

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**DELRAY ESTUARY**  
**AS AMENDED MAY 2, 2019**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by DELRAY ESTUARY HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation (hereinafter referred to as the "Association").

**RECITALS:**

**WHEREAS**, the original declaration of covenants, conditions and restrictions for Delray Estuary was recorded in Official Record Book 12271, at Page 111, Public Records of Palm Beach County, Florida, and was amended thereafter;

**WHEREAS**, Delray Estuary Homeowners Association, Inc., hereby amends that Declaration, with any amendments to date, by restating the Declaration and all amendments in their entirety.

**NOW, THEREFORE**, the following provisions are governing:

Section 1. **DEFINITIONS.** The following definitions shall apply in this Declaration and in the Articles of Incorporation and By-Laws, unless the context otherwise requires:

1.1 "**Articles**" means the Amended and Restated Articles of Incorporation as amended from time to time.

1.2 "**Assessment**" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Lots.

1.3 "**Association**" means DELRAY ESTUARY HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, its successors, assigns and legal representatives.

1.4 "**Association Certificate**" means a document which must be executed by the president or vice president and secretary or assistant secretary of the Association.

1.5 "**Board of Directors**" or "**Board**" means the representative body which is responsible for the administration of the Association's affairs.

1.6 "By-Laws" mean the By-Laws as amended from time to time.

1.7 "Common Area" or "Common Areas" means and refers to those Properties which are intended to be devoted to the common use and the enjoyment of the Owners and occupants, in this Declaration, as well as the portions of the Properties less the Lots, and as well as all personal property owned, leased by or dedicated to the Association for the common use and enjoyment of the Owners and occupants pursuant to the Subdivision Plat.

1.8 "Community" means DELRAY ESTUARY, as per Exhibit "A" to this Declaration.

1.9 "County" means Palm Beach County, Florida.

1.10 "Declaration" means this instrument as amended from time to time. The term "Original Declaration" means the declaration of covenants, conditions and restrictions for Delray Estuary as recorded in Official Record Book 12271 at Page 111, Public Records of Palm Beach County, as amended to this date.

1.11 "Dwelling Structure" means a residential single family home situated on a Lot, including all improvements associated with the home on the Lot. Unless the context specifically provides or requires otherwise, reference to the term "Dwelling Structure" shall not include the Lot.

1.12 "General Plan of Development" means that plan as approved by appropriate governmental agencies which shall represent the total general scheme and general uses of land in the Properties, as it may be amended from time to time.

1.13 "Governing Documents" means and includes this Declaration and all Exhibits hereto, including the Articles of Incorporation and By-Laws, as amended from time to time.

1.14 "Guest" means any person who: (A) is physically present in, or occupies the Lot at the invitation of the Owner or other legally permitted occupant, without requirement to contribute money, perform services or provide any other consideration to the Owner or lessee in connection with such presence or occupancy; (B) is not the Owner or lessee of the Lot on which he or she is present; and (C) is not a member of the family of the Owner or lessee of the Lot on which he or she is present. Notwithstanding the foregoing, an Owner or lessee of the Lot on which he or she is present shall be considered a Guest if he or she is not a permanent occupant of that Lot. Furthermore, a member of the family of the Owner or lessee of a Lot shall be considered a Guest unless he or she is a permanent occupant of such Lot.

1.15 "Institutional Mortgagee" shall mean and refer to any bona fide first mortgage encumbering a Lot which was made in favor of a bank, mortgage company, insurance company,

federal or state savings and loan association, real estate or mortgage investment trust, or other lender who makes residential mortgage loans in the ordinary course of its business and is generally recognized in the community as an institutional lender.

1.16 "Lease" means the grant by an Owner of a temporary right of use of the Owner's Dwelling Structure and Lot for valuable consideration.

1.17 "Lot" means each "unit" referred to as such on the Subdivision Plat, and intended for residential occupancy, on which a Dwelling Structure is situated.

1.18 "Member" or "Member of the Association" means a record Owner of a Lot.

1.19 "Occupy" shall mean and refer to the act of being physically present on a Lot for two (2) or more consecutive days, including staying overnight. "Occupant" is a person who occupies a Lot. A "permanent occupant" means a person who is occupying a Lot other than as a Guest or for a vacation.

1.20 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but excluding those having such interests merely as security for the performance of an obligation.

1.21 "Primary Institutional Mortgagee" means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more Lots in the Community than any other institutional mortgagee, such determination to be made by reference to the number of Lots encumbered, and not by the dollar amount of such mortgages.

1.22 "Properties" means all real property, including improvements thereon, which are now or hereafter made subject to this Declaration.

1.23 "Rules and Regulations" means those rules and regulations promulgated from time to time by the Board of Directors, governing the use of the Properties, including the Lots, and the operation of the Association.

1.24 "Subdivision Plat" means and refers to the Plat of Estuary, according to the Plat thereof recorded on October 25, 1999 in Plat Book 86, at Page 75, Public Records of the County and the Plat of Royal Palm Gardens, according to the Plat thereof recorded in Plat Book 21, Page 57, Public Records of the County.

1.25 "Voting Interest" means and refers to the arrangement established in the Governing Documents by which the Owners of each Lot collectively are entitled to one vote in Association matters, except that a Voting Interest shall not apply to a Lot where the voting rights

of a member are suspended pursuant to Section 8.9 of the By-Laws. Any voting interest suspended shall revise the denominator of any fraction for computation of approval or consent under the Governing Documents.

1.26 “Administrative Rules” means those administrative rules adopted from time to time by the Division of Florida Condominiums, Timeshares and Mobile Homes.

Section 2. PROPERTY SUBJECT TO THIS DECLARATION.

The real property which is and shall be transferred, sold, conveyed and occupied subject to this Declaration, is legally described in Exhibit "A" attached to and made a part of this Declaration.

Section 3. EASEMENTS; PROPERTY RIGHTS IN THE COMMON AREA; PARTY WALLS.

3.1 Easements. Each of the easements and easement rights referred to in this Section 3.1, is reserved through the Properties and is a covenant running with the land in the Community, and notwithstanding any other provisions of this Declaration, shall survive the removal of any of the Properties from the Community. None of the easements specified in this Section 3.1 may be encumbered by any leasehold or lien other than those on the Lots. Any lien encumbering these easements shall automatically be subordinate to the rights of Owners with respect to such easements.

A. Utility Service and Drainage Easements.

1. There is hereby created a blanket easement upon, across, over, through and under the Properties and Lots for the installation, replacement, repair and maintenance of all utility and service lines and systems, including but not limited to electric, gas, water, sewer, telephone, electric, cable television, security, and surveillance or communication lines and systems, and irrigation. By virtue of this easement it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Properties, to excavate for such purposes and to affix and maintain wires, circuits, and conduits on the Lots and on, in and under the roofs and exterior walls of the Dwelling Structures, providing the disturbed areas are restored to the condition in which they were found and that an easement does not prevent or unreasonably interfere with the use of the Lots. Except as otherwise provided in Section 3.1.A.2 below, no sewer, electrical lines, water lines, or other utility service lines or facilities for such utilities and no cable or communication lines and systems may be

installed or relocated on the Properties except as are approved by the Association. Utility as referred to herein means a public or private utility. This power to create easements shall also include the power to modify or relocate easements which are created.

2. In addition to the foregoing, the following shall apply with respect to easements for drainage: There is hereby reserved an easement for drainage from each Lot onto an adjoining Lot and the Common Area. It shall be the responsibility of the Owner of the Lot for whose benefit this easement has been created, to insure that the drainage flow from his or her Lot remains open and free. It shall be the responsibility of the Association to insure that the drainage flow from the Common Area, remains open and free.
  3. The Association, or its designee, shall have a right to remove any improvements interfering with or impairing such facilities or easements herein reserved. No Owner shall do anything anywhere on his Lot that interferes with or impairs or may interfere with or impair, the provision of such utility or other services or drainage facilities or the use of these easements.
  4. The easements may not be removed from their intended use by the Association, any Owner or others.
  5. The easements under this Section 3.1.A shall survive the termination of this Declaration.
- B. Maintenance Easement in Favor of the Association. There is hereby reserved to the Association an easement over the Common Area for the Association's maintenance obligations pursuant to this Declaration. This easement shall also apply over, on, across, under and through each Lot for the Association's maintenance obligations under this Declaration. The easement may not be removed from its intended use by the Association, any Owner or others.
- C. Encroachments. If any Lot or Dwelling Structure encroaches upon any of the Common Area for any reason other than the intentional act of an Owner, or if any Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists. The easements under this Section 3.1.C shall survive the termination of this Declaration.

- D. Ingress and Egress. A non-exclusive easement shall exist in favor of each Owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Lots or Common Area as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Common Area as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways. This easement may not be removed from its intended use by the Association, any Owners or others.
- E. Easement of Enjoyment to Common Area. Every Owner has a right and easement of enjoyment of the Common Area, subject to any limitations in this Declaration and reasonable Rules and Regulations.

### 3.2 Common Area.

- A. Purposes Intended. Common Area shall be used for the purposes intended.

### 3.3 Party Walls.

- A. Ownership and Cross-Easement. Each Owner shall own that portion of the Party Wall which lies within the boundaries of his own Dwelling Structure, with a cross-easement of support in all other portions thereof. The Party Walls shall be for the perpetual benefit of and use by the respective Owners of the Dwelling Structures served by such Party Walls, including their respective grantees, successors, or assigns (the "Adjoining Owners"), and shall be the obligation of each respective Owner to make necessary repairs, as further set forth in this Section 3.3.
- B. Restrictions on Use. Subject to the terms of this Declaration, Adjoining Owners shall have the right to the full use of the Party Walls with respect to their Dwelling Structures, providing that any such use shall not infringe on the rights of or the enjoyment of the Party Wall(s) by Adjoining Owner(s) or in any manner impair the value of any of the Party Walls. No openings shall be made in any Party Wall. No Owner shall cause a Party Wall to be exposed to the elements. Any Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements

and any damage it causes. Owners may not make any alterations or additions to a Party Wall without the prior written consent of the Adjoining Owner(s) and the Association.

- C. Sharing the Costs of Repair and Maintenance; Right to Contribution. Adjoining Owners shall each maintain their respective exterior of the Party Wall(s) affecting their Dwelling Structures. All other costs associated with the reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of the Party Wall. The right of any Owner to contribution from any other Owner under this Section 3.3 shall be appurtenant to the land and shall pass to such Owner's successors in title and shall be secured by a lien and be enforceable in the manner set forth in Section 5 below.
  
- D. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, or if it shall otherwise become necessary to repair or rebuild any Party Wall, any Owner who has used the Party Wall may restore the same, but no greater dimension of said Party Wall, or of any extension or restoration thereof, shall be placed upon the land of the Adjoining Owner not extending, constructing, or restoring said Party Wall than that existing prior to such fire or other casualty, without the written consent of the latter first obtained. No part of any addition to the dimensions of said Party Wall, or of any extension thereof already built, that may be made by either of said Adjoining Owners, or by those claiming under them respectively, shall be placed upon the land of the other Adjoining Owner, without the written consent of the latter first obtained. The Adjoining Owner who elects to restore a Party Wall shall be reimbursed for one-half (½) of the total costs associated therewith by the other Adjoining Owner; provided, however, that if any repair or reconstruction of a Party Wall is required solely because of the actions or failure to act of or on behalf of a single Adjoining Owner, then the entire cost of such repairs or reconstruction shall be borne solely by such wrongdoer(s).
  
- E. Indemnity Right. If an Adjoining Owner shall refuse or fail to pay his or her share of any expenses provided for in this Section 3.3, the other party or parties who advance such expenses are hereby granted a right of indemnity by such wrongful Adjoining Owner who has failed to pay his or her share of such expenses, together with interest at the rate of eighteen percent (18%) per annum from the date when such payments were due

and any and all costs and attorneys' fees incurred in connection with the collection of any such sums, and lien rights as set forth in Section 5 below.

- F. Easement Rights. Whenever any Party Wall shall be rebuilt, it shall, to the extent reasonably possible, be erected in the same manner and at the same location as it was initially erected and shall be of the same size and of the same or similar materials and of like quality. Easements are hereby granted, reserved, and/or created over and through the respective Dwelling Structures as may be reasonably required from time to time in connection with all repairs or reconstruction performed pursuant to this Section 3.3, including easements of access to any Dwelling Structures with respect thereto.
  
- G. Arbitration. In the event of any dispute arising concerning a Party Wall under the provisions of this Section 3.3, each party shall choose one arbiter, and such arbiter shall choose an additional arbiter, and the decision of a majority of all the arbiters shall be final and conclusive of the question involved.

#### Section 4. ASSOCIATION.

4.1 The operation of the Community is by the DELRAY ESTUARY HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, which shall perform its functions pursuant to this Declaration, and the following:

- A. Articles of Incorporation. The Amended and Restated Articles of Incorporation of the Association shall be the Articles of Incorporation attached as Exhibit "B", as amended from time to time.
  
- B. By-Laws. The Amended and Restated By-Laws of the Association shall be the By-Laws attached as Exhibit "C", as amended from time to time.
  
- C. Membership and Voting Rights. The membership of the Association shall be as provided in the Articles of Incorporation and By-Laws. The Owners of each Lot shall collectively be entitled to that vote as more fully provided in the Articles of Incorporation and By-Laws.
  
- D. Limitation on Association Liability.
  - 1. Notwithstanding its duty to maintain and repair certain Properties, the Association shall not be liable to the Owners for injury or

damage caused by Properties for which the Association has responsibility to maintain. In the event that any portion of the Properties for which the Owner has maintenance responsibility under this Declaration, or any real or personal property of the Owner, shall be damaged in the course of the Association's maintenance, repair or replacement (or failure to effect maintenance, repair or replacement) of those Properties for which the Association has responsibility, or damaged due to the failure of the Association to maintain, repair or replace, the Owner shall bear the full risk of loss. The only exception under this Section 4.1.D.1 is where the Association (whether for itself or its contractor) is guilty of gross negligence or intentional misconduct which causes the loss, in which case the Association bears the risk of loss created by same (with any available contribution from the contractor or others). The Association is excused from its ordinary negligence. This Section 4.1.D.1 shall also apply where the loss results in the course of the Association's reconstruction and repair after casualty.

2. The Association shall in no event be liable for any damages resulting from an Owner's breach of his or her maintenance, repair and replacement responsibility under this Declaration.

- E. Actions by Association. Anything herein to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating or otherwise abetting any legal action, claim or extra-judicial action except for (i) imposition, enforcement and collection of Assessments, including lien rights, pursuant to Section 5 below, (ii) collecting of debts owed to the Association, (iii) bringing any contest or appeal of tax assessments relating to any property owned by the Association, (iv) actions brought by the Association to enforce the provisions of this Declaration, and (v) counterclaims brought by the Association in proceedings instituted against it; unless such legal action, claim or extra-judicial action shall be specifically approved for such purposes by 75% of the total votes of all Members of the Association in existence at any time. If the Association's actions have been approved by the Members in accordance with this Section 4.1.E, all expenses incurred shall be deemed common expenses. In any action brought by or against the Association, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. This Section 4.1.E may not be amended.

- F. All decisions and powers of the Association as accorded by the Governing Documents and applicable statutes shall be exercised by the Board of Directors without membership approval, unless otherwise provided in the Governing Documents or applicable statutes to the contrary.

Section 5. ASSESSMENTS AND LIENS; CHARGES. The Association has the power to levy and collect assessments against each Lot and Owner in order to provide the necessary funds for proper operation and management of the Community and for the operation of the Association, including both annual assessments for each Lot's share of the common expenses as set forth in the annual budget, and special assessments for any proper common expenses. The Association may also levy Charges against individual Lot(s) and Owner(s) for any amounts, other than for common expenses, which are properly chargeable against such Lot and Owner under the Governing Documents.

5.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement or insurance of the Common Area, certain portions of the Lots, water and sewer charges, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Community, including those amounts budgeted for the purpose of funding reserve accounts; clean-up, landscaping, maintenance, dredging, water treatment, algae treatment, or other care of canals, lakes, roads or other property (public or private) adjacent to the Properties to the extent such care would, in the reasonable determination of the Board, be beneficial to the Properties and to the extent that the Association has been granted the right to so care for the affected property by the owner thereof or other person authorized to grant such right, including, but not limited to, any appropriate governmental authority; maintenance of electronic and other surveillance devices. The Association, through its Board, shall have the right to either maintain the initial surveillance devices, inclusive of an unmanned and manned gate off Palm Trail, an unmanned gate at Estuary Way, and an emergency access off Palm Trail, with a "knox box"; it being understood that the Association shall have the right to change its surveillance devices and entrance features consistent with its rights and obligations set forth herein or under Florida law. Common expenses may include bulk rate cable television and telecommunications services.

5.2 Share of Common Expenses. All Lots shall be assessed equally. However, a Charge shall be levied against individual Lot(s) as set forth in Section 5.11 below.

5.3 Ownership. Assessments collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot. No Owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided in the Governing Documents or by law.

5.4 Who is Liable for Assessments. The Owner of each Lot, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the Owner and is jointly and severally liable with the previous Owner for all assessments or installments thereon that came due up to the time of transfer of title, plus past due and current interest, late fees, costs and attorneys fees. Multiple Owners are jointly and severally liable.

5.5 No Waiver or Excuse From Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Area, by abandonment of the Lot on which the assessments are made, by interruption in the availability of the Lot or the Common Area for any reason whatsoever, or by dissatisfaction with the Association and/or its operation and policies. No Owner may be excused from payment of his share of the common expenses unless all Owners are likewise proportionately excused from payment.

5.6 Application of Payments; Failure to Pay; Interest; Late Fees. Assessments and installments thereon paid on or before fifteen (15) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the rate of 18% per annum calculated from the date due until paid. In addition, any assessments or installments not paid on or before fifteen (15) days after the date due shall result in the imposition of a late fee equal to the higher of \$25.00 or five (5%) percent of the late payment. Assessments and installments thereon shall become due, and the Owner shall become liable for the assessments or installments, on the date established in the By-Laws or otherwise set by the Board of Directors of the Association for payment. All payments on account shall be applied in the following order irrespective of any restrictive endorsement, designation or instruction placed on or accompanying any payment: To interest, late fees, costs and attorneys'/paralegals' fees, and annual and/or special assessments first due and owing. If payment is made by check which fails to clear, then the Owner shall be considered not to have made payment.

5.7 Liens. The Association has a lien on each Lot securing payment of past due assessments, including late fees, interest and attorneys' and paralegal fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit or other lawsuit. The lien is perfected upon recording a Claim of Lien in the Public Records of the County, stating the legal description of the Lot, the name of the record Owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

5.8 Priority of Lien.

A. Rights of Mortgagees and Other Lienholders. The liability and priorities of mortgagees and other lienholders and successors in title to Lots as a result of a mortgage or lien

foreclosure shall be as provided in the chapter 720, Florida statutes, as amended from time to time. The relation back as provided for in chapter 720, Florida Statutes, as amended from time to time, shall also apply. Therefore, where the mortgagee of a first mortgage of record or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of the first mortgage or deed in lieu of foreclosure, such acquirer of title, its successors and assigns shall be liable for all assessments as provided in Section 720.3085, Fla. Stat. (2017). Notwithstanding anything contained herein to the contrary, only a first mortgagee who acquires title to a Lot shall be excused from paying assessments which came due prior to acquiring title. Nothing herein shall be construed to relieve a first mortgagee who acquires title from the obligation to pay the Association the lesser of twelve (12) months of unpaid assessments that came due immediately preceding the acquisition of title or one percent (1%) of the original mortgage amount as is currently required pursuant to Section 720.3085, Fla. Stat. (2017). If the referenced statute is amended to *increase* the amount of a first mortgagee's liability, the first mortgagee shall be liable for that increased amount. No statutory amendment which may effectively decrease a first mortgagee's liability shall alter a mortgagee's liability to the Association under this section. Any Lot Owner who was not the holder of a first mortgage who acquires title to a Lot at a foreclosure sale held in the context of a mortgage foreclosure or any other public sale shall be liable to pay any and all unpaid assessments that came due prior to acquiring title in addition to all interest, costs, late charges and attorney's fees which came due prior to taking title as well as those that were incurred subsequent to acquiring title and in collection of such sums.

- B. Leases. Any lease of a Lot shall be subordinate and inferior to any claim of lien of the Association, regardless of when the lease was executed.

5.9 Foreclosure of Lien; Action at Law. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the same manner in which mortgages are foreclosed in the State of Florida and may also bring an action to recover a money judgment for unpaid assessments without waiving any lien rights. In addition to any assessments due, the Association shall be entitled to recover interest, late fees, and all costs of collection, including Court costs and paralegal and attorneys' fees. Whenever the Association shall bring a lien foreclosure action, the Association shall be entitled to receive a reasonable rental from the Owner, pending litigation, for that time period during which the Owner is in possession of the Lot either by himself, or tenants, guests or other occupants; the Association is entitled to an appointment of a Receiver, which may be the Association, to collect the rent.

5.10 Certificate As To Assessments. The Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the Owner with respect to the Lot have been paid, within fifteen (15) days after request by an Owner or mortgagee. The provisions of F.S. 720.30851, as amended from time to time, shall apply to this subject.

5.11 Charges.

A. Defined. Each Lot and Owner shall be liable for Charges levied by the Association against the Lot and Owner. Charges shall be deemed to include but not be limited to: maintenance or other services furnished by the Association for the benefit of an Owner; maintenance services performed by the Association under Sections 6.1.B.1 through 5 below, and allocated by the Association for the benefit of the particular Lot; and any other sums other than assessments which are referred to as Charges in the Governing Documents, due and payable as set forth in the invoice from the Association. The cost allocation for those maintenance items referenced in Sections 6.1.B.1 through 5 below shall be based on the actual cost billed by the contractor to the Association with respect to the Dwelling Structure.

B. Who is Liable for Charges. The Owner of each Lot, regardless of how title was acquired, is liable for all Charges coming due while he or she is the Owner, as well as while his or her predecessors-in-title owned title to the Lot. Multiple Owners are jointly and severally liable.

C. Application of Payments; Failure to Pay; Late Fees; Interest. Any Charges paid on or before fifteen (15) days after the date due as specified in the notice of Charge from the Association shall not bear interest, but all Charges not so paid shall bear interest at the rate of 18% per annum, calculated from the date due until paid. In addition, any Charges or installments not paid on or before fifteen (15) days after the date due shall result in the imposition of a late fee of the higher of \$25.00 or five (5%) percent of the late payment. All payments on account shall be applied in the following order irrespective of any restrictive endorsement, designation or instruction placed on or accompanying any payment: To interest, late fees, costs and attorneys'/paralegals' fees, and annual and/or special assessments first due and owing. If payment is made by check which fails to clear, then the Owner shall be considered not to have made payment.

D. Liens. The Association has a lien on each Lot securing payment of past due Charges, including interest, late fees and attorneys' and paralegal fees and costs incurred by the Association incident to the collection of the Charges or enforcement of the lien, whether before, during or after a lien foreclosure suit or other lawsuit. The lien is perfected upon recording a Claim of Lien in the Public Records of the

County, stating the legal description of the Lot, the name of the record Owner, the Charges past due and the due dates. The lien is in effect until barred by law. Upon full payment of all sums secured by the Claim of Lien, the person making the payment is entitled to a satisfaction of the lien.

1. Proviso. Notwithstanding the foregoing to the contrary, no lien shall be recorded for a fine.

E. Priority of Lien.

1. Rights of Certain Mortgagees. The Association's lien for Charges shall be subordinate and inferior to any recorded first Institutional Mortgage, unless the Association's claim of lien was recorded before the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when the mortgage was recorded.
2. Leases. Any lease of a Lot shall be subordinate and inferior to any claim of lien of the Association, regardless of when the lease was executed.
3. Relation Back. The continuing lien as well as claim of lien of the Association shall relate back to the recording of this Declaration for purposes of obtaining priority over any recorded first non-Institutional Mortgage and the record owner of any lien on any Lot other than the recorded mortgage of an Institutional Mortgagee recorded prior to the recording of the Association's claim of lien.
4. Liability. Notwithstanding the foregoing Institutional Mortgagee priority to the contrary, any mortgagee or other buyer who acquires title to a Lot, regardless of how his or her or its title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all Charges, including interest, late fees, costs and paralegal and attorneys' fees incurred by the Association, including those incurred prior to the acquisition of title with respect to any former Owner, jointly and severally, with the former Owner.

F. Foreclosure of Lien; Action at Law. The Association may bring an action in its name to foreclose its lien for unpaid Charges in the same manner that mortgages are foreclosed in the State of Florida, and

may also bring an action to recover a money judgment for the unpaid Charges without waiving any lien rights, and shall be entitled to recover interest, late fees, and all costs of collection, including Court costs and paralegal and attorneys' fees.

5.12 Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, Charges and liens created under this Declaration:

- A. All Properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- B. All Common Area exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption.

Notwithstanding any provision in this Section 5.12, no land or improvements devoted to Lot or dwelling use shall be exempt from assessments, Charges or liens.

Section 6. MAINTENANCE, REPAIR AND REPLACEMENT; ASSOCIATION ALTERATIONS. Responsibility for the maintenance, repair, replacement and Association alterations of the Properties shall be as follows, except that reconstruction and repair after casualty shall instead be governed by the provisions of Section 10 below, as to Party Walls, by the provisions of Section 3.3 above.

6.1 Association Maintenance. In addition to other provisions contained elsewhere in this Declaration, the following Properties shall be maintained, repaired and replaced by the Association at the expense of the Association, as an item of common expense:

- A. All Common Area.
- B. Only the following portions of the Dwelling Structures and Lots:
  - 1. Exterior painting, steam cleaning and caulking of windows and doors, and building stucco repair.
  - 2. Exterior lights.
  - 3. Mailboxes.
  - 4. Cleaning and sealing of driveways, sidewalks, entranceways, excluding any rear or exterior patios.

5. Decorative shutters.
6. Seawall.
7. Irrigation.
8. The maintenance, removal and replacement of all palm and hardwood trees. Lot Owners shall be responsible for all other landscaping. The Association shall provide trimming for owners' shrubs, plants and ornamentals, except for bougainvillea/jasmine or other climbing plants. In the event a Lot Owner fails to maintain the landscaping on their Lot and or fails to remove and replace landscaping, after having been provided with written notice from the Association to do so, the Association shall have the right to enter upon of the Lot to remove, replace and/or perform whatever landscaping is deemed necessary on the Lot. The expense incurred by the Association shall be the responsibility of the Lot Owner. If the cost and expense is not timely paid, the Association shall have the right to assess the Lot owner for same, and record and foreclose a lien as set forth in Sections 5.7 and 5.9 of this Declaration.
9. Perimeter walls.

The Association shall be reimbursed by the Owner of the Lot for the cost of the maintenance services it performs under Sections 6.1.B.1 through 5 above and allocated by the Association for the benefit of each particular Lot, as a Charge under Section 5.11 above. If landscaping must be removed by the Owner in order for the Association to discharge its maintenance, repair and/or replacement duties under this Section 6.1.B, the Association shall notify the Owner that said landscaping must be removed. If the Owner fails to do so, the Association may perform its duties without any liability for damage to landscaping, which the Association is not obligated to replace.

6.2 Maintenance by Owners. Each Owner is responsible, at his own expense, for the maintenance, repair and replacement of the following Properties:

- A. Common Area. No common area.

B. The entirety of the Lots and Dwelling Structures, including roofs and fences and including pavers bordering the seawall, and inclusive of landscaping, not maintained by the Association under Section 6.1.B above.

C. Each Owner shall also have the following responsibilities/limitations except for those items, if any, explicitly made the responsibility of the Association elsewhere in this Declaration:

1. Each Owner must perform promptly all maintenance, repairs and replacement for which the Owner is responsible, which are necessary to ensure good and quality condition, and/or which if not performed would affect any of the Properties, including any Lot(s) belonging to any other Owner(s). The term "good and quality condition" includes but is not limited to requiring the Dwelling Structure and all exterior improvements on the Lot to be kept clean and free of algae, stains and mildew; all exterior components on the Lot shall not have cracked, chipped, faded, broken, worn, torn, stained or missing components.

2. Each Owner shall promptly report to the Association or its agents any defect or need for repair on the Properties for which the Association is responsible to maintain, repair and replace under this Declaration.

3. No Owner shall make any alteration, addition or improvement to any portion of the Common Area, except as is specifically permitted by this Declaration.

4. No Owner shall do anything which shall adversely affect the safety or soundness of the Common Area; the opinion of the Board of Directors shall control in determining whether the safety or soundness of the Common Area is adversely affected.

6.3 Association Alterations and Improvements. Subject to the provisions of Section 9 below, the following shall apply: The Association shall have the right to make or cause to be made alterations or improvements to the Common Area which are approved by the Board of Directors; provided however, if the cost to the Association of same shall exceed ten (10%) percent of the annual budget, cumulatively in a budget year, then the alteration or improvement may not be made unless approved by not less than a majority of the voting interests of those members of the Association present in person and by proxy at a member's meeting. Notwithstanding the foregoing to the contrary, in the event that any alteration or improvement is necessary in the

maintenance, repair and replacement or protection of the Common Area or protection of the Owners or Occupants, then such alteration or improvement shall not require the approval of the Owners as provided for in this Section 6.3.

Section 7. OWNERS' CONSTRUCTION, ALTERATIONS AND IMPROVEMENTS. The following applies to the Owners and Occupants:

7.1 Scope; Review by Board of Directors. No structure (whether part of a residence) fences, walls, swimming pools, exterior lighting, or any other improvement, shall be constructed or maintained upon any Lot; no alteration, addition, changing or remodeling to the exteriors of any Dwelling Structure or other structure on a Lot shall be made; and no landscaping, removal of landscaping or modification to the irrigation system shall be added or altered on a Lot; without the Owner first obtaining the prior written approval of the Board of Directors and fully and strictly complying with this Section 7. This Section 7 shall also apply to when Board approval is required under Section 8 below. Notwithstanding the foregoing to the contrary, there shall be no Board approval of antennae and satellite dishes as permitted by Section 8.19 of this Declaration. No Owner shall make any alteration, improvement or addition to any Common Area.

7.2 Submission of Plans. Prior to any modification, alteration or improvement referred to in section 7.1 above, the Owner must submit a three (3) complete set of plans and specifications and plot plans to an advisory committee established by the Board of Directors, who will review same and make recommendations to the Board of Directors for approval or disapproval, and if no such committee, then directly to the Board of Directors. The plans and specifications and plot plans must show to the extent applicable, the exterior design, height, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, with front, side and rear elevation and floor plans, with reference to the street side and rear lines of the Lot; the general plan of landscaping, fence, walls and windbreaks, and a grading plan and any other details of the modification, alteration or improvements and set forth a completion time frame; in a form which would be acceptable to obtain a building permit or in the event a permit is not required, then in a form that would be required if a permit was in fact required. A refundable down payment of \$5,000 (and \$2,000 if only landscaping) or such other amount as determined by the Board from time to time must accompany the application. Costs for damages will be deducted from the deposit as damages occur, if any, and only after the proper completion of the work per the plans and specifications approved by the Board, the balance, if any, will be refunded to the Owner. If the Association is required to correct work not constructed or installed pursuant to the approved plans and specifications, and/or within the timeframe specified by the Board, the Association may perform same and deduct the cost from the down payment and if the down payment is not sufficient, an Owner shall pay the difference as a Charge. An application relating to landscape modifications

must also include an irrigation plan approved by a landscape maintenance company selected by the Owner, to be paid for at the expense of the Owner.

7.3 Powers of the Board of Directors. The Board of Directors shall have the following powers:

- A. To require the submission of samples of building materials and colors proposed to be used, and may also require such additional information as may be reasonably necessary to evaluate the proposed construction, alteration or improvement.
- B. To institute and require a reasonable filing fee as above-referenced to accompany the submission of plans and specifications, as a means of defraying its expenses.
- C. To approve or disapprove all plans and specifications within sixty (60) days after the Owner submits all fees, and information which is reasonably necessary for the Board to render its decision under this Section 7. In the event that the Board fails to take any action within the sixty (60) day period, approval will not be required, and this Section 7 will be deemed to have been fully complied with.
  - 1. In the event that the Board disapproves any plans and specifications submitted to it, the Board shall so notify the applicant in writing, stating the grounds upon which the disapproval was based. The Board may alternatively approve plans and specifications subject to modifications required in writing by the Board.
- D. To promulgate rules and regulations of general application, governing the procedures to be followed by the Board, including the form and content of applications, plans and specifications to be submitted for approval. The Board may from time to time adopt architectural guidelines, that are not inconsistent with this Declaration.
- E. By any of its members or appointed agents upon reasonable notice and at any reasonable time, to enter and inspect any Lot for compliance with this Section 7 of this Declaration or any other provision in the Declaration under which the Board has jurisdiction.
- F. To set a deadline for completion.

7.4 Review Criteria. The Board may disapprove any plans submitted to it or require modifications to same, for any one or more of the following reasons:

- A. Failure of such plans to comply with any of the protective covenants, conditions and restrictions contained in this Declaration and architectural guidelines adopted from time to time by the Board of Directors.
- B. Failure to include information in such plans and/or as requested by the Board;
- C. Objection to the site plan, exterior design, appearance or materials of any proposed alteration or improvements, including without limitation, color or color scheme, finish, proportion, style or architecture, height, bulk or appropriateness of any proposed alteration or improvement;
- D. Incompatibility of the proposed alteration or improvement with existing improvements.
- E. Failure of the proposed alteration or improvement to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules or regulations;
- F. Any other matter which in the judgment and sole discretion of the Board would render the proposed alteration or improvement inharmonious or incompatible with the General Plan of Development of the Community and/or the general appearance of the Community.

7.5 Permits and Certificates of Occupancy; Compliance; Hours of Work.

- A. No person shall seek or apply for a building permit from any governmental authority unless and until the approval of the proposed improvements has been obtained from the Board.
- B. After the plans and specifications and plot plans and other data submitted have been approved by the Board, no alteration, improvement or structure shall be erected, constructed, placed or maintained upon the Lot or Dwelling Structure unless same shall be erected, constructed, placed or maintained in conformity with the plans and specifications and plot plans approved by the Board. Any alteration, construction or structure which shall be erected, constructed, placed or maintained which is not in

conformity with the plans and specifications and plot plans approved by the Board shall be deemed to have been undertaken without such approval and to be in violation of this Declaration.

- C. Furthermore, no certificate of occupancy (if applicable) shall be issued unless the Owner(s) have complied with this Section 7.
- D. Contractors and Owners shall be permitted to perform work provided for in this Section 7, only from 8:00 a.m. to ~~5~~6:00 p.m., Monday through Saturday. Contractors shall exit the community no later than 6:00 p.m. The foregoing shall not be permitted to work at other hours Monday through Saturday and at no time on Sundays and federal holidays.

7.6 No Waiver. The approval of the Board of plans and specifications submitted for approval, as herein specified, shall not be deemed to be a waiver by the Board of the right to object to any of the features or elements embodied in such plans and 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, even if submitted by the same Owner(s) and/or contractor(s).

7.7 Liability for Actions of the Board. The Board and its officers and committee members shall not be liable for any costs or damages incurred by anyone submitting plans for approval, or any other party, due to any mistakes in judgment, negligence or nonfeasance of the Board, officers and its committee members in connection with the approval or disapproval of plans. Neither the Board of Directors or officers or committee members, nor any person acting on behalf of any of them, shall be responsible for any defects in any plans or specifications, nor for any defects in any alterations or improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

7.8 Variance. The Board may authorize variances from compliance with the provisions of any architectural standards (not inconsistent with this Declaration) adopted by the Board, when circumstances such as topography, natural obstructions, hardships, aesthetic, or environmental considerations require. Such variance must be evidenced in writing and approved by a majority of the entire membership of the Board. If such variances are granted, no violation of this Declaration or the Board's architectural guidelines shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration or architectural guidelines for any purpose except as to the particular Lot and

particular provisions of the architectural guidelines, covered by the variance, nor shall it affect, in any way the Owner's obligation to comply with all governmental laws and regulations affecting his or her use of the Lot, including, but not limited to, zoning ordinances and set-back lines imposed by any governmental or municipal authority, nor shall it entitle the Owner or any other Owner to a similar variance in the future.

7.9 Flags. Any Owner may display one portable, removable United States flag or official flag of the state of Florida in a respectful manner, and one (1) portable, removable, official flag, in a respectful manner, not larger than 4 ½ feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps or Coast Guard, or POW-MIA flag. The Owner shall also be entitled to erect that flagpole as permitted by F.S. 720.304(b), as amended from time to time.

7.10 Access Ramp. An access ramp shall be permitted on a Lot where the occupant has a medical necessity or disability that requires a ramp for egress and ingress, meeting the conditions set forth in F.S. 720.304(5), as amended from time to time, and subject to architectural guidelines adopted by the Board regarding this subject.

7.11 Security Sign. One security sign, as approved by the Board and not to exceed 60 square inches, shall be permitted on a Lot no further than ten (10) feet from the entrance to the Dwelling Structure, and providing that the location of the sign does not interfere with the Association's landscaping services.

7.12 Plastic or Synthetic Plants. No plastic or synthetic plants shall be permitted outside of the Dwelling Unit if visible from the street.

7.13 Solar Collectors and Other Energy Devices. An Owner shall be permitted to install solar collectors or other energy devices, subject to the prior approval of the Board of Directors, provided that the installation is within the Lot, and if installed on the roof, shall be limited to an orientation to the south or within 45 degrees east or west of due south if such limitation does not impair the effective operation of the solar collectors.

Section 8. USE AND OCCUPANCY RESTRICTIONS. The use and occupancy of the Properties shall be in accordance with the following provisions so long as the Community exists:

8.1 Occupancy of Lots; Subdivision.

- A. General. Each Lot shall be occupied by Owners and tenants and officers, directors, managers, members, agents and employees of an Owner who is an entity, and beneficiaries in the case of a trust, and their family members and guests and invitees, as a residence and for no other purpose, subject to any other provision in this Declaration and in the Rules and Regulations

relating to use of the Lot. No Lot shall be occupied by that number or persons or relationships exceeding the limits as set forth in the applicable zoning code.

- B. Subdivision. No Lot may be subdivided into more than one Lot. Only entire Lots may be sold, leased or otherwise transferred.

8.2 Age. There is no age restriction in this Community.

8.3 Pets and Animals.

- A. Owners and tenants are permitted to have pets and animals as a privilege, but only as follows:

1. No pet or animal shall be permitted in any Lot or Dwelling Structure, except for up to, but no more than four (4) cats and, up to, but no more than two (2) dogs; birds in cages in reasonable numbers and kept inside of the Dwelling Structure and not in the screened room; fish in tanks kept in the Dwelling Structure. No such pet or animal shall be bred or kept for commercial purposes, nor shall the number of pets exceed any applicable zoning regulations.
2. When outside of the Dwelling Structure, all dogs and cats must be accompanied by an attendant who shall have such dog/cat firmly held by collar and leash. No cats or dogs shall be permitted to run at large outside the Lot.
3. The owner/custodian of each animal and pet and/or the individual walking same, shall be required to clean up after the pet/animal and dispose of all solid waste.
4. The owner/custodian of the animal or pet shall remove his or her animal or pet from the Community when such animal or pet emits excessive noise such that same may be heard outside of the Lot.
5. The pet/animal owner and the Owner of the Lot involved shall be strictly liable for damages caused by the pet/animal to the Properties.

6. Any pet/animal owner's privilege to have a pet/animal reside in the Community shall be revoked if the pet/animal shall create a nuisance or shall become a nuisance.

B. Exception. The provisions of this Section 8.3 shall yield where necessary to meet the needs of handicapped persons pursuant to fair housing laws.

8.4 Vehicles and Parking. The following restrictions apply irrespective of whether the Properties in question lies within areas owned by or dedicated to a governmental entity:

A. Prohibited Vehicles or Items. This Section A lists prohibited vehicles or items ("Prohibited Vehicles"), which are prohibited outside of the garage on the Properties, unless such vehicle or item is also listed in Section B below, in which case it shall not be prohibited outside of the garage: Trucks, whether covered or uncovered, whether with a bed top or without, unless permitted by Section 8.4.B.7 below; vans, sports utility and sports activity vehicles unless permitted by Section 8.4.B.6 below; agriculture vehicles; dune buggies, swamp buggies and all terrain and off-road vehicles; any trailer or other device transportable by vehicular towing; semis, tractors or tractor trailers; buses; limousines; travel trailers; vehicles which are an eyesore; motorcycle delivery wagons; campers; recreational vehicles; mobile homes or mobile houses; truck mounted campers attached or detached from the truck chassis; motor homes or motor houses; motor vehicles not having any bodies whatsoever, or incomplete bodies; passenger automobiles that have been converted to a different type of motor vehicle by replacing the original body or by modifying the exterior of the vehicle; vehicles that are noisy, unsightly or junkers, or which have flat or missing tires; and boats and boat trailers; commercial vehicles; any police or official vehicles; and other such motor vehicles.

B. Exceptions to A above. The following shall not be considered Prohibited Vehicles, subject to other provisions in this Declaration or in the Rules and Regulations of the Association not inconsistent with this Section 8.4:

1. Moving vans for the purpose of loading and unloading, but at no time during the hours of 5:00pm to 8:00am, nor from 9:00pm Saturday to 8:00am Monday.

2. Vehicles, regardless of classification, necessary for the maintenance, care or protection of the Property, during regular

business hours, and only for the time period during which the maintenance, care or protection is being provided.

3. Service and delivery vehicles, servicing the Property, regardless of classifications, during regular business hours and only for that period of time to render the service or delivery in question.
4. Vehicles for handicapped person, "handicapped" being defined by any fair housing law.
5. Police and Emergency vehicles.
6. Certain vans and sports utility or sports activity vehicles which are permitted. A two-axle van or sports utility or sports activity vehicle which is not a commercial vehicle as defined below; which contains windows on the rear of the vehicle, on both sides of the vehicle adjacent to the first row of seating, and also at least one set of windows on each side of the vehicle beyond the windows adjacent to the first row of seating.
7. Certain pickup trucks are permitted. A pickup truck which is not a commercial vehicle as defined below, not exceeding ½ ton carrying capacity, but only for a Guest and not to exceed 48 hours in any given month.

C. Classifications and Definitions.

1. Except as otherwise provided as to certain vans and sports utility and sports activity vehicles under Subsection B.6 above, a State registration or title classification shall have no bearing on determination of the classifications under this Section 8.4.
2. A "commercial vehicle" shall mean any motor vehicle which has an outward appearance of being used in connection with business, (e.g., the vehicle displays work equipment to view and/or is commercially lettered or contains a commercial or business logo). Actual use of the vehicle shall yield to its outward appearance. A vehicle with a covered sign or logo shall still be considered to be a commercial vehicle. A vehicle with a removable sign or logo shall not, with the sign/logo removed, be considered to be a commercial

vehicle unless it meets the definition of “commercial vehicle” even without the sign or logo.

D. The following additional regulations apply:

1. No repair (including changing of oil) of a vehicle shall be made on Properties except for minor repairs necessary to permit removal of a vehicle. Washing, waxing, or the changing of tires of a vehicle is permitted.
2. No motor vehicle which is of the type of vehicle which is unregistrable shall be driven or operated on any of the Property at any time for any reason.
3. No motor vehicle, including moving vans, shall be parked at any time on the grass on the Properties (except for landscaping equipment at the direction of the Board of Directors).
4. Except where safety dictates otherwise, horns shall not be used or blown while a vehicle is parked, standing in or driving through parking areas. Racing engines and loud exhausts shall be prohibited.
5. No vehicle shall be parked such that it blocks any sidewalk, except where otherwise necessary by moving vans and then only for loading and unloading.
6. All vehicles must be in working order; no vehicles on blocks, jacks or ramps, shall be permitted.
7. No on-street parking shall be permitted between the hours of 2:00 a.m. through 6:00 a.m.

E. Remedy of Towing. If upon the Association's provision of that notice required by Section 715.07, Florida Statutes and applicable County Ordinances, as amended from time to time, an offending vehicle owner does not remove a prohibited or improperly parked vehicle from the Properties, the Association shall have the power and right to have the vehicle towed away at the vehicle owner's expense.

F. Alternative/Concurrent Remedies. Whether or not the Association exercises its right to have the vehicle so towed, the Association shall

nonetheless have the right to seek compliance with this Section 8.4 by injunctive and other relief through the courts; and/or any other remedy conferred upon the Association by law or the Declaration, Articles of Incorporation and By-Laws. The Association's right to tow shall in no way be a condition precedent to any other remedies available to the Association incident to the enforcement of this Section 8.4.

- G. No semi-trailer truck, semi, tractor-trailer, big rig or eighteen-wheeler truck shall be permitted in the Community at any time and their entry is strictly prohibited, unless specifically authorized by the Board of Directors on a case-by-case basis with such conditions as the Board may impose.

8.5 Nuisances, Ordinances and Laws. No Owner, Occupant or Guest shall use any of the Properties, or permit same to be used, in any manner which is unreasonably disturbing, detrimental or a nuisance to the Owner(s), Occupant(s) and Guest(s) of other Lot(s), or which would not be consistent with the maintenance of the highest standards for a first class residential development, nor permit the Properties to be used in a disorderly or unlawful way, nor which will produce an insurance risk for the Association or other Owners or Occupants. The use of each Lot shall be consistent with existing ordinances and laws and the Governing Documents, and Occupants shall at all times conduct themselves in a peaceful and orderly manner. No inflammables other than propane tanks for heating or cooking shall be stored anywhere on the Properties. Televisions, radios and musical instruments may only be used at such times and at such volume so as not to create a disturbance for other Owners and Residents. No items shall be permitted to fall from upstairs balconies of the Dwelling Structure, and no rugs and other items shall be shaken from the Dwelling Structures.

8.6 No Business Activity. No business or commercial activity or enterprise of any kind whatsoever shall be erected, maintained, operated, carried on, permitted or conducted on the Properties, including Lots; provided, however that the following shall not violate this Section 8.6:

- A. Any business which qualifies as a home office or occupation under the applicable zoning code shall be permitted. Therefore, any home office shall be operated in accordance with, and only to the extent permitted by, applicable city, county, state and federal codes, ordinances and regulations. Home office use of a Lot shall only be permitted to the extent permitted by law and to the extent that the office is not staffed by employees, is not used to receive clients and/or customers and does not generate additional visitors or traffic into the Lot or on any part of Association property. Lots may not be used as a place to manufacturer goods, physically fill customer orders, store unhealthful chemicals in significant

quantities, resell goods and/or warehouse parts used in an owner's or occupant's trade. However, Owners and occupants are permitted to telecommute from their Lots and/or to pursue their occupations from their Lots. A day care or childcare facility or operation (regardless of age) shall not be permitted, irrespective of whether same is a home occupation or permitted by the applicable zoning code.

- B. The practice of leasing Lots.
- C. The business of operating the Association.

8.7 Trash and Garbage. No trash shall be discarded on any part of the Properties except in receptacles provided by each Owner. All garbage and rubbish (excluding glass and newspapers) must be securely tied in plastic bags before being placed in the receptacles. Glass, newspapers and other recyclables shall be placed in separate receptacles supplied by the Owner or collection authorities. Receptacles must be stored out of sight, except that receptacles may be placed in the front of the Lot no earlier than sundown prior to the date of collection and must be removed and placed out of sight no later than sundown on the date of collection. The foregoing is subject to any regulations and policies of the collection authorities and Rules and Regulations of the Association.

8.8 Solicitation. No business solicitation whatsoever shall be permitted in the Community, whether or not such solicitation is for the benefit of a non-profit organization, whether in person or by hand delivery of letters, without the permission of the Board of Directors of the Association. This shall not preclude an owner from inviting a person or firm to enter the Community for the purpose of contracting business with the Owner.

8.9 Leasing of Lots with Dwelling Structures.

- A. General. An Owner may lease only his or her entire Dwelling Unit, and then only in accordance with the Declaration, after receiving the approval of the Association as provided for in this Section 8.9. Reference to "leasing" in this Section 8.9 shall also include rental. Prior approval is also required in connection with any lease renewal and in connection with any change in occupancy under, during or along with a lease. A lease or rental shall exist if any form of consideration (whether for services, employment or otherwise) is paid or exchanged. Any lease, lease renewal or change in occupancy under, during or along with a lease is referred to in this Section 8.9 as a "Transfer".
- B. Procedures.

1. Notice by the Owner. An Owner shall give to the Board of Directors or its designee written notice of an intended Transfer at least thirty (30) days prior to the proposed Transfer and occupancy thereunder, together with the name and address of the proposed lessee(s), an executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require the personal appearance of any lessee(s), and his/her spouse and any other intended occupants, as a condition of approval.
2. Approval. After the required notice and all information, transfer fee, and appearances requested have been provided, the Board shall approve or disapprove the proposed Transfer within thirty (30) days. If the Board neither approves nor disapproves within this time period, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a letter of approval to the Owner.
3. Disapproval. A proposed Transfer shall be disapproved only if a majority of the whole Board so votes, and in such case the Transfer shall not be made. Notice of disapproval shall be sent or delivered in writing to the Unit Owner. The following circumstances shall be considered violations of this declaration which disqualify the applicant from renting or purchasing a lot in the community and the Association may disapprove an application to lease were any of the following circumstances exist:
  - A. There are any unresolved violations of the governing documents or rules by the owner of the unit to which the application relates;
  - B. The application reflects (or the Association otherwise discovers) that the applicant would, upon taking occupancy of the premises be in violation of a provision of the governing documents or rules;
  - C. The owner is delinquent in the payment of any sums owed the Association whether said sums are in the form of a lien

for delinquent assessments or whether said sums are owed in the form of a final judgment or other claim by the Association against the existing owner;

- D. Any proposed occupant of the subject property is listed on the Florida Department of Law Enforcement's Sexual Predator List or is listed on another similar such list;
  - E. Any proposed occupant of the subject property has been convicted of a felony involving violence or the use of a deadly weapon within ten (10) years of the date of the application to the Association;
  - F. The owner or proposed occupant fails or refuses to provide the information reasonably requested by the Association in connection with the application process or fails to submit to an interview with the Board or committee if requested;
  - G. The proposed occupant misrepresents material facts on the application or during the interview process.
4. Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease.
5. Unapproved Transfers. Any Transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall be void unless subsequently approved in writing by the Board of Directors. The Association shall have the right to remove any occupant(s) and personal belongings by injunctive relief or by other means provided in this Declaration should this Section 8.9 be violated.
6. Application Form. The Association is vested with the authority to prescribe an application form such as may require specific personal, social, financial, and other data including driver's license and social security number relating to the intended lessee(s), and occupants, as may

reasonably be required by the Association in order to enable the Association to reasonably investigate the intended lessee(s), and occupants within the time limits extended to the Association for that purpose as set forth in this Section 8.10. The application shall be complete and submitted to the Association along with and as an integral part of the notice of intended Transfer. The Association may also be entitled to conduct an on-site interview with the lessee and intended adult occupants as a condition to approval.

7. Transfer Fee. The Board of Directors is empowered to charge a fee (“Transfer Fee”) in connection with and as a condition for the approvals set forth in this Section 8.9, in such amount per applicant as the Board shall determine from time to time, which, until changed by the Board of Directors, shall be \$500.00. There shall be no transfer fee in connection with the renewal of a lease, with the same lessee, if the renewed lease term immediately follows the expiration of the previous lease term.
8. Damage Deposit. The Board may require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of one month’s rent into an escrow account maintained by the Association. The security deposit shall protect against damages to the Common Area. Payment of interest, claims against the down payment, refunds and disputes under this subsection shall be handled in the same fashion as provided for in Part II of Chapter 83, Florida Statutes.
9. Certain Exceptions. Section 8.9 shall not apply to any lease by an Owner to his or her spouse, child, parents, the parent of his or her spouse, his or her brother or sister, the brother or sister of his or her spouse, or the spouses of any of the foregoing. Section 8.9 shall not apply where the Association is the owner of the Lot and Dwelling Unit. Section 8.9 shall also not apply to a lease by an Institutional Mortgagee that acquires its title as the result of owning a mortgage upon the Dwelling Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure

proceedings; nor shall such Section 8.9 apply to a transfer, sale or lease by an Institutional Mortgagee that so acquires its title. Nor shall such Section require the lease by a purchaser who acquires title to a Dwelling Unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

1. Proviso. This Subsection 8.9.9 shall not be construed to exempt the foregoing from compliance or permit the foregoing to be in noncompliance with the Chapter 720, Florida Statutes and all other provisions of the Governing Documents and Rules and Regulations of the Association; nor shall the grantee (other than another Institutional Mortgagee) of the foregoing be exempt from the requirements of this Section 8.9. However, Section 8.9 shall not apply where the Association is the owner of the Lot and Dwelling Unit.

C. Contents of Lease Agreement. Every lease, whether oral or written shall contain, and if it does not contain, shall automatically be deemed to contain, the following:

1. The lessee and all occupants shall abide by all provisions of the Governing Documents and reasonable Rules and Regulations, as amended from time to time, and the failure to do so shall constitute a material default and breach of the lease.
2. Any assessments or Charges, together with interest, late fees, costs and attorneys' fees, due and owing by the Owner/landlord shall be paid by the lessee directly to the Association, so long as the Association notifies the Owner/landlord and lessee of such sums due and owing, and lessee shall not be in breach of the lease for making such payments and deducting same from the rent due and owing to the landlord; the foregoing shall not change the fact that the Owner shall remain primarily liable for the payment of any and all such sums to the Association until same are paid in full.
3. The parties recognize that the Association, as agent for the landlord/Owner, has the power to evict the tenants and occupants under Chapter 83, Florida Statutes, for violations of the Governing

Documents and reasonable Rules and Regulations, as amended from time to time.

- D. Lease Term. The minimum permitted lease term shall be four (4) months, and only one lease shall be permitted in any 12-month period. A lease shall be considered made on the first day of the lease term.

8.10 Ownership Transfer of Ownership Lots. In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Lots, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of the ownership of a Lot shall be subject to the following provisions so long as the Community exists, which provisions each Owner of a Lot agrees to observe.

A. Forms of Ownership.

- 1. General. Except as otherwise provided in this Section 8.10, there is no limit as to how a Lot may be owned.
- 2. Life Estate. A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 8.10.B below. In that event, the life tenant shall be the only Association member from such Lot, and the occupancy of the Lot shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and Charges against the Lot. Any consent or approval required of Association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners.

- B. Transfer of Ownership of Lots. Owners may transfer title to Lots without the need for Association approval. However, each Owner shall be required to advise the Association of any transfer of ownership, and the Association shall be permitted to adopt a form for the Owner and/or purchaser/new owner to execute providing reasonable information relating to same, and shall be permitted to require the new Owner and intended adult occupants to submit themselves to an orientation with the Board or its designee.

8.11 Laundry. No portion of the Properties shall be used for the drying or hanging of laundry, unless such laundry is adequately screened from public view, so that the laundry is not visible from any Lot; the foregoing is subject to F.S. 163.04, as amended from time to time.

8.12 Bicycles, Toys and Similar Items of Personal Property shall not be left outside on the Lot or Dwelling Structure, except in the patio areas, and shall in no event be left on the Common Area.

8.13 During the hurricane season, when an Owner or Occupant is absent from the Dwelling Structure for a period of ten (10) days or longer, the Owner or Occupant must make the following preparations prior to departure:

- A. Removal of furniture, plants and other objects from any areas outside of the Dwelling Structure.
- B. Designate a responsible firm or individual to care for the Dwelling Structure should same suffer hurricane or tropical storm damage and furnish the Board with the name of such firm or individual. Such firm or individual shall contact the Board for clearance to install or remove hurricane shutters, and such parties shall be subject to approval of the Board.

8.14 Deployment of Hurricane Shutters. At no time shall a hurricane shutter be closed more than 72 hours prior to the issuance of a hurricane or tropical storm watch, which must be removed no later than 72 hours of the lifting of a hurricane or tropical storm watch or warning. The Board of Directors shall have the authority to extend the time frame for the removal of hurricane shutters in times of emergency.

8.15 Hazardous Materials. No toxic waste, chemical pollutant, contaminant or other form of "hazardous waste" as defined under any state or federal laws, shall be used, generated or permitted within any portion of the Properties, except in strict conformance with such laws, and each Owner and Occupant, and their family members, guests and invitees shall be responsible for complying with such laws, statutes, ordinances and other restrictions, including any regulations promulgated by any governmental agencies.

8.16 Window Treatments. All window treatments placed on the inside of the windows must contain a white color on the reverse side facing to the exterior, or be a natural wood color, so as to create a uniform appearance throughout the Properties.

8.17 Garages. The doors of all garages shall be kept in a useful operating condition and shall be closed, except as needed for ingress and egress. No ventilation grills or other

openings of any kind shall be made in any garage door. No garage may be used as living space, with garage use to be limited to storage and/or the parking of vehicles and the like.

8.18 Air Conditioners. Window or wall-mounted air conditioning units are prohibited.

8.19 Satellite Dishes/Antennae. No satellite dishes/antennae shall be permitted except as protected by federal law, and must be installed on the air conditioning well on the Lot only. No other location for satellite dish installation shall be permitted. Board approval for the installation of satellite dishes/antennae shall not be required.

8.20 Signs. No signs of any kind shall be permitted except as permitted on non-prohibited vehicles as covered in Section 8.4 above, however, one "open house" sign, professionally lettered, no larger than 180 square inches mounted on a stake on the Lot, shall be allowed for no longer than 48 hours in any seven (7) day period.

8.21 No Temporary Buildings. No out-buildings, portable buildings, temporary or accessory buildings or structures, or storage buildings shall be erected, constructed or located upon any Lot for storage or otherwise, without the prior written consent of the Board of Directors.

8.22 Rear Gates. No rear gate on a Lot shall be locked.

8.23 Loitering; Use of Recreational Facilities. No loitering shall be permitted, and no workers or trades serving a Lot or Dwelling Structure shall use any of the recreational facilities.

Section 9. INSURANCE AND CASUALTY. The insurance which will be carried upon the Properties in the Community shall be governed by the following provisions:

9.1 By the Association.

A. Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry under the Governing Documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Owners without naming them, and their mortgagees, as their interests shall appear.

1. The cost of insurance premiums and other incidental expenses incurred by the Association in administering and carrying out the provisions of this Section 9.1 shall be a common expense of the Association; notwithstanding the foregoing, any increase in the premium occasioned by misuse, occupancy or abandonment of any

Dwelling Structure or of the Common Area by particular Owner(s) shall be levied against a Lot and Owner and paid by such Owner(s) as a Charge and collectible as Charges are collected pursuant to the Declaration.

2. Premiums upon insurance policies may be financed in the manner as the Board of Directors deems appropriate.
  3. The Association is hereby permitted to purchase insurance policies which contain deductibles.
  4. The Board of Directors of the Association is empowered to adjust claims under any policies of insurance carried by the Association.
  5. All policies shall be issued by a company authorized to do business in Florida.
- B. Required Coverage. The Association shall maintain adequate insurance, including comprehensive coverage, covering the Common Area, only, in an amount determined annually by the Board of Directors. The Association shall also carry fidelity bond coverage and directors and officers liability insurance.
- C. Description of Coverage. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by Owners or their authorized representatives upon request.
- D. Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association, Owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful and wanton disregard for life or property.
- E. Share of Insurance Proceeds. All insurance policies obtained by the Association shall provide that all proceeds covering property losses shall be paid to the Association.

## 9.2 By the Owners.

- A. Each Owner hereby covenants to maintain full casualty insurance coverage on all portions of his Lot, inclusive of the entire Dwelling Structure. Such coverage shall include loss by damage by fire and all other hazards covered by a standard extended coverage endorsement; all perils covered by the standard "all risk" endorsement; and an Inflation Guard Endorsement where obtainable; windstorm coverage; and flood insurance if the Lot is in a recognized flood zone requiring such insurance. Upon request from the Association, the Owner shall furnish the Association with a certificate of insurance evidencing coverage. The Owners may, but shall not be required to, procure title insurance and insurance upon their personal property and for their personal liability and living expense. All policies shall be issued by a company authorized to do business in Florida.
- B. All insurance purchased by Owners under this Section 9.2 shall be so purchased at their own expense.

Section 10. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

10.1 Association Reconstruction and Repair After Casualty. Any damage or destruction to the Common Area shall be repaired or reconstructed by the Association, substantially in accordance with the plans and specifications for the original improvements; or if such plans and specifications are lost or unavailable, then in accordance with plans and specifications approved by the Board of Directors of the Association. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair of the damaged Common Area, 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, the Association may levy an annual or special assessment against all Owners in sufficient amounts to provide funds for the payment of such costs. Notwithstanding the foregoing to the contrary, repair of damage or destruction to the Common Area is optional if this Declaration is terminated as provided for in Section 14 below.

10.2 Owners' Reconstruction and Repair After Casualty. All damage or destruction to any Lot or Dwelling Structure improvement shall be repaired or reconstructed by each Owner with improvements of at least similar size and type and exterior appearance; the provisions of Section 7 shall apply here. Construction shall proceed diligently and continuously. Although it is impossible to anticipate all problems which may arise from a casualty, the intent is to try to assure that the overall quality of the General Plan of Development is maintained by requiring damaged Dwelling Structures to be rebuilt, repaired or replaced and that unsightly and dangerous conditions on the Lots are remedied as soon as possible. The provisions of Section 3.3 above shall apply as to Party Walls.

Section 11. CONDEMNATION OR EMINENT DOMAIN. The circumstances of a taking of Common Area by the power of eminent domain and/or of any taking of Common Area or other Properties by way of condemnation, eminent domain or inverse condemnation, shall be dealt with in such reasonable manner as determined to be appropriate under the circumstances by two-thirds of the entire Board of Directors. For the purposes of this Section 11, each Owner shall be considered as having sufficient property rights in and to the Common Area so as to be able to institute a claim directly against the taking authority.

Section 12. COMPLIANCE AND DEFAULT; REMEDIES.

12.1 Duty to Comply; Dispute Resolution. Each Owner, his tenants, guests, and invitees, and the Association, shall be governed by and shall comply with the provisions of the corporate act, the Governing Documents, and the Rules and Regulations, and architectural guidelines of the Board of Directors. Actions for damages, for injunctive relief, and/or for declaratory relief, for failure to comply may be brought by the Association or by an Owner against:

- A. The Association;
- B. An Owner;
- C. By tenants, guests or invitees occupying a Dwelling Structure or using the Common Area; or
- D. Any member of the Board of Directors who willfully and knowingly fails to comply with the foregoing.

Election and recall disputes shall be submitted to mandatory binding arbitration with the Division of Florida Land Sales, Condominiums and Mobile Homes pursuant to F.S. 720.311(1), as amended from time to time. Furthermore, those disputes referenced in F.S. 720.311(2) shall be submitted to mandatory mediation before the dispute is filed in court. The provisions of said statutes and any Administrative Rules shall be followed.

12.2 Association Notice to Correct. Should any Owner fail to properly discharge his/her maintenance, repair and replacement obligations as provided for in Section 6 and in Section 10.2 above; or shall fail to make and pay for maintenance, repair or replacement as provided for in Section 6 above; or should any Owner violate Section 7 above; or should the neglect or the willful misconduct of Owner(s) cause damage which then requires maintenance, repair or replacement by the Association; then the following shall apply:

- A. The Board may (but shall not be required to) provide notice of such condition(s) to the proper Owner(s), demanding that the condition(s) be corrected within thirty (30) days from the date the notice was sent. In

the event that the Owner does not rectify the condition at the end of this period, then the Association shall be entitled to contract to have the necessary work performed (and entry onto the Lot), whereupon the cost of this work together with an administration fee of 10% of the cost of the work shall become a Charge against the Owner and Lot concerned (solely or proportionately as the Board shall determine) and collectible as Charges are collected under this Declaration.

- B. This Section 12.2 is in addition to the rights of entry onto the Lots and Dwelling Structures as provided for in Sections 12.3 and 12.4 below.
- C. Provisos. Notwithstanding any provision to the contrary in this Section 12.2, the following shall apply:
  - 1. The thirty (30) day notice period may be shortened or eliminated if the Board determines that an emergency exists to effect correction.
  - 2. The thirty (30) day notice shall not apply to Section 12.3 below.

12.3 Negligence; Damage Caused by Condition in Lot. Each Owner shall be liable to the Association for the expenses of any maintenance, repair or replacement of Common Area made necessary by his act or negligence, or by that of any member of his family or his guests, invitees, agents, or lessees. If any condition, defect or malfunction existing within a Lot or Dwelling Structure, whether caused by the Owner's negligence or otherwise, shall cause damage to the Common Area or to other Lots and Dwelling Structures, the Owner of the offending Lot shall be liable to the person or entity responsible for repairing the damaged areas, for all costs of repair or replacement not paid by insurance. If the Association effects correction, the cost shall be levied as a Charge against the Owner and Lot and collectible as Charges are collected under this Declaration; the Association may, but is not required to, provide notice to the Owner prior to effecting correction.

12.4 Association's Access. The Association, by and through the Board of Directors, officers, or the agents or employees of the Association, has an irrevocable right of access onto the Lots and Dwelling Structures for the purposes of inspection, maintenance, repair, replacement, alteration and improvement of those Properties for which it is obligated to maintain, repair and replace, and for which it is permitted to alter and improve, under this Declaration.

12.5 Owners Responsible. Owners are strictly responsible to ensure that their family members, guests, agents, lessees, invitees, etc. or any occupants of their Lots comply with the Governing Documents and Rules and Regulations and architectural guidelines of the Board of Directors, as amended from time to time; and the statutes which apply; and as such, are

responsible and liable to the Association for violations of same by their family members, guests, agents, lessees, servants, etc. or any occupants of their Lots.

12.6 Waiver of Rights. The failure of the Association or of an Association member to enforce any right, provision, covenant or condition which may be granted by the Governing Documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future.

12.7 Costs and Attorneys' and Paralegal Fees. In any legal proceeding arising out of an alleged failure of an Owner (for himself/herself or for his/her family members, guests, agents, tenants and invitees or any occupants of the Lot), or the Association, or any tenants, guests or invitees occupying a Lot or using the common area, to comply with the Governing Documents or Rules or Regulations and architectural guidelines as amended from time to time, or applicable statutes, the prevailing party shall be entitled to recover from the losing party, costs and attorneys' and paralegal fees, including those incurred in appellate proceedings. Attorneys' which are recoverable include those incurred in connection with the entitlement as well as amount of attorneys' fees. An Owner prevailing in an action between the Association and the Owner, in addition to recovering his or her reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Owner for his or her share of assessments levied by the Association to fund its expenses of the litigation. The Association shall also be entitled to recover attorneys' fees and costs incurred prior to and with or without the filing of a legal action, to include those incurred by the Association in connection with mediation proceedings. This Section 12.7 shall survive the termination of an Owner's membership resulting from the voluntary or involuntary transfer of title to the Lot.

12.8 No Election of Remedies. All rights, remedies and privileges granted to the Association or Owners under any terms, provisions, covenants, or conditions of the Governing Documents or Rules and Regulations of the Association, or law, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Governing Documents, Rules and Regulations of the Association, or at law or in equity.

Section 13. RIGHTS OF MORTGAGEES. The following rights shall apply to certain or all mortgagees, in addition to those rights contained elsewhere in the Governing Documents:

13.1 General Lender Rights. Upon written request to the Association by an Institutional Mortgagee, or the insurer or guarantor of any Institutional Mortgagee held by an Institutional Mortgagee encumbering a Lot or residence on a Lot, conditioned on such notice or request specifying the name and address of the requesting party, then such party shall be entitled to prompt written notice of:

- A. Any condemnation or casualty loss that affects either a material portion of the Properties or any Lot or Dwelling Structure on a Lot encumbered by its Institutional Mortgage;
- B. Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot or Dwelling Structure on a Lot on which it holds the Institutional Mortgage;
- C. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- D. Any proposed action which requires the consent of a specified percentage of Institutional Mortgagees.

13.2 Financial Statement. Any Institutional Mortgagee, upon written request, shall be entitled to receive from the Association a financial report for the immediately preceding fiscal year.

13.3 Consent of Institutional Lenders. Whenever the consent or approval of any, all or a specified percentage or portion of the holder(s) of any mortgage(s) encumbering any Lots is required by this Declaration, the Articles, the By-Laws, or any applicable statute or law, to any amendment of the Declaration, the Articles, or the By-Laws, or to any action of the Association, or to any other matter relating to the Properties, the Association may request such consent or approval of such holder(s) by written request sent certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by such holders). Any holder receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested, in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association), which response must be received by the Association within thirty (30) days after the holder receives such request, and if such response is not timely received by the Association, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be deemed evidenced by an affidavit signed by an officer of the Association, which affidavit, where necessary, may be recorded in the public records of the County, and which affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained. The foregoing shall not apply where an Institutional Mortgagee is otherwise required to specifically join in an amendment to this Declaration.

13.4 Amendments. Any Institutional Mortgagee who has registered its name with the Association shall be provided with written notice prior to the effective date of any proposed, material amendment to this Declaration, or the Articles or By-Laws.

Section 14. TERMINATION OF DECLARATION. This Declaration may be terminated in the following manner:

14.1 This Declaration may be terminated by the approval in writing by the Owners of not less than 75% of the Lots and by the record owners of the Institutional Mortgages on the Lots whose Owners are consenting in writing.

14.2 Sale of Common Area. Should this Declaration be terminated as provided for in Section 14.1 above, then all Common Area shall be transferred to a trustee appointed by the circuit court for the County, which trustee shall sell the Common Properties free and clear of the provisions of this Declaration upon such terms as established by the trustee and approved by the court. The proceeds of such sale shall first be used for the sale, operation, maintenance, repair and upkeep of the Common Area, including a trustee's fee approved by the court, and then next for the payment of any debts or obligations constituting a lien on the Common Area. The excess of proceeds, if any, shall be distributed equally to all Units. Only those easements which state that they shall survive the termination of this Declaration shall so survive unless otherwise required under law.

14.3 General Provisions. The termination of the Declaration shall be evidenced by an Association certificate certifying as to facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of the County.

14.3 New Declaration. The termination of this Declaration does not bar the filing of another declaration affecting all or any portion of the same property.

14.4 Last Board. The members of the last Board of Directors shall continue to have the powers granted in this Declaration and in the Articles of Incorporation and By-Laws for the purpose of winding up the affairs of the Association, subject to the authority of the trustee, notwithstanding the fact that the Association itself may be dissolved upon a termination.

14.5 Provisions Survive Termination. The provisions of this Section 14 shall be deemed covenants running with the land, and shall survive the termination of this Declaration until all matters covered by those provisions have been completed.

14.6 Priority - Conflict. In the event that there is any conflict between this Section 14 and Section 15 below, the language contained in this Section 14 shall control and govern.

Section 15. AMENDMENT OF DECLARATION.

15.1 Amendments. This Declaration may only be amended by the affirmative vote (at any annual or special meeting of Members) of Members holding not less than seventy-five

percent (75%) of the votes of the Membership [votes present, as to large associations]. However, no amendment shall be permitted which has a material and adverse affect upon the rights of an Institutional Mortgagee without the prior written consent of such Institutional Mortgagee, as appropriate. This Section 15.1 may not be amended. In the event any amendment is sought, notice shall be given to all Owners and Institutional Mortgagees who have requested notice pursuant to Section 13 below at least forty-five (45) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, an officer of the Association shall execute an amendment to this Declaration which shall set forth the terms of the amendment, which shall be effective upon its recording. Such amendment shall be recorded in the Official Records of the County. [Scrivener's Note: The Membership approval required is 75% of those votes of the Membership present in person and/or by proxy at a Membership meeting.]

Section 16. MISCELLANEOUS PROVISIONS:

16.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not affect the remaining portions thereof.

16.2 Priorities in Case of Conflict. In the event of conflict between or among the provisions of any of the following, the order of priorities shall be from highest priority to lowest:

- A. The Homeowners' Association Statute.
- B. The Corporate Act.
- C. Other Florida Statutes which apply.
- D. This Declaration.
- E. The Articles of Incorporation.
- F. The By-Laws.
- G. The Rules and Regulations promulgated by the Board of Directors, and architectural guidelines adopted by the Board of Directors.

16.3 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable.

16.4 Invalidity. In the event any court shall hereafter determine that any provisions of this Declaration as originally drafted, or as amended, violates the rule against perpetuities or any other rules of law because of the duration of the period involved, the period specified in the Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law, and for such purpose measuring lives shall be that of the (original) incorporator(s) of the Association.

16.5 Captions. The captions in this Declaration and in the Articles of Incorporation and By-Laws attached hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit any provision in the Governing Documents.

16.6 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

16.7 Owners' Affirmative Duty. All Owners are charged with the affirmative duty to keep the Association notified, in writing, of his/her mailing addresses, as they change from time to time, including a second address for emergency in the event of a catastrophic event. The Owner shall also notify the Association of the name and address of any mortgagee holding a mortgage on his/her lot. The Association shall be permitted to rely on information supplied by Owners in writing.

16.8 Covenant Running with the Land. All provisions of the Governing Documents shall be perpetual and be construed to be covenants running with the Properties in the Community, and all of the provisions of the Governing Documents shall be binding upon and enure to the benefit of the Developer and subsequent owner(s) of Properties within the Community, and their respective heirs, personal representatives, successors and assigns. None of the provisions contained in the Governing Documents are intended to create, nor shall be construed as creating, any rights in and for the benefit of the general public.

16.9 Duration. This Declaration, as amended from time to time, shall run and bind the Properties for a period of forty (40) years from the date the original Declaration was recorded in the Public Records of the County, at which time the Declaration, as amended, shall automatically be renewed for successive periods of ten (10) years, unless and until terminated as provided in Section 14 above.

Section 17. GENERAL GRANDFATHER PROVISION. Any use restriction or architectural prohibition in this Declaration which is permitted by the Original Declaration is hereby grandfathered, but once a use changes or is replaced or an architectural change is made or an alteration or improvement is replaced, then the grandfather protection shall cease to apply.

Section 18. SURFACE WATER MANAGEMENT AND DRAINAGE.

18.1 The surface water management and drainage system for the Properties is part of one integrated system throughout the Properties. An easement is hereby created over the Common Area and over all drainage easements throughout the Properties, whether now or hereafter existing, in favor of the Association, including its agents or other designees, for surface water drainage and for the installation and maintenance of the surface water management and drainage system for the Properties; provided, however, that such easement shall be subject to improvements constructed within the Properties as permitted by controlling governmental authority from time to time. The surface water management and drainage system shall be developed, operated and maintained in conformance with the requirements of the South Florida Water Management District (the "District") and/or any other controlling governmental authority. The District has the right to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel it to correct any outstanding problems with the surface water management system facilities or in mitigation or conservation areas under the responsibility or control of the Association. The Association shall maintain the entire surface water management and drainage system including, ut not limited to, all lakes, canals, swale areas, retention areas, culverts, pipes, and related appurtenances regardless of location or whether owned by the Association. Notwithstanding the foregoing, the Association will have the right, but not the obligation, to maintain any property which is owned and/or maintained by the District or any other controlling governmental authority subject to the requirements of the District.

18.2 Any proposed amendment to this Declaration, which would affect the surface water management and drainage system, environmental conservation areas, if any, or water management portions of the Common Area must be submitted to the District to determine whether the proposed amendment necessitates a modification of the Surface Water Management Permit (the "Permit"). After a review of the proposed amendment, the District will advise the Association if a modification of the Permit is necessary.

18.3 The Permit and its conditions has been recorded in Official Record Book 14281, at Page 1292, Public Records of the County, which is incorporated herein by reference. The Registered Agent for the Association shall maintain copies of all further permitting actions for the benefit of the Association.

#### Section 19. MITIGATION AREA.

19.1 Certain Lots may contain or be adjacent to preserved, restored or created wetlands preservation areas, mitigation areas and upland buffer zones (hereinafter collectively referred to as the "Mitigation Areas"), which are protected under conservation easements ("Conservation Easements"). The monitoring and maintenance of the Mitigation Areas shall be the perpetual responsibility of the Association which shall maintain same pursuant to and specifically in accordance with any Conservation Easements, the requirements and restrictions contained in the applicable governmental and quasi-governmental permits, and in accordance with the requirements of the District, and any applicable governmental or quasi-governmental

authority, from time to time. The Association shall be responsible for said monitoring and maintenance of the Mitigation Areas, including retaining all necessary consultants and all costs of said monitoring and maintenance (including replacement of plants). The cost of the monitoring and maintenance of the Mitigation Areas, including the hiring of consultants and replacement of plants, shall be a common expense of the Association.

19.2 The Mitigation Areas may not be altered by any Owner from their natural permitted condition, with the exception of exotic or nuisance vegetation removal or restoration, in accordance with any restoration plan included within any Conservation Easement. Exotic vegetation may include, but is not limited to melaleuca, Brazilian pepper, Australian pine, and Japanese climbing fern. Nuisance vegetation may include cattails, primrose willow and grape vine. Activities prohibited within the Mitigation Areas include, but are not limited to: constructing or placing of any building on or above the ground; dumping or placing soil or other substances, including trash or other debris; removal or destruction of trees, shrubs or other vegetation with the exception of exotic or nuisance vegetation, which may be removed; and any other activities detrimental to drainage, flood control, water conservation, erosion control and/or wildlife, habitat conservation or preservation, all as prescribed by any applicable governmental or quasi-governmental authority from time to time. The Association shall be responsible for the perpetual maintenance of the Mitigation Areas and shall take action against Owners as necessary to enforce the conditions of any Conservation Easement, the requirements and restrictions contained in the applicable governmental and quasi-governmental permits, and in accordance with the requirements of the District, and any applicable governmental or quasi-governmental authority, from time to time. The Association shall install permanent markers or signs, which shall be installed at the edge of the lot/line buffer, and shall inform Owners of the conservation status of Mitigation Areas. The Association shall be responsible for the perpetual maintenance of the signs. The cost of the maintenance of the Mitigation signs shall be a common expense of the Association. The Association shall have the right to convey the Mitigation Areas of any portion thereof, to the City, County or any governmental or quasi-governmental entity, without the necessity or joinder of any Owner or Mortgagee(s).

Section 20. EFFECTIVE DATES. The Effective Date of the provisions of this Amended and Restated Declaration with Exhibits, including Articles of Incorporation and By-Laws, shall be the date on which this Declaration with Exhibits, including Articles of Incorporation and By-Laws, is recorded in the Public Records of the County. Provided however, that to the extent that any provision in this Declaration contains a use restriction which is in effect the same or similar to that contained in the Original Declaration or any amendment to the Original Declaration, then the Effective Date of such use restriction is the date of recording of the Original Declaration or amendment, as applicable. Further provided however, that if an earlier Effective Date is referenced in this Declaration, then that earlier date shall control as the Effective Date. Finally, an easement created by any Original Declaration which is stated in this Declaration shall have as an Effective Date, the date of recording of the Original Declaration.

**CERTIFICATE OF ADOPTION OF AMENDED AND RESTATED**

**DECLARATION**

THE UNDERSIGNED, being the president of DELRAY ESTUARY HOMEOWNERS ASSOCIATION, INC., hereby certifies that the foregoing was approved by not less than a majority of the entire membership of the Board of Directors then serving, obtained at a meeting held on July 31, 2008, with quorum present; and was approved by not less than 75% of the voting interests of those members of the Association present in person and by proxy at a meeting of the members held on October 21, 2008, called for the purpose, with quorum present.

IN WITNESS WHEREOF, the Association has caused these presents to be executed in its name and its corporate seal to be affixed by its president on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

WITNESSES:

DELRAY  
ESTUARY HOMEOWNERS ASSOCIATION,  
INC.

Sign \_\_\_\_\_

BY: \_\_\_\_\_

PRESIDENT

Print \_\_\_\_\_

Print \_\_\_\_\_

Sign \_\_\_\_\_

Current Address \_\_\_\_\_

Print \_\_\_\_\_

\_\_\_\_\_

SEAL

STATE OF FLORIDA )

) ss.

COUNTY OF PALM BEACH )

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me personally appeared \_\_\_\_\_, President of DELRAY ESTUARY HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, who is personally known to me or who has produced \_\_\_\_\_ (if left blank, personal knowledge existed) as identification and who did not take an oath and who executed the aforesaid as their free act and deed as such duly authorized officers; and that the official seal of the Corporation is duly affixed and the instrument is the act and deed of the Corporation.

WITNESS my signature and official seal at \_\_\_\_\_ in  
the County of Palm Beach, State of Florida, the day and year last aforesaid.

NOTARY PUBLIC:

Sign: \_\_\_\_\_

Print: \_\_\_\_\_