Common Expenses. If the expenditure of funds for Common Expenses will exceed the funds produced by assessment for Common Expenses, the Board may make special assessments for Common Expenses, which shall be levied in the same manner as herein, and shall be payable in the manner determined by the Board, as stated in the notice of any special assessments for Common Expenses. In the event any assessments for Common Expenses are made payable in equal payments, as provided in the notice from the Association, such periodic payments shall automatically continue to be due and payable in the same amount and frequency unless and until: (i) the notice specifically provides that the periodic payments will terminate or change upon the occurrence of a specified event or date of the payment of the specific amount; or (ii) the Association notifies the Owner in writing of a change in the amount and/or frequency of the periodic payments. In no event shall any assessments for Common Expenses be due less than ten (10) days from the date of the notification of such assessments.

Section 3. **Uniformity and Commencement of Assessments.** Except as provided herein, Assessments for Common Expenses assessed against each Lot shall be equal. The assessment for Common Expenses as to each Lot owned by an Owner shall commence on the

first day of the full calendar month following the Owner's acquisition of title to said Lot. Except as provided herein, as to any Lot, Home, or Townhome Unit, including Model Homes, owned by the Developer, the annual assessment shall commence on the date that the Developer closes the sale of said Lot, Home, or Townhome to the first Owner acquiring title from the Developer.

Section 4. **Working Capital Contribution.** In addition to assessments for Common Expenses, each Owner, at the time of acquiring title to a Lot, shall pay to the Association a contribution to a working capital fund of the Association in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00), which shall be in addition to the Owner's responsibility for assessments for Common Expenses. The working capital fund shall be used by the Association for any expenses or otherwise as the Association shall determine from time to time and need not be restricted or accumulated.

Section 5. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to pay Common Expenses and to promote the recreation, health, safety and welfare of the residents in the Community, for the improvement of the Common Areas, for maintenance of Recreation Parcels and for the responsibilities set forth in Article IV hereof. Assessments shall also be used for the maintenance and repair of the Surface Water or Storm Water Management Systems including, but not limited to, work within retention areas, common drainage structures and drainage easements.

Section 6. **Effect on Developer.** Notwithstanding any provision that may be contained to the contrary in this Declaration, for as long as Developer (or any of its affiliates) is the Owner of any Lot, Developer shall have the option, in its sole discretion, to: (i) pay assessments on the Lots owned by it; (ii) pay assessments only on certain designated Lots (e.g., those under construction or those containing a Home for which a certificate of occupancy has been issued); or (iii) not pay assessments on any Lots (regardless of whether there is a Home thereon) and in lieu thereof, funding any resulting deficit in the Association's operations (exclusive of any reserves or capital improvements). The deficit to be paid under option (iii) above shall be the difference between: (i) actual operating expenses of the Association (exclusive of capital improvement costs and reserves); and (ii) the sum of all monies receivable by the Association (including, without limitation, assessments, interest, late charges, fines and incidental income) and any surplus carried forward from the preceding year(s). Developer may from time to time change the option under which Developer is making payments to the Association by written notice to such effect to the Association. If Developer at any time elects option (ii) above, it shall not be deemed to have elected option (iii) as to the Lots which are not designated under option (ii). When all Lots within the Community are sold and conveyed by Developer, neither the Developer, nor its affiliates, shall have further liability of any kind to the Association for the payment of assessments, deficits or contributions.

Section 7. **Special Assessments.** Special Assessments include, in addition to other Assessments designated as Special Assessments in this instrument and whether or not for a cost or expense which is included within the definition of "Common Expenses," those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring Improvements for, or on, the Common Areas or the cost (whether in whole or in part) of reconstructing or replacing such improvements. In addition, Special

Assessments may be levied against particular Lots and/or Owners to the exclusion of others. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any regular Assessment. Any Special Assessments assessed against Lots and the Owners thereof shall be paid by such Owners in addition to any other Assessments. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after Turnover shall require the affirmative assent of at least thirty percent (30%) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws; provided, however, the Board acting alone and without the consent of Members may levy Special Assessments for the following: i) in the event of a casualty loss to repair and replace Common Areas which are not insurable (e.g., landscaping, fencing, *etc.*), not insured, under insured, or where insurance coverage was denied by the insurance carrier after the casualty loss; ii) to obtain funds to cover insurance deductibles in the event of a casualty loss; or iii) capital improvements necessary or desirable for the sole purpose of preservation of, or prevention of damage to, Common Areas.

Section 8. Annual Assessments. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amounts of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Failure to fix the amounts of the annual assessments within the time period set forth above does not preclude the Board from fixing the assessment at a later date.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. The Association may delegate to a management company or financial institution responsibility for collection of assessments and the issuance of such certificates.

Section 9. Effect of Non-Payment of Assessment; Remedies of the Association. Any assessment not paid within fifteen (15) days of the due date shall be subject to a late charge of Fifty and No/100 Dollars (\$50.00). Any assessment not paid within thirty (30) days of the due date shall, in addition to the late charge above, bear interest from the due date at the rate of 18% per annum. The Association may, at its election, bring an action at law against the Owner personally obligated to pay the same and/or foreclosure of the lien against the Lot and any improvements thereon. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or by abandonment of his Lot, Home, or Townhome.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be a lien superior to all other liens save and except ad valorem tax liens and mortgage liens of an Institutional Mortgagee. The sale or transfer of any Lot pursuant to foreclosure, or any proceeding in lieu thereof of a mortgage meeting the above qualifications, shall extinguish the lien of such assessments as to payments which became due prior to such sale

or transfer pursuant to the foreclosure. No sale or transfer shall relieve such Lot Owner from personal liability for any assessments.

Section 11. **Exempt Property.** All properties dedicated to and accepted by a local public authority shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments, unless otherwise specifically made exempt by this Declaration.

ARTICLE VII

MAINTENANCE OBLIGATION OF LOT OWNERS

Section 1. **Single Family Residence Owner Responsibility.** Each Owner of a Single Family Residence shall be responsible for the repair, maintenance and/or replacement of all portions of the residential dwelling and other improvements on the Lot, except for the maintenance duties of the Association as hereinabove provided. Accordingly, each such Owner shall maintain, at such Owner's expense, the exterior and interior of the dwelling, including but not limited to, all doors, windows, glass, screens, electric panels, electric wiring, electric outlets and fixtures, heaters, hot water heaters, refrigerators, dishwashers and other appliances, drains, plumbing fixtures and connections and all air conditioning equipment. Further, each Owner shall maintain at its expense all structural, electrical, mechanical and plumbing elements thereof. Any Owner is strictly prohibited from performing any maintenance duties of the Association without prior consent from the Board.

Section 2. **Townhome Unit Owner Responsibility** Each Owner of a Townhome Unit shall be responsible for the repair, maintenance and/or replacement of all portions of the interior of the residential dwelling in the manner set out in Article XVI herein.

Section 3. **Lot Owner Liability.** Should any Owner either: (a) fail to perform its responsibilities as set forth herein; (b) cause any damage to any improvement which the Association has the responsibility to maintain, repair and/or replace; or (c) undertake unauthorized improvements or modifications to Owner's Home or to any other portion of Owner's Lot or to the Common Areas as set forth herein, then, in an such event, the Association, after approval of a majority vote of the Board and upon ten days' prior written notice to the Owner, shall have the right, through its agents and employees, to enter upon said Lot and remove unauthorized improvements or modifications. The cost thereof, plus reasonable overhead costs to the Association, shall be added to and become a part of the assessment to which the Lot is subject.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. **Required Approvals.** The Architectural Guidelines and Community-Wide Standards attached hereto as Exhibit "E," and by this reference incorporated herein, shall govern all improvements or alterations desired to be made to a Home or a Lot within the Community. An application for approval of any such improvements or alterations shall be filed with the Board which shall be accompanied by proposed plans and specifications showing the

nature, kind, shape, height, materials and location of any such improvements or alternations to be made. The Board, or any architectural control committee composed of three (3) or more representatives appointed by the Board ("Committee" or "Architectural Committee"), shall approve or disapprove any such application within thirty (30) days after submittal. If the application is not approved within such time, the proposed improvements or alterations shall be deemed automatically approved. Nothing contained herein shall relieve the Owner from the responsibility of obtaining proper governmental approvals and permits.

Section 2. **Waiver of Liability.** The Association or the designated Committee shall not be liable to any Owner in connection with the exercise or non-exercise of architectural control hereunder, or the approval or disapproval of any alteration, addition, improvement or change. Furthermore, any approval of plans or specifications by the Association or its designated Committee shall not be deemed to be a determination that such plans or specifications are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the Association, are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements. The Association or its designated Committee shall not be liable for any deficiency, or any injury resulting from any deficiency in such plans and specifications.

Section 3. **Developer Control.** Notwithstanding the foregoing, so long as Developer holds Class "B" voting rights, architectural control shall be vested in Developer and not the Association, and during such period all references contained in the subparagraph to the Association of the Committee shall be deemed to refer to Developer; provided, however, that at any time Developer may assign its right to architectural control to the Association by a written assignment.

Section 4. **Endorsement of Plans.** Approval of plans, specifications and location of improvements by the Architectural Committee shall be endorsed on both sets of said plans and specifications, and one set shall forthwith be returned by the Board or designated Committee to the person submitting the same. The approval of the Board or designated Committee of plans or specifications submitted for approval, as herein specified, shall not be deemed to be a waiver of the right to object to any of the features or elements embodied in such plans or specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots.

Section 5. **Construction to be in Conformance with Plans.** After such plans, specifications and other data submitted have been approved by the Board or designated Committee, no building, outbuilding, garage, fence, wall, retaining wall, or other improvements or structures of any kind shall be erected, constructed, placed, altered or maintained in the Community unless the same shall be erected, constructed or altered in conformity with the plans and specifications theretofore approved by the Board or designated Committee.

Section 6. **Deemed Approval.** After the expiration of one year from the date of completion of any structure or alteration, such structure or alteration shall be deemed to comply with all of the provisions of this Article VIII unless notice to the contrary shall have been recorded in the Public Records, or legal proceedings shall have been instituted to enforce such compliance.

Section 7. **Right of Entry.** Any agent or member of the Board or designated Committee may at any reasonable time enter and inspect any building or property if reasonably believed by such agent or member to be a violation of the covenants, restrictions, reservations, servitudes or easements of the Declaration.

Section 8. **Developer Exempt.** The Developer, Lots owned by Developer and improvements made by Developer shall be exempt from the application of this Article VIII and Developer is not obligated to comply with the provisions hereof.

ARTICLE IX **EASEMENTS**

Section 1. **Future Easements.** The Association shall have the right to grant permits, licenses and easements over, upon, across, under and through the Property for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Community, as so determined by the Board of the Association.

Section 2. **Access and Maintenance Easement.** Developer does hereby establish and create for the benefit of the Association and for all Owners from time to time subject to this Declaration, and does hereby give, grant and convey to each of the aforementioned, the following easements, licenses, rights and privileges:

(a) Right-of-way for vehicular or pedestrian ingress and egress by vehicles on over, under and across the Private Drives and all streets, roads and walks within the Common Areas (as they may be built or relocated in the future).

(b) Rights to connect to, maintain and make use of utility lines, wires, pipes, conduits, power, lights, telecommunication lines and equipment, gas, water, sewer, irrigation and drainage lines which may from time to time be in or along the streets and roads or other areas of the Common Areas, but only in accordance with applicable laws and regulations and the requirements of the applicable entities which regulate said utilities.

Section 3. **Reservation of Rights.** Developer reserves to itself, its designees, successors and assigns easements, licenses, and rights and privileges of a right-of-way in, through, over, under and across the Property for the construction, maintenance and repair of utility lines, wires, pipes, conduits, power, lights, cable television, telephone lines and equipment, gas water, sewer, irrigation and drainage lines and other improvements which may from time to time be in or along the streets and roads or other areas of the Community. Developer also reserves the right for itself, its designees, successors and assigns to continue to use the Community, and any Common Areas, Private Roads, roadways, sales offices, Model Homes, signs, flags, promotional material and parking spaces located on the Community, in its efforts to market Lots, Townhomes, and Homes in the Community. This paragraph may not be amended without the prior written consent of the Developer.

Section 4. **Maintenance Easement.** The Developer, by its execution of this Declaration, hereby grants to the Association and each Owner a nonexclusive perpetual easement

for the maintenance, repair and replacement of water and sanitary sewer lateral pipes servicing the Lot and improvements thereon, which lateral pipes are located within the Common Areas.

Section 5. Public Service and Utilities Easement. Developer hereby grants to delivery, pickup and fire protection services, police, building, zoning, code enforcement, health and sanitation, and other public service personnel and vehicles, United States mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by the Developer, its successors or assigns to service the Community, and to such other persons as the Developer from time to time may designate, the nonexclusive, perpetual right of ingress and egress over and across the Common Areas for the purposes of performing their authorized services and investigation.

Section 6. Encroachments on Lots of Common Areas. In the event any portion of any roadway, walkway, parking area, roof drainage system, roof, trellis, water lines, sewer lines, utility lines, sprinkler system, Home, or any other improvement as originally constructed by Developer or its designee, successor or assigns encroaches on any Lot or Common Areas, it shall be deemed that the Owner of such Lot or Common Areas has granted a perpetual easement to the Owner of the adjoining Lot, Common Areas, or the Association as the case may be, for continuing maintenance and use of such encroaching roadway, walkway, parking area, roof drainage system, roof, trellis, water line, sewer line, utility line, sprinkler system or other structure originally constructed by the Developer. The foregoing shall also apply to any replacements of any such roadway, walkway, parking area, roof drainage.

ARTICLE X

CONVEYANCE OF COMMON AREAS TO ASSOCIATION

Prior to that date that the Developer conveys the first Lot in the Community, Developer shall convey title to the Common Areas located in the Community to the Association, which shall be obligated to accept such conveyance.

ARTICLE XI

RIGHTS OF DEVELOPER

Section 1. Sales Office. For as long as the Developer owns any property affected by this Declaration, the Developer shall have the right to transact any business necessary to consummate sales of any said property or other properties owned by Developer, including but not limited to, the right to maintain model dwellings, have signs and flags on any portion of the Properties, employees in the offices, and show dwellings. Sales Office signs and all items pertaining to sales shall remain the property of the Developer.

Section 2. Developer Exempt. The Developer, and Lots, Homes or Townhomes owned by Developer and improvements made by Developer shall be exempt from the prohibition as to adding or altering the landscaping on any Lots.

Section 3. Common Areas. For so long as Developer owns any property affected by this Declaration, the Developer shall have the right to create and transfer in or out of the Community, any Common Areas which it deems in its discretion to be necessary, required or

otherwise a benefit to the Community as such and in the furtherance of the purposes, restrictions and covenants of this Declaration.

Section 4. **Access for Construction and Sales Purposes.** The Developer shall have a right to access an easement on, over, under and through all of the property described herein, or later added or annexed hereto, for construction and sales purposes, for so long as Developer owns any property included within the Community, or later added or annexed.

Section 5. **Indemnification** The Association covenants and agrees that it will indemnify, defend and hold harmless Developer, and any related partners, corporations, or other entities, parent corporations and their employees from and against any and all claims, suits, actions, causes of action and/or damages arising from any personal injury, loss of life and/or damage to property sustained on other property serving the Association, or resulting or arising out of the operation of the Association and improvements thereof and thereon, or resulting from or arising out of activities or operation of the Association, and from and against all costs, expenses, attorney's fees (including, but not limited to, all trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred by Developer arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments and/or decrees which may be entered thereon. The costs and expense of fulfilling this covenant of indemnification set forth in this paragraph shall be an Association Expense to the extent such matters are not covered by the Association's insurance. This Section shall not be amended unless such amendment is made by the Developer.

ARTICLE XII **ASSIGNMENT OF POWERS**

All or any part of the rights and powers and reservations of the Developer herein contained may be deeded, conveyed, or assigned to other persons or entities by an instrument in writing duly executed, acknowledged and recorded in the Public Records.

ARTICLE XIII **RESTRICTIONS**

The Property shall be used only for residential and related purposes as may more particularly be set forth in this Declaration any Subsequent Amendments thereto and in compliance with the Architectural Guidelines and Community-Wide Standards attached hereto as Exhibit "E." The Association, acting through the Board of Directors, shall have the standing and the power to enforce use restrictions and the Architectural Guidelines and Community-Wide Standards contained in this Declaration.

The Association, acting through its Board of Directors, shall have the authority to make, to enforce, to amend and to delete standards and restrictions governing the use of Lots and Common Areas, in addition to those contained herein, and to impose reasonable user fees for facilities, including, but not limited to, vehicle storage areas, pathway systems, lakes and parking facilities, if any. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, cancelled or modified in a general or special meeting of the Association by Members representing a majority of the total votes at such meeting.

The declaration or other creating document for any individual deed to a Lot may impose stricter standards than those contained in this Declaration. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

Section 1. Occupants Bound. All provisions of the Development Agreement, this Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners or Members, and which provide for sanctions against Owners or Members, shall also apply to all occupants of any Lot.

Section 2. Signs. No sign of any kind shall be erected by an Owner within the Property without the written consent of the Board of Directors and Developer; provided however, an Owner may permanently display a security company sign on the Lot. The Board of Directors or Developer, their agents, employees, nominees and assigns, shall have the right to erect signs without the consent of any Person whatsoever being required. "For Sale" signs may be erected by Developer or Developer's agent, however, "For Sale" signs erected by Owners are permitted only after the last Lot owned by the Developer or any Builder has been sold. Further, any such sign shall not exceed four feet (4') square or be taller than thirty-six inches (36"). Any sign erected without permission can be removed by the Association or Developer.

Section 3. Parking and Garages. No street parking shall be permitted between midnight and 7:00 am. Owners shall park only in their garages or in the driveways serving their Lot, or permitted spaces or designated areas on Common Areas as may be directed by the Association, in which parking may or may not be assigned, subject to such reasonable rules and regulations as the Board of Directors may adopt; provided however and notwithstanding anything herein to the contrary, each Lot shall be limited to no more than four (4) vehicles with two (2) vehicles parked inside the garage and two (2) vehicles parked in the driveway. In no event shall Owners or guests of Owners be permitted to park on roads or in Common Areas outside the designated areas, unless prior approval has been obtained from the Association. All commercial vehicles, recreational vehicles, buses, trucks, vans, tractors, mobile homes, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers must be parked entirely within a garage unless otherwise permitted by the Board. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets, in a reasonable number so as not to create a nuisance as determined by the Association; provided, however, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots, or the owner of any property located adjacent to the Property, may be removed by the Board and handed over to the appropriate state or county authority. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall at all times, whenever they are outside a Lot, be confined on a leash held by a responsible person. Dogs shall be walked only in those areas designated by the Association and shall not be allowed to foul the Common Areas.

Section 5. Nuisance. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No gatherings, parties, barbecues or the like may be held outside of the Member's dwelling which may interfere with the peaceful enjoyment of neighboring Lot Owners. No illegal, noxious, or offensive activity shall be carried on or conducted upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any property adjacent to the Lot. There shall not be maintained any plants, animals, or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unlawful, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No business or commercial activities shall be conducted from any Lot except as provided herein or pursuant to the development and sale of Lots.

Section 6. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent unclean, unhealthy, unpleasant, unsightly or unkempt conditions on his Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Gardening and landscaping on the Property are to be maintained in good order at all times. No basketball hoops or volleyball nets shall be erected in front yards nor on or adjacent to any Area of Common Responsibility.

Section 7. Antenna and Aerial. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those satellite dishes that are one (1) meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association is empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Association may also adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to certain specified locations, not visible from the street or neighboring properties, and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible dishes or antennae. Any permissible dishes or antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. This Section shall not apply to Developer.

Section 8. Clotheslines, Garbage Cans and Tanks. All clotheslines, garbage cans, recycle cans, above-ground tanks and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

Section 9. **Subdivision of Lot.** Until Turnover occurs, no Lot shall be platted, replatted, subdivided or its boundary lines changed, nor shall any portion of a Lot, less than the whole thereof, be sold, conveyed or transferred except with the prior written approval of the Developer, which approval may be granted or withheld in the sole discretion of Developer. Thereafter, no Lot shall be platted, replatted, subdivided or its boundary lines changed, nor shall any portion of a Lot, less than the whole thereof, be sold, conveyed or transferred except with the prior written approval of the Board of Directors. Developer, however, hereby expressly reserves the right to plat, re-plat, subdivide or change the boundary lines of any Lot(s) or other property owned by the Developer and the right to sell, convey or transfer any portion of a Lot less than the whole thereof, without notice to or the approval or consent of any Person whatsoever being required. Any such Subdivision, boundary line change, platting or replatting shall not be in violation of the applicable subdivision and zoning regulations. The Developer may subdivide a Lot in such manner that any portion of a Lot may be sold, transferred and conveyed by the Developer, together with the whole of an adjacent or contiguous Lot such that the whole of one Lot and a portion of another Lot which are owned in common by the same Owner may be combined, developed and improved by such Owner as a single unified home site. Once so combined, developed and improved as a single unified residential home site, no such combination of a Lot and a portion of another Lot or combination of two (2) or more Lots shall thereafter be resubdivided into more than one (1) single family residential home site. It is expressly provided that to the extent that any two (2) or more contiguous Lots or portions of contiguous Lots which share a common side boundary line are owned in common by a single Owner and are combined, developed and improved by the Owner thereof as a single unified residential home site, any utility easement reserved along the side Lot line of the Lot shown on the plat of the Lot lying adjacent to the boundary between the Lots so combined shall automatically be terminated, cancelled and extinguished without the requirement of any separate instrument and without the necessity for the joinder of the Developer, the Association or the City, provided and to the extent that any such utility easement is not then in use.

Section 10. **Guns.** The use of firearms within the Property is prohibited. The term "firearms" includes "B-B" guns, paint ball guns, pellet guns, and other firearms of all types, regardless of size. Use of crossbows, slingshots, and like items is similarly prohibited.

Section 11. **Swimming Pools.** No above ground swimming pools shall be erected, constructed or installed on any portion of the Property. No swimming pools shall be enclosed by any screen, screening or other enclosure or under a roof of any kind unless the same shall be located entirely within the required governmental or subdivision setbacks. No pools shall be constructed in positions where they are visible from roads or Common Areas unless approved by the Committee.

Section 12. **Irrigation.** All sprinkler and irrigation systems shall be subject to approval in accordance with Article VIII of this Declaration and shall draw water only from utilities or governmental entities furnishing water to the Property, except for such systems owned or operated by the Association or the Developer, which may use wells, or if required by Developer, shall use treated effluent.

Section 13. **Tents, Trailers, Temporary Structures, Basketball Hoops.** Owners or occupants shall not place upon a Lot or any part of the Property a basketball hoop, tent or trailer or any structure of a temporary nature, such as a shack or utility shed without obtaining prior written approval from the Committee.

Section 14. **Trees.** Until Turnover, no trees shall be removed from any Lot or any portion of the Property without the prior written consent of Developer and the Committee. Thereafter, no such trees shall be removed from any Lot or any portion of the Property without the prior written consent of the Committee. Such approval shall be reasonably given if such removal is necessary in connection with the location of the main residential dwelling(s) or other improvement on a particular Lot, or any portion of the Property, where the preservation of any tree would work a hardship or require extraordinary design measures in connection with the location of such dwelling or other improvement on the Lot, or any portion of the Property. Approval to remove trees shall be sought at the same time as construction plans are submitted to the Committee for approval. As used herein, the term "trees" shall mean and be defined as any tree three (3) inches or greater in diameter as measured one (1) foot above ground level.

Each individual lot shall be planted with a minimum of two (2) four inch (4") caliper native hardwood trees in accordance with the Tree Replacement Plans and the City's Manual of Acceptable Trees as adopted by Resolution Number 2009-10, as may be amended from time to time. Palms with a minimum of a four inch (4") caliper may be planted in place of the above-described hardwood trees at a 2:1 ratio. Such planting shall occur prior to the issuance of a certificate of occupancy for each individual lot. As there are 77 single family lots, and the required minimum planting described herein provides for four (4) tree mitigation credits per lot, a total of 308 mitigation credits will be provided at build out on the single family lots.

The trees shall remain perpetually on each Lot. In the event any of the trees die of natural causes, disease or neglect, or are destroyed by natural causes, they shall be replanted with the same or other approved type of tree to comply with these minimum requirements. Upon notification by the Association and/or the City of West Melbourne, each Owner shall have thirty (30) days to replant/replace said trees required under these restrictions.

Section 15. **Drainage.** All storm water from any Lot shall drain into or onto contiguous or adjacent street rights-of-way, drainage easements, retention areas, or Common Areas in the manner to be approved by Developer and the Committee, and in accordance with regulations promulgated by the District, Brevard County, and such other governmental agencies, as same may be modified or required by future regulation. Storm water from any Lot shall not be permitted or allowed to drain or flow unnaturally onto, over, under, across or upon any contiguous or adjacent Lot unless a drainage easement shall exist therefor. No Owner shall be permitted to alter the grade of or original drainage plan for any Lot, or change the direction of, obstruct or retard the flow of Surface Water drainage, nor shall any Owner alter or remove any drainage or environmental berm or swale on any lakefront, Lot or portion of the Property or divert any storm water drainage over, under, through or around any such berm or swale.

Section 16. Pesticides, Herbicides and Fertilizers. No pesticides, insecticides, fungicides, herbicides, fertilizers or other deleterious substances shall be applied within thirty (30) feet of any Lot boundary adjoining a lake or pond without the prior written approval from the Board of Directors. The Developer may apply pesticides, insecticides, fungicides, herbicides, fertilizers or other substances as they may deem appropriate within thirty (30) feet of a lake or pond without approval of any entity including the Board being required as such is allowed by applicable law.

Section 17. Walls. Other than those constructed by the Developer and/or the Association, no walls shall be erected unless approved in writing by the Committee. The height of all walls shall be subject to the control and approval of the Committee. All walls shall be constructed of brick, stucco or other materials that shall conform to the guidelines and specifications otherwise set forth by the Committee.

Section 18. Exterior Lighting. Exterior lighting or illumination of buildings, yards, parking areas, sidewalks and driveways on a Lot or other portions of the Property shall be designed and installed so as to avoid visible glare (direct or reflected) being seen from street and road rights-of-way, other Lots or Common Areas. All exterior lighting shall conform to the applicable provisions set forth by the Committee. Special exceptions to such specifications may be approved by and within the discretion of the Committee upon a showing of good cause.

Section 19. Enforcement. In the event of the violation of or the failure to comply with the requirements of this Article and the failure of the Owner of the affected Lot, within ten (10) days following written notice by the Association of such violation or non-compliance and the nature thereof, to cure or remedy such violation, then the Association or its duly appointed employees, agents or contractors shall have the right, but not the obligation, and an easement and license to enter upon the affected Lot or improvements thereon, without being guilty of any trespass therefor, for the purpose of curing or eliminating such violation, all at the sole expense of the Owner of the affected Lot. Such costs and expenses, together with an overhead expense to the Association of fifteen percent (15%) of the total amount thereof, shall be payable by the Owner of the affected Lot to the Association within ten (10) days after written notice to the Owner of the Lot of the amount thereof, which amount shall become a Lot Expense and Lot Assessment against said Lot. The Association may place a lien upon the Owner's Lot to recover such costs and expenses, as a charge on and running with the Property as provided herein, and the Association may seek all other legal and equitable remedies available to it.

Section 20. Building Envelope. Improvements on each Lot shall be confined within a building envelope which shall be established by the Developer at the time a Lot is sold to an Owner and shall be on file with the Committee. The Developer, until Turnover, and thereafter the Committee, may modify the building envelope of a Lot, if so requested by the Owner of that Lot, if in the sole opinion of Developer, until Turnover, and thereafter the Committee, it is necessary to make such modifications.

Section 21. Residential Dwellings. Aluminum or metal roofs are not permitted. Each residential dwelling constructed on the Property shall conform in all respects to the requirements set out in the Development Agreement.

Section 22. **Precedence Over Less Stringent Governmental Regulations.** In those instances where the Covenants, conditions and restrictions set forth in this Article set or establish minimum standards or limitations or restrictions on and in excess of governmental regulations, the Covenants, conditions and restrictions set forth in this Article shall take precedence and prevail over less stringent governmental regulations.

Section 23. **Lakes and Retention Areas.** Access to and use of lakes, if any, within the Property shall be governed and controlled by the Association. This shall not be deemed to imply that any of the Property will have access to lakes. There shall be no boating, swimming or other water sports conducted on any retention ponds within the Property. Fishing activities related to retention ponds shall be subject to the rules and regulations of the Association, and at the risk of the Person undertaking such activity.

Section 24. **Fences.** Other than those constructed by the Developer and/or the Association, no fences shall be erected unless approved in writing by the Committee. The height of all fences shall be subject to the control and approval of the Committee. All fences shall be made of white vinyl only.

ARTICLE XIV **INSURANCE AND CASUALTY LOSSES**

Section 1. **Insurance.** The Board of Directors, or its duly authorized agent, shall have the authority to procure insurance coverage for the Association, its directors, officers and Members collectively by virtue of their directorship, services as an officer, or membership in the Association, if the same shall be available at reasonable cost, as follows:

(a) The Association shall maintain casualty insurance covering the Common Areas (to the extent the Association does not own same, casualty insurance shall only be obtained by the Association if required by agreement of the Association or if deemed necessary to cover an interest of the Association in same), and other real and personal property owned by the Association, or that for which it is responsible to insure. The insurance coverage shall be in amounts and with deductibles determined by the Board.

Should any property which the Association is required to insure be damaged or destroyed by any act, omission or fault of a Member, or group of Members, nothing contained in this Declaration shall be deemed to prohibit the Association and/or its insurers from seeking any remedies it may have in law or in equity against the offending Member or group of Members.

(b) The Association shall maintain liability insurance covering any liability the Association, its directors, officers and Members by virtue of their directorship, services as an officer, or membership in the Association, may assume under common law or by contract, for claims for damages, for bodily injury, sickness, disease or death of any person (other than an employee of the Association) and for the loss, injury or destruction of tangible real or personal property, including loss of use resulting therefrom. The limits of coverage shall be determined by the Board.

Should any claim for damages for bodily injury, sickness, disease or death of any person or for loss, injury or destruction of tangible real or personal property be made against the Association, its directors, officers or Members by virtue of their directorship, services as an officer, or membership in the Association, which resulted from any act, omission or fault of a Member or group of Members, nothing contained in this Declaration shall be deemed to prohibit the Association and/or its insurers from seeking any remedies it may have in law or in equity against the offending Member or group of Members.

(c) The Association shall maintain workmen's compensation insurance in compliance with the laws of the State of Florida and any applicable federal laws covering the Associations' obligations to its employees.

Notwithstanding the foregoing, the Board may vary the scope of the coverage of the foregoing insurances in this Section 1, obtain other insurances as it determines appropriate, or delete any of the coverages of the foregoing insurance if it deems it appropriate.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any excess proceeds remaining after defraying such costs of repairs or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvement account.

(b) If it is determined, as provided in this Article, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, such proceeds shall be disbursed in the manner provided for excess proceeds in Section 2(a) of this Article. This is a covenant for the benefit of any Institutional Mortgagee of a Parcel and may be enforced by such Institutional Mortgagee.

Section 3. Repair and Reconstruction.

(a) Immediately after the damage or destruction by fire or other casualty to any property insured by the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the insured property to substantially the same condition in which it existed prior to the fire or other casualty, subject to any governmental requirements.

(b) Any damage or destruction to the insured property shall be repaired or reconstructed unless the Members representing at least seventy-five percent (75%) of the total votes of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or

reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available provided, however, such extension shall not exceed ninety (90) days. No mortgagee shall have the right to participate in the determination of whether the insured property damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the insured property shall be restored to its natural state and maintained by the Association or other entity or person responsible for its maintenance, as applicable, in a neat and attractive condition.

Section 4. Insufficient Insurance Proceeds. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment in an equal amount against all Members for the amount necessary to defray the cost of repair or reconstruction, less the insurance proceeds available. An additional Special Assessment for the cost of repair or reconstruction not covered by insurance proceeds may be made in like manner at any time during or within six (6) months following the completion of any repair or reconstruction under this Article.

Section 5. Individual Insurance. Each Owner covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structures in a manner consistent with the original construction. In the event that the structure is totally destroyed and the Owner determines not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and it shall thereafter be maintained in a neat and attractive manner by the Owner.

ARTICLE XV **NO PARTITION**

Except as is permitted in the Declaration or Subsequent Amendments thereto, there shall be no physical partition of the Common Areas or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property, nor from acquiring and disposing of real property as otherwise provided in this Declaration or required by any governmental agency or entity thereof, nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE XVI **PROVISIONS APPLICABLE TO TOWNHOME UNITS**

Section 1. General Statement of Intent. The following Articles which are made applicable to Townhome Units located within the Subdivision are in addition to all other

requirements imposed by this Declaration. A Townhome Unit may sometimes be referred to herein as a "Townhome."

Section 2. Authority of the Board to Create Sub-Association. The Board of Directors, in its discretion, may administer the requirements imposed upon Townhome Units or may authorize a sub-association or sub-committee of Townhome Owners (collectively, "Townhome Association" or "Townhome Board") to administer the requirements imposed by this Article.

Section 3. Townhome Unit Owner. All maintenance of a Townhome Unit, whether ordinary or extraordinary (including, without limitation, maintenance of screens, windows (both sides), hurricane shutters, all doors within or affording access to a Unit, that portion of the electrical (including wiring) and plumbing (including fixtures and connections), fixtures and outlets, appliances, carpets and other floor covering lying within the boundaries of the Townhome Unit, all interior services, and in general, the entire interior of the Unit), as well as air conditioning and heating equipment which services the Townhome Unit, shall be performed by the Owner of such unit at that Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. All maintenance repair and replacement activities shall be conducted by the Townhome Owner in the least obtrusive manner and without disturbing the rights of other Townhome Owners. The Townhome Association shall have the power and authority, but not the obligation, to perform or cause to be performed, the necessary maintenance repair or replacement required by any Townhome Owner and may charge the Townhome Owner for the cost thereof which shall be charged and collected as part of the Assessment attributable to such Townhome Unit.

ARTICLE XVII

ADDITIONS, ALTERATIONS OR IMPROVEMENTS

BY TOWNHOME OWNERS

No Townhome Owner shall make any structural addition, alteration or improvement in or to the Townhome Property or their Townhome Unit without the prior consent of the Townhome Board and the majority of the Townhome Owners. The Townhome Board shall have the obligation to answer any written request by a Townhome Owner for approval of such an addition, alteration or improvement in such Townhome Owner's Unit within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Townhome Board's consent. Once the Townhome Board has consented, then the proposed additions, alterations and improvements must be approved by a majority of the Townhome Owners. The proposed additions, alterations and improvements by the Townhome Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Townhome Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. A Townhome Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Townhome Owner, and their heirs, personal representatives, successors and assigns, as appropriate, to hold the Townhome Association and all other Townhome Owners harmless from any liability or damage to the Townhome Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and

insurance thereof from and after that date of installation or construction thereof as may be required by the Townhome Association. The Townhome Board may impose administrative charges for considering any such proposal.

ARTICLE XVIII

FUNCTIONS OF THE TOWNHOME ASSOCIATION

Section 1. **Board Action.** The affairs and decisions of the Townhome Association shall be conducted and made by the Townhome Board. The Townhome Owners shall only have such power or rights of approval or consent as is expressly specified herein, or in the Articles of Incorporation or Bylaws. In the absence of a specific requirement of approval by Townhome Owners, the Townhome Board may act on its own through its proper officers.

Section 2. **Powers and Duties.** The Townhome Association shall have all of the powers and duties granted or imposed upon it by this Townhome Declaration, including, without limitation.

(a) The Townhome Board shall from time to time, and at least annually, prepare a budget for the Townhome Association which shall include Assessments imposed upon Lots in the Subdivision as provided in this Declaration and which shall determine and include the amount of assessments payable by Townhome Owners to meet the additional expenses of the Townhome Property and shall allocate and assess such expenses among the Townhome Owners in equal shares and in accordance with the provisions of this Declaration, the Townhome Articles and the Townhome By-Laws. The Townhome Board shall, from time to time, impose special assessments for the purposes and in the manner herein provided. The Townhome Association shall advise all Townhome Unit Owners promptly in writing of the amount of the Assessment payable by them as determined by the Townhome Board and shall furnish copies of each budget, upon which assessments are based, to all Townhome Owners and, if requested in writing, to their respective mortgagees.

(b) The irrevocable right to have access to each Townhome Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any property maintained by the Townhome Association or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Townhome Property or to any other Townhome Unit or Units.

(c) To make and collect assessments imposed upon Townhome Owners pursuant to this Declaration and to remit same to the Association. The Townhome Association shall enforce all provisions of the Master Declaration in conjunction with the Master Association.

(d) The power to make and collect Assessments and other charges against Townhome Owners.

(e) The duty to maintain accounting records according to good accounting practices which shall be open to inspection by Townhome Owners or their authorized representatives at reasonable times.

(f) The power and right to contract for the management and maintenance of the Townhome Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Townhome Association in carrying out its powers and duties by performing such functions such as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and maintenance, repair and replacement, property required to be maintained by the Townhome Association with funds as shall be made available by the Townhome Association for such purposes. The Townhome Association and its officers shall, however, retain at all times the powers and duties granted by this declaration, including but not limited to the making of assessments, promulgation of rules and the execution of contracts on the Townhome Association's behalf.

(g) The power to borrow money, execute promissory notes and other evidence of indebtedness and to give a security, therefore mortgages and security interests in property owned by the Townhome Association, provided that such actions are approved by a majority of the entire membership of the Townhome Board and of the Townhome Units represented at a meeting, at which a quorum has been obtained or by such greater percentage of the Townhome Board or Townhome Owners as may be specified in the By-Laws with respect to certain borrowing.

(h) The power to adopt and amend rules and regulations covering the details of the operation and use of the Townhome Property.

(i) The power to employ personnel (part-time or full-time).

In the event of conflict between the powers and duties of the Townhome Association or the terms and provisions of this Declaration, exhibits attached hereto or otherwise, this Declaration shall take precedence over the Articles, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time.

ARTICLE XIX

COLLECTION OF TOWNHOME ASSESSMENTS

Section 1. **Creation of the Lien and Personal Obligation of Assessments.** Each Townhome Owner by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Townhome Association or its agent, Assessments which shall include: (1) Commencement Assessments; (2) Administrative Assessments; (3) Periodic Assessments; and (4) Special Assessments for capital improvements. All assessments, together with late fees, interests, costs and reasonable attorney's fees for collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees for collection thereof, shall also be the personal obligation of the person who was the Townhome Unit Owner of such Property at the time when the assessment fell due, and all subsequent Townhome Unit Owners, until paid.

Section 2. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Townhome Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 3. Uniform Rate of Assessment. All Assessments must be fixed at a uniform rate for all Townhome Units and each Townhome Unit Owner.

Section 4. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for in this Article shall commence as to all Townhome Units on the date (which shall be the first day of the month) fixed by the Townhome Board to be the date of commencement. Each subsequent annual assessment shall be imposed for the year beginning January 1 and ending December 31. The annual assessments shall be payable in advance in monthly installments, or in annual, semi-annual, or quarterly installments if so determined by the Townhome Board. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Townhome Board shall fix the amount of the annual assessment against each Townhome Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the assessments shall be sent to every Townhome Owner subject thereto. The Townhome Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Townhome Association setting forth whether the assessments on a specified Townhome Unit have been paid. A properly executed certificate of the Townhome Association as to the status of assessments on a Townhome Unit is binding upon the Townhome Association as of the date of its issuance.

Section 5. Guarantee of Assessment by Developer. The Developer may elect not to pay the annual assessment on each such Townhome Unit. Should Developer so elect not to pay the assessment, Developer shall pay all costs incurred by the Townhome Association in accomplishment of the purposes set forth herein, in excess of the total amount collected by the Townhome Association through all Assessments. Developer may at any time revoke this election and place itself in the position of being obligated to pay the full impact of all assessments for each Townhome Unit owned by the Developer at the time said revocation is presented to the Association.

Section 6. Effect on Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date shall bear a late fee of Twenty-Five Dollars (\$25.00) and interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obliged to pay the same or foreclose the lien against the Townhome Unit Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his or her Townhome.

Section 7. Assumption of Delinquent Assessments by Successors. The personal component of the obligation for delinquent assessments shall not pass to the Townhome Unit Owner's successors in title unless expressly assumed by them. Irrespective of the assumption of

the personal component of the obligation by any successors in title, the lien for delinquent assessments shall continue to be a lien upon the Townhome Unit Owner until such time as it is fully paid.

Section 8. **Subordination of the Lien to Mortgages** The lien of the Assessments provided for herein shall be a lien superior to all other liens except real estate tax liens and the lien of any mortgage to any Institutional Lender which is now or hereafter placed upon any Townhome Unit Owner subject to assessment as long as such mortgage lien is a first lien against the property encumbered thereby. Provided, however, that any such mortgagee, when in possession, or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all person claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid assessments which cannot be collected as a lien against any Townhome Unit Owner by reasons of the provisions of this section shall be deemed to be an assessment divided equally among, and payable by a lien against all Townhome Unit Owners subject to assessment by the Association, including the Townhome Unit Owners as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Notwithstanding any contrary provision hereof, no Institutional Lender acquiring title to a Townhome Unit Owner through foreclosure or conveyance in lieu of foreclosure, and no purchaser at foreclosure sale, and no persons claiming by, through or under such Institutional Lender or purchaser, shall be personally obligated to pay assessments that accrue prior to the Institutional Lender's or the foreclosure purchaser's acquiring title.

ARTICLE XX

TOWNHOME INSURANCE PROVISIONS

Insurance covering portions of the Townhome Property shall be governed by the following provisions:

Section 1. **Purchase.** All insurance policies described herein covering portions of the Townhome Property shall be purchased by the Townhome Association and shall be issued by an insurance company authorized to do business in Florida and which, in the case of hazard insurance, has either a financial rating in Best's Financial Insurance Reports of Class VI or better or a financial rating therein of Class V and a general policyholder's rating of at least "A."

(a) Each insurance policy, the agency and company issuing the policy and the insurance trustee hereinafter described (the "Insurance Trustee") shall be subject to the approval of the Primary Institutional First Mortgagees in the first instance.

(b) The named insured shall be the Townhome Association, individually, and as agent for Townhome Owners of Townhome Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Townhome Owners and their mortgagees shall be additional insureds.

(c) All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee. All policies and endorsements thereto shall be retained by the Townhome Association with copies thereof being provided to the Insurance Trustee.

(d) One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Townhome Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Townhome Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

(e) Townhome Owners may obtain insurance coverage at their own expense and in their own discretion upon the property lying within the boundaries of their Townhome Unit, including, but not limited to, their personal property (except as covered in paragraph 10.2.1 below), and for their personal liability and living expense and for any other risks.

Section 2. **Coverage.** The Townhome Association shall maintain insurance covering the following:

(a) The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Townhome Property initially installed in accordance with the original plans and specifications therefor, and replacements thereof of like kind or quality, but excluding all floor, wall and ceiling coverings and all furniture, furnishings and other personal property owned, supplied or installed by Townhome Owners or tenants of Townhome Owners and excluding all other alterations, capital improvements and betterments made by Townhome Owners or such tenants) together with all service machinery contained therein (collectively the "Insured Property"), shall be insured in an amount not less than one hundred percent (100%) of the insurable value thereof (based on replacement cost), excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Townhome Board. Such coverage shall afford protection against:

(1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

(2) Such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such additional coverage as shall be required by the Townhome Board, and with coverage of not less than One Million Dollars (\$1,000,000.00) per each accident or occurrence, for personal injury and/or property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.

(c) Workmen's compensation and other mandatory insurance when applicable.

(d) Flood insurance, if required by the Primary Institutional First Mortgagee or if the Association so elects.

(e) Such other insurance as the Townhome Board of the Townhome Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's standard right to: (i) subrogation against the Townhome Association and against the Townhome Owners individually and as a group; (ii) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk; and (iii) avoid liability for a loss that is caused by an act of the Townhome Board, or by a member of the Townhome Board or by one or more Townhome Owners.

Section 3. Additional Provisions. All policies of physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the named insureds, including all mortgagees of Townhome Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Townhome Board shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this paragraph.

Section 4. Premiums. Premiums upon insurance policies purchased by the Townhome Association shall be paid by the Townhome Association and made a part of the Assessment against Unit Owners as herein provided.

Section 5. Insurance Trustee; Share of Proceeds. All insurance policies obtained by the Townhome Association shall be for the benefit of the Townhome Association, the Townhome Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Townhome Board and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the county. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee (if appointed) shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Townhome Owners and their respective mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

(a) Proceeds on account of damage to the Insured Property shall be held in undivided, but equal shares for each Townhome Owner, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Townhome Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.

(b) Proceeds on account of damage solely to Townhome Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Townhome Association in its sole discretion) (collectively the "Optional Property"), if any, collected by reason of optional insurance which the Townhome Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Townhome Owners of Townhome Units or of other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Townhome Owner, which cost and allocation shall be determined in the sole discretion of the Townhome Association.

(c) No mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Townhome Owner and mortgagee pursuant to the provisions of this Declaration.

Section 6. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) First, all expenses of the Insurance Trustee shall be paid or provided for.

(b) If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Townhome Owners, remittances to Townhome Owners and their mortgagees being payable jointly to them.

(c) If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial Townhome Owners as provided in paragraph 10.5.1 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial Owners.

(d) In making distributions to Townhome Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Townhome Association made by its President and Secretary as to the names of the Townhome Owners and their mortgagees and their respective shares of the distribution.

Section 7. Townhome Association as Agent. The Townhome Association is hereby irrevocably appointed as agent and attorney-in-fact for each Townhome Owner and for each Townhome Owner of a mortgage or other lien upon a Townhome Unit and for each owner of any other interest in the Townhome Property to adjust all claims arising under insurance policies purchased by the Townhome Association and to execute and deliver releases upon the payment of claims.

Section 8. **Townhome Owners' Personal Coverage.** Unless the Townhome Association elects otherwise, the insurance purchased by the Townhome Association shall not cover claims against a Townhome Owner due to accidents occurring within a Townhome Unit, nor casualty or theft loss to the contents of an Owner's Townhome Unit. It shall be the obligation of the individual Townhome Owner, if such Townhome Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Townhome Association.

Section 9. **Benefit of Mortgagees.** Certain provisions in this Article XX entitled "Insurance Provisions" are for the benefit of mortgagees of Townhome Units and may be enforced by such mortgagees.

Section 10. **Insurance Trustee Not Appointed.** The Townhome Board shall have the option in its discretion of appointing an Insurance Trustee. Anything to the contrary in this Declaration notwithstanding, if the Townhome Association fails or elects not to appoint an Insurance Trustee, the Townhome Association shall perform directly all obligations imposed upon the Insurance Trustee by this Declaration.

ARTICLE XXI

TOWNHOME PROPERTY RECONSTRUCTION OR REPAIR

AFTER FIRE OR OTHER CASUALTY

Section 1. **Determination to Reconstruct or Repair.** In the event of damage to or destruction of the Townhome Property as a result of fire or other casualty) is destroyed or substantially damaged the Townhome Association shall arrange for the prompt repair and restoration of the Insured Property and the Insurance Trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If seventy-five percent (75%) or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Townhome Association with respect thereto) is substantially damaged or destroyed and if Townhome Owners owning eighty percent (80%) of the Townhome Units duly and promptly resolve not to proceed with the repair or restoration thereof and the Institutional First Mortgagees holding mortgages on at least fifty-one percent (51%) of the Townhome Units subject to mortgages held by Institutional First Mortgagees approve such resolution, the Townhome form of ownership shall be terminated and shall thereafter be subject to an action for partition instituted by the Townhome Association, any Townhome Owner, mortgagee or lienor, as if the Townhome Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Townhome Owners in proportion to their respective interests (with respect to proceeds held for damage to the Insured Property lying within the boundaries of the Townhome Unit), and among affected Townhome Owners in proportion to the damage suffered by each such affected Townhome Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Townhome Unit); provided, however, that no payment shall be made to a Townhome Owner until there has first been paid off out of the Townhome Owner's share of such fund all mortgages and liens on their Townhome Unit in the order of priority of such mortgages and liens. Whenever in this paragraph the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days

from the date the Insurance Trustee notifies the Townhome Board and Townhome Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee notifies the Townhome Board and the Townhome Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee may rely upon a certificate of the Townhome Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

Section 2. Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements; or if not, then in substantial accordance with the plans and specifications approved by the Townhome Association.

Section 3. Special Responsibility. If the damage is only to those parts of the Townhome Property for which the responsibility of maintenance and repair is that of the respective Townhome Unit Owners, then the Townhome Unit Owners shall be responsible for all necessary reconstruction and repair (unless insurance proceeds are held by the Townhome Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Townhome Association shall have the responsibility to reconstruct and repair the damaged Townhome Property, provided the respective Townhome Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Townhome Unit-by-Townhome Unit basis, as determined in the sole discretion of the Townhome Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Townhome Association.

Section 4. Estimate of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Townhome Association has the responsibility of reconstruction and repair, the Townhome Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

Section 5. Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Townhome Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Townhome Owners in sufficient amounts to provide funds for the payment of such costs.

Section 6. Construction Funds. The funds for payment of the costs of reconstruction and repair, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Townhome Association from Assessments against Townhome Owners, shall be disbursed in payment of such costs in the following manner:

(a) If the total Assessments made by the Townhome Association in order to provide funds for payment of the costs of reconstruction and repair which are the responsibility of the Townhome Association are more than Fifty Thousand Dollars (\$50,000.00), then the sums paid upon such Assessments shall be deposited by the Townhome Association with the Insurance

Trustee. In all other cases, the Townhome Association shall hold the sums paid upon such Assessments and disburse the same in payment of the costs of reconstruction and repair.

(b) The proceeds of insurance collected on account of a casualty, and the sums collected from Townhome Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(1) If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Townhome Association is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the Townhome Board of the Townhome Association; provided, however, that upon written request to the Insurance Trustee by the Primary Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

(2) If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Townhome Association is more than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs in the manner contemplated herein, but then only upon the further approval of an architect qualified to practice in Florida and employed by the Townhome Association to supervise the work.

(3) If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Townhome Association, this balance may be used by the Townhome Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Townhome Owner bears to the total of such estimated costs to all affected Townhome Owners, as determined by the Townhome Board; provided, however, that no Townhome Owner shall be paid an amount in excess of the estimated costs of repair for the Townhome Owner's portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Townhome Owners and their mortgagees jointly as elsewhere herein contemplated.

(4) It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable to any mortgagee.

(5) Notwithstanding the provisions herein, the Insurance Trustee (if appointed) shall not be required to determine whether or not sums paid by Townhome Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Townhome Association alone or upon the additional approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Townhome Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

Section 7. **Benefit of Mortgagees.** Certain provisions in this Article are for the benefit of mortgagees of Townhome Units and may be enforced by any of them.

ARTICLE XXII CONDEMNATION OF TOWNHOME PROPERTY

Section 1. **Deposit of Awards with Insurance Trustee: Authority of Townhome Association.** The taking of portions of the Townhome Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Townhome Owners, the Townhome Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Townhome Board of the Townhome Association, the amount of that award shall be set off against the sums hereafter made payable to that Owner, or the Townhome Association may institute a lawsuit against such Townhome Owner to collect such sums. The Townhome Association shall represent the Townhome Owners in any condemnation proceedings relating to any part of the Townhome Property and in negotiations, settlements and agreements with the condemning authorities for the acquisition of any part of the Townhome Property.

Section 2. **Determination Whether to Continue Townhome Form of Ownership.** Whether the Townhome form of ownership will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain shall also be deemed to be a casualty.

Section 3. **Disbursement of Funds.** If the Townhome form of ownership is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Townhome form of ownership is terminated after a casualty. If the Townhome form of ownership is not terminated after condemnation, the size of the Townhome Property will be reduced and the property damaged by the taking will be made useable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the

manner provided for disbursement of funds by the Insurance Trustee after a casualty, or as elsewhere in this Article XXII specifically provides.

Section 4. Townhome Unit Reduced but Habitable. If the taking reduces the size of a Townhome Unit and the remaining portion of the Townhome Unit can be made habitable (in the sole opinion of the Townhome Association), the award for the taking of a portion of the Townhome Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Townhouse Declaration:

(a) The Townhome Unit shall be made habitable, if the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the Townhome Owner of the Townhome Unit.

(b) The balance of the award in respect of the Townhome Unit, if any, shall be distributed to the Townhome Owner and to each mortgagee of the Townhome Unit, the remittance being made payable jointly to the Townhome Owner and such mortgagees.

(c) If the floor area of the Townhome Unit is reduced by the taking, the percentage representing the share in the Assessments shall be reduced by multiplying the percentage of the applicable Townhome Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Townhome Unit after the taking and the denominator of which shall be the area in square feet of the Townhome Unit before the taking. The shares of all Townhome Owners in the Assessments shall then be restated as follows:

(1) Add the total of all percentages of all Townhome Units after reduction as aforesaid (the "Remaining Percentage Balance"); and

(2) Divide each percentage for each Townhome Unit after reduction as aforesaid by the Remaining Percentage Balance. The result of such division for each Townhome Unit shall be the adjusted percentage for such Townhome Unit.

Section 5. Townhome Unit Made Uninhabitable. If the taking is of the entire Townhome Unit or so reduces the size of a Townhome Unit that it cannot be made habitable (in the sole opinion of the Townhome Association), the award for the taking of the Townhome Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Townhome:

(a) The awards shall be paid: (i) to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Townhome Unit which is not so habitable; (ii) to the Townhome Association for any due and unpaid Assessments; and (iii) jointly to the affected Townhome Owners and other mortgagees of their Townhome Units as their interests may appear. In no event shall the total of such distributions in respect of a specific Townhome Unit exceed the market value of such Townhome Unit immediately prior to the taking. The balance, if any, shall be paid to the Townhome Association.

(b) The remaining portion of the Townhome Unit, if any, shall become part of the Townhome Property and shall be placed in a condition allowing, to the extent possible, for

use by all of the Townhome Owners in the manner approved by the Townhome Board; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Townhome Property.

(c) The shares in the Assessments appurtenant to the Townhome Units that continue as part of the Townhome shall be adjusted to equitably distribute the shares in the Assessments among the reduced number of Townhome Owners (and among reduced Townhome Units).

(d) If the balance of the award (after payments to the Townhome Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Townhome Unit, the additional funds required for such purposes shall be raised by Assessments against all of the Townhome Owners who will continue as Owners of Townhome Units after the changes in the Townhome effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

(e) If the market value of a Townhome Unit prior to the taking cannot be determined by agreement between the Townhome Owner and mortgagees of the Townhome Unit and the Townhome Association within thirty (30) days after notice of a dispute by any affected party, such value shall be determined by Arbitration in accordance with the then existing rules of the American Arbitration Association, except that the Arbitrators shall be three (3) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Townhome Unit. A judgment upon the decision rendered by the Arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of Arbitration proceedings shall be assessed against all Townhome Owners, including Townhome Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Townhome Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

Section 6. **Taking of Townhome Property.** Awards for the taking of Townhome Property shall be used to render the remaining portion of the Townhome Property useable in the manner approved by the Townhome Board; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Townhome Property. The balance of the awards for the taking of Townhome Property, if any, shall be distributed to the Townhome Owners in the shares in which they own the Townhome Property after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Townhome Unit, the distribution shall be paid jointly to the Townhome Owner and the mortgagees of the Townhome Unit.

Section 7. **Amendment of Townhome Declaration.** The changes in Townhome Units, in the Townhome Property and in the ownership thereof that are effected by the taking shall be evidenced by an amendment to this Townhome Declaration that is only required to be approved by, and executed upon the direction of the Townhome Board.

ARTICLE XXIII
GENERAL PROVISIONS

Section 1. **Execution of Documents Required by the City.** The Developer's plan for the development of the Community may require from time to time the execution of certain documents required by the City. To the extent that said documents require the joinder of any or all Owners in the Community, each of said Owners, by virtue of his acceptance of a deed to his Lot, does irrevocably give and grant to the Developer, or any of its officers individually, full power of attorney to execute said documents as his agent and in his place and stead.

Section 2. **Enforcement.** The Developer, Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Court costs and reasonable attorneys' fees for any proceeding to enforce this Declaration, including any appeal therefrom, shall be borne by the Owner(s) against whom the suit has been filed. Failure by the Developer, Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. **Amendment.** The process of amending or modifying this Declaration shall be as follows:

(a) Until Turnover, all amendments or modifications shall only be made by Developer without the requirement of the Association's consent or the consent of the Owners so long as such amendments or modifications do not materially impair the common plan of development of Palm Garden Lakes; provided, however, that the Association shall, forthwith upon request of Developer, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Developer shall, from time to time, request. Notwithstanding the foregoing, until Turnover, any amendments to this Declaration (including without limitation, any amendment which results in the annexation of additional lands into the Property, the merger or consolidation of the Association with any other property owners association, the dedication of any part of the Common Area for public use, and the conveyance, mortgaging, or encumbrance of any part of the Common Area) must have prior written approval of FHA or VA in accordance with the HUD's regulations, if FHA or VA is the insurer of any mortgage encumbering a Lot.

(b) After Turnover, this Declaration may be amended by: (i) the consent of the Owners owning two-thirds (2/3) of all Lots; together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners owning two-thirds (2/3) of the Lots may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws and evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

(c) Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Developer alone until Turnover and by the Board thereafter and without the need of consent of the Owners.

(d) Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Developer, the Association or of any Institutional Mortgagee under the Governing Documents without the specific written approval of such party affected thereby. Finally, notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Article XI and any such amendment shall be deemed to impair and prejudice the rights of Developer.

(e) A true copy of any Amendment to this Declaration shall be sent certified mail by the Association to Developer and to all Institutional Mortgagees holding a mortgage on any portion of the Property requesting notice. The amendment shall become effective upon the recording amongst the Public Records of the County of said amendment to this Declaration which sets forth any amendment or modification to this Declaration.

(f) Notwithstanding anything contained herein to the contrary, Developer may, without the consent of any Owners (and subject to FHA or VA approvals as set forth above), file any amendment(s) to this Declaration which may be required by an Institutional Mortgagee for the purpose of satisfying said Institutional Mortgagee's development criteria or such other criteria as may be established by such Institutional Mortgagee's secondary mortgage market purchasers, including, without limitation, the FNMA and the FHLMC; provided, however, any such filed amendment(s) must be in accordance with any applicable rules, regulations and other requirements promulgated by HUD.

(g) Any proposed amendment to this Declaration which would affect the Surface Water or Stormwater Management System (including environmental conservation areas, if any, and the water management portions of the Common Area), shall be submitted to the District for a determination of whether the proposed amendment necessitates a modification of the District Permit.

(h) In no event shall any amendment to this instrument be construed as not requiring adherence with the minimum City of West Melbourne Land Development Regulations and Municipal Code of Ordinances regarding setbacks, lot size, or any other development related criteria. A copy of any amendment to this instrument shall be submitted as a courtesy to the City of West Melbourne.

Section 5. Term. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property, and inure to the benefit of Developer, the Association and the Owners and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date of recording this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such fifty (50)-year term or any such ten (10)-year extension there is recorded amongst the Public Records

of the County an instrument agreeing to terminate this Declaration signed by the Owners owning two-thirds (2/3) of the Lots and Institutional Mortgagees holding first mortgages encumbering two-thirds (2/3) of all Lots encumbered by first mortgages held by Institutional Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the fifty (50)-year term or the ten (10)-year extension during which such instrument was recorded.

In the event this Declaration is terminated or the Association ceases to exist for any reason, the Owners shall be jointly and severally responsible for the costs to maintain and shall maintain the Common Area, including the Storm Water Management System, in the manner described herein. This provision shall survive the termination of this Declaration and shall run with the Property in perpetuity. Any Owner may, however, petition the Circuit Court for the appointment of a Receiver to manage the affairs of the Association in the event of dissolution of the Association.

Section 6. **Damage or Destruction to Common Areas.** Each Owner shall be liable to the Association for any damage to the Common Areas not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, tenants, guests and invitees, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to charge such Owner a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. The cost of correcting such damage shall be a Special Assessment against the Lot of such Owner and may be collected as provided herein for the collection of Assessments.

Section 7. **Leasing of Lots.** In the event an Owner leases said Owner's Lot, Home, or Townhome, such lease shall contain a covenant that the Lessee acknowledges that the Lot is subject to this Declaration of Covenants and is familiar with the provisions hereof, including the restrictions contained herein, and agrees to abide by all such provisions. In the event such a lease does not contain language to the effect of the foregoing, then the Association may declare the lease void and take such further action as the Association deems applicable, including a "removal action" against the tenant and the Owner. All costs and expenses of the foregoing shall be the cost and expense of such Owner. The Owner shall be liable and fully responsible for all acts of Owner's Lessee and responsible for the compliance of the Lessee of all provisions of this Declaration. Further, in no event shall a Lot be leased more than one (1) time in one (1) calendar year and in no event shall any such lease have a term of less than six (6) months.

Section 8. **Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by sixty percent (60%) of all the votes entitled to be cast by all of the Voting Members. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, to the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article V hereof; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Developer or is approved by the percentage votes, and pursuant to the same procedures necessary to institute proceedings as provided above.

Section 9. Indemnification. The Association shall indemnify every officer, director, committee member, and employee of the Association against any and all costs and expenses, including reasonable attorneys' and paralegals' fees, reasonably incurred by or imposed upon any officer, director, committee member, or employee of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) whether civil, criminal or investigative, or any appeal from such proceeding, to which he or she may be made a party, or to which he or she may become involved, by reason of being or having been an officer, director, committee member or employee of the Association, or having served at the Association's request as an officer, director, committee member or employee of any other corporation, whether or not he or she is an officer, director, committee member, or employee at the time such expenses are incurred, regardless of by whom the proceeding was brought, except in relation to matters as to which any such officer, director, committee member or employee shall be adjudged liable for gross negligence or willful misconduct, unless and only to the extent that the court in which such action or suit was brought shall determine that despite the adjudication of liability, but in view of all the circumstances of the case, such director, officer, committee member or employee of the Association is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The officers, directors, committee members and employees of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association provided that they had been empowered by the Board of Directors to enter into such contract or commitment on behalf of the Association, and the Association shall indemnify and moreover hold each such officer, director, committee member and employee of the Association free and harmless against any and all liability to others on account of any such contract or commitment. Expenses incurred in defending a suit or proceeding whether civil, criminal, administrative or investigative may be paid by the Association in advance of the final disposition of such action, suit or proceeding if authorized by all of the non-interested directors of the Association, upon receipt of an undertaking by or on behalf of the director, officer, committee member or employee to repay such amount if it shall ultimately be determined that he or she is not to be indemnified by the Association as authorized herein. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, committee member or employee of the Association or former officer, director, committee member or employee of the Association, may be entitled whether under law, agreement or vote of the Members of the Association or otherwise. The Association may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available, whether or not the Association would have the power to indemnify the officer, director, committee member, or employee against such liability under the provisions herein. The right to indemnification provided herein shall inure to the benefit of the heirs, executors and administrators of such person entitled to be indemnified.

Section 10. Governing Law. The construction, validity and enforcement of the Declaration, the Articles, the Bylaws and rules and regulations of the Association shall be determined according to the laws of the State of Florida. The venue of any action or suit brought in connection with this Declaration, the Articles, the Bylaws and the rules and regulations of the Association shall be in Brevard County, Florida.

Section 11. Attorneys' Fees. Reasonable attorneys' and paralegals' fees and expenses incurred by the Association, the Developer, their respective successors in interest and

assigns, or an Owner, incident to the enforcement of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association shall be borne by the non-prevailing party in such action, including those incurred on appeal, regardless of whether such action or proceeding is prosecuted to judgment.

Section 12. **Construction.** The provisions of this Declaration shall be liberally construed so as to effectuate and carry out the objects and purposes specified in this Declaration.

Section 13. **Article and Section Headings.** Article and section headings contained in the Declaration are for convenience and reference only and in no way define, describe, extend or limit the intent, scope or content of the particular Articles or sections in which they are contained or to which they refer and, accordingly, the same shall not be considered or referred to in resolving questions of interpretation or construction.

Section 14. **Singular Includes Plural.** Whenever the context of this Declaration requires the same, the singular shall include the plural and the plural the singular and the masculine shall include the feminine and the neuter.

Section 15. **Time of Essence.** Time is of the essence of this Declaration and in the performance of all covenants, conditions and restrictions set forth herein. Whenever a date or the expiration of any time period specified herein shall fall on a Saturday, Sunday or legal holiday, the date shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday.

ARTICLE XXIV **COVENANTS RUNNING WITH THE LAND**

All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Lots and Homes and the Property and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of Developer and subsequent Owner(s) of the Homes, Lots and Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. All present and future Owners, lessees, and occupants of the Lots and Homes, as applicable, shall be subject to and shall comply with the provisions of this Declaration and the Articles, Bylaws and applicable rules and regulations as they exist and may from time to time be amended. The acceptance of a deed of conveyance of a Lot and Completed Home, or the entering into a lease of or occupancy of a Home, shall constitute an adoption and ratification by such Owner, lessee, or occupant of the provisions of this Declaration, and the Articles, Bylaws, and applicable rules and regulations of the Association, as they may be amended from time to time. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

ARTICLE XXV
NOTICES AND DISCLAIMERS AS TO WATER BODIES

NEITHER DEVELOPER, THE ASSOCIATION, NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, OR MANAGEMENT AGENTS, (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN PALM GARDEN LAKES EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF PALM GARDEN LAKES LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY HABITAT OR ENTER INTO WATER BODIES WITHIN PALM GARDEN LAKES AND MAY POSE A THREAT TO PERSON, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

IN WITNESS WHEREOF, the undersigned, being the Developer, herein, has executed this Declaration this 30 day of NOVEMBER, 2018.

DEVELOPER:

PALM GARDENS DEVELOPMENT, LLC
a Florida limited liability company

By: 
Michael E. Maguire, Manager

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 30th day of November, 2018, by Michael E. Maguire, Manager of Palm Gardens Development, LLC, a Florida limited liability company, who is personally known to me or has produced FL M260-545-57-390-0 as identification.


Notary Public

My Commission expires:

