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**DECLARATION OF COVENANTS, RESTRICTIONS AND
RECIPROCAL EASEMENTS**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENTS (this "Declaration") is made and entered into as of this 5th day of June, 2006 by MARSH HARBOUR ASSOCIATES, LTD., a Florida limited partnership, whose address is 2121 Ponce De Leon Blvd., PH, Coral Gables, FL 33134, hereinafter referred to as "Declarant."

RECITALS

WHEREAS, Declarant is the owner of that certain Parcel of real property located in Palm Beach County, Florida, which is legally described in **Exhibit "A"** attached hereto (the "Property"); and

WHEREAS, Declarant intends to develop the Property into a residential community known as "Marsh Harbour" (the "Properties"); and

WHEREAS, Declarant is desirous of (i) providing for the operation and maintenance of the Common Areas, as hereinafter defined, as well as other portions of the Properties; (ii) establishing certain easements in, to, over, under, across and through portions of the Properties for the benefit of the Dwellings and Sub-Association Parcels located thereon and other portions of the Properties; and (iii) imposing certain restrictions in connection with the development, ownership and use of the Common Areas, the Dwellings, the Sub-Association Parcels and other portions of the Properties, all as more particularly provided for herein; and

NOW, THEREFORE, for valuable consideration, the Declarant does hereby declare as follows:

**ARTICLE 1
DEFINITIONS**

1.1. Definitions. In addition to the terms defined elsewhere in this Declaration, the following terms used in this Declaration shall have the following meanings:

1.1.1. "Access Areas" means the driveways, sidewalks, paths, walks, walkways, and other areas suitable for pedestrian or vehicular traffic, that may exist from time to time, on or over portions of the Common Areas.

1.1.2. "Access Control Facilities" means the facilities, systems, equipment and devices, if any, that may exist from time to time, located within or in connection with the Access Areas which are intended to control access to the Properties.

1.1.3. "Act" means Chapter 720 of the Florida Statutes as enacted as of the date hereof, and as renumbered from time to time.

1.1.4. "Amenities" means any Common Areas now or hereafter located on or around the Properties, which are made available for the use and enjoyment of the Community Beneficiaries, including, without limitation, any clubhouse, swimming pools and pedestrian walkways, as well as any parks adjacent to or other property located adjacent to or in the vicinity of the Properties that are owned by the City or by others but are to be maintained by the Maintenance Association pursuant to Section 6.1 of this Declaration.

1.1.5. "Applicable Law" means all laws, rules, regulations, codes and ordinances of the United States, the State of Florida, the County and the City, applicable to the ownership, operation and use of the Properties, as renumbered from time to time.

1.1.6. "Articles" means the Articles of Incorporation of the Maintenance Association, as amended from time to time.

1.1.7. "Assessment" means a share of the funds required for the payment of Common Expenses which, from time to time, are assessed by the Maintenance Association against some or all of the Dwellings for the purposes set forth herein, including any Special Assessments, Emergency Special Assessments, Individual Assessments and Dwelling Maintenance Expenses.

1.1.8. "Association" or "Maintenance Association" means the "Marsh Harbour Maintenance Association, Inc., a Florida not-for-profit corporation," or any successor thereto.

1.1.9. "Board" or "Board of Directors" means the Board of Directors of the Maintenance Association, as appointed or elected from time to time.

1.1.10. "By-Laws" means the By-Laws of the Maintenance Association, as amended from time to time.

1.1.11. "CDD" means the "Marsh Harbour Community Development District" or any successor thereto.

1.1.12. "CDD Property" means the personal property, if any, and real property which is owned by, dedicated to or reserved in favor of, or may hereafter be acquired by, dedicated to or reserved in favor of the CDD, including, without limitation, any portion of the Properties used for water systems, sewer systems, and the Surface Water Management System. Notwithstanding anything to contrary in this Declaration, in no event shall any portion of the CDD Property be deemed part of the Common Areas.

1.1.13. "City" means the City of Riviera Beach, Florida.

1.1.14. "Common Areas" means those portions of the Properties designated as Common Areas pursuant to Section 3.1 of this Declaration, but specifically excluding the CDD Property.

1.1.15. "Common Expenses" means those expenses, costs and disbursements described in Section 6.9.

1.1.16. "Community" means the residential community to be developed upon the Property, and known as "Marsh Harbour."

1.1.17. "Community Beneficiaries" means the Owners, the Declarant, the Declarant's Permittees, the Maintenance Association, the CDD, each Sub-Association and, as applicable, the members, families (provided that the Owner or other permitted occupant must reside with his/her family), tenants, licensees, guests, invitees, members, agents, employees, contractors and Institutional Mortgagees thereof, and, in the case of Owners which are corporations, partnerships or trusts, the officers and directors, members, partners and beneficiaries (as the case may be) thereof, a fiduciary or beneficiary of an Owner which is a trust, or occupants named or described in a lease or sublease approved in accordance with this Declaration.

1.1.18. "Condominium" means any portion of the Properties which has been submitted to condominium ownership.

1.1.19. "County" means Palm Beach County, Florida.

1.1.20. "Declarant" means and refers to Marsh Harbour Associates, Ltd., a Florida limited partnership, its successors and such assigns who acquire all or any portion of the Properties from the Declarant so long as the Declarant assigns such rights of Declarant hereunder, or any one or more of such rights, to any such person or entity by an express written assignment executed by the existing Declarant and recorded in the Public Records of the County. Declarant may assign all or any portion of its rights hereunder, or all or any portion of such rights in connection with specific portions of the Properties. In the event of any partial assignment by Declarant, the assignee shall not be deemed the Declarant, but may exercise such rights of the Declarant as are specifically assigned to it, if any. Any such assignment may be made on a nonexclusive basis. In the event the holder of any mortgage executed by the Declarant, or any subsidiary or affiliate of the holder, obtains title to all or any portion of the Properties by foreclosure, or deed in lieu thereof, or other conveyance, such holder, or subsidiary or affiliate of the holder, shall become the Declarant only if it so elects by written notice to the Board, except as otherwise provided by the Act or the rules promulgated thereunder, but regardless of such election the holder, or subsidiary or affiliate of the holder, shall have the right to assign any of the rights of the Declarant as provided herein to any third party who acquires title to all or a portion of the Properties from the holder, or subsidiary or affiliate of the holder. In any event, any subsequent Declarant shall not be liable for any defaults or obligations incurred by any prior Declarant, except as same are expressly assumed by the subsequent Declarant. The rights of Declarant under this Declaration are independent of the Declarant's rights to control the Board of Directors of the Maintenance Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Owners, the Board or the Maintenance Association upon turnover of control of the Maintenance Association.

1.1.21. "Declarant's Permittees" means the Declarant's officers, directors, members, partners, lenders, employees, agents, contractors, subcontractors, suppliers, lessees, licensees, guests and invitees (and the officers, directors, shareholders, members and employees thereof).

1.1.22. "Declaration" and "this Declaration" means this instrument, as it may be amended from time to time, together with any Supplemental Declaration.

1.1.23. "Declaration of Condominium" means an instrument creating a Condominium, as recorded in the Public Records, and as amended from time to time.

1.1.24. "DPEP" means the Palm Beach County Department of Planning and Environmental Protection.

1.1.25. " Dwelling" means a single-family residence for which a Certificate of Completion, or its equivalent, has been issued by the City, including a condominium unit, townhome, or apartment.

1.1.26. " Dwelling Maintenance Expenses" means the expenses for maintenance, repair and replacement of the exterior building surfaces and the rooftops of those Dwellings that are not governed by a Sub-Association pursuant to Section 6.1.4.

1.1.27. " Dwelling Maintenance Assessment" means the Assessments for Dwelling Maintenance Expenses which are assessed against those Dwellings that are not governed by a Sub-Association pursuant to Section 7.12.

1.1.28. " Family" or words of similar import shall be deemed to include a spouse, children, parents, brothers, sisters, grandchildren and other persons permanently cohabiting in a Dwelling together with the Owner or permitted occupant thereof.

1.1.29. " FNMA/FHLMC" means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, respectively.

1.1.30. " General Assessment" means the share of funds for the payment of Common Expenses, which from time to time are assessed to a Dwelling pursuant to Section 7.9.

1.1.31. " Individual Assessment" means an Assessment levied by the Maintenance Association against a Dwelling or Dwellings for the purposes described in Section 7.13.

1.1.32. " Institutional Mortgagee" means a bank, savings and loan association, insurance company, mortgage banker, real estate or mortgage investment trust, pension fund, an agency of the United States Government or any state or local government, the FNMA, the FHLMC or any other lender generally recognized as an institutional lender, or the Declarant, holding a first mortgage on one or more Dwellings or on all or any portion of the Properties.

1.1.33. " Limited Common Areas" means such portions of the Common Areas, if any, which are intended for the exclusive use (subject to the rights, if any, of the County, the City, the Maintenance Association, the CDD and the public) of certain Owners, to the exclusion of others. Unless otherwise provided specifically to the contrary, reference to the Common Areas shall include the Limited Common Areas.

1.1.34. " Limited Common Expenses" means and refers to the costs and expenses of operating, administering, and/or maintaining any Limited Common Areas. At the option of the Maintenance Association, all or certain types of such Limited Common Expenses may be assessed, pro rata, only against the permitted users of the corresponding Limited Common Areas.

1.1.35. " Lots" means those portions of the Property that are not Common Areas or CDD Property. There shall be two classes of Lots: those containing one or more Dwellings and those not containing any Dwellings. Only those Lots containing one or more Dwellings shall be subject to Assessments as provided in Section 7.3 of this Declaration.

1.1.36. "Maintenance Association" or "Association" means Marsh Harbour Maintenance Association, Inc., a Florida not-for-profit corporation, or any successor thereto.

1.1.37. "Maintenance Association Property" means the personal property and real property, if any, which is owned by or may hereafter be acquired by, or is otherwise made available to the Maintenance Association and which is not included in the Common Areas, including, without limitation, any portion of the Properties used for management offices, manager's quarters or the storage of maintenance equipment or supplies.

1.1.38. "Master Life Safety Systems" means and refers to any and all emergency lighting, audio and visual signals, safety systems, sprinklers and smoke detection systems, which are now or hereafter installed in any improvements constructed upon the Properties. All such Master Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, which are located outside of or adjacent to a Dwelling, shall be deemed part of the Common Areas.

1.1.39. "Member" or "Members" means those persons who are members of the Maintenance Association, as provided in this Declaration or in the Articles and By-Laws.

1.1.40. "Owner" or "Owners" means the person or persons, or legal entity or entities, including the Declarant, holding fee simple interests of record to any Dwelling, including any condominium unit, townhome, or apartment constructed within a Sub-Association Parcel, or to a Sub-Association Parcel, including sellers under executory contracts of sale, unless any such interest is held merely as security for the performance of an obligation.

1.1.41. "Parking Spaces" means individual spaces in the Common Areas, which become Limited Common Areas upon being assigned or designated to one or more Dwellings for the exclusive use of the Owners or occupants therein and their guests and invitees, pursuant to Section 3.2.

1.1.42. "Percentage Shares" means the shares of Common Expenses allocated to the Dwellings, from time to time, as set forth in Section 7.4.

1.1.43. "Property" means the lands described in attached **Exhibit "A"** and all additions or supplements thereto, now or hereafter made subject to this Declaration, except such as are withdrawn from the provisions hereof in accordance with the procedures set forth in Section 12.6.

1.1.44. "Properties" means the Property, together with all improvements now or hereafter thereon, and any and all additions or supplements thereto, now or hereafter made subject to this Declaration, including, without limitation, the CDD Property, except such as are withdrawn from the provisions hereof in accordance with the procedures set forth in Section 12.6.

1.1.45. "Public Records" means the Public Records of the County.

1.1.46. "Rules and Regulations" means the rules and regulations, if any, as established, and as amended from time to time, by the Maintenance Association pursuant to Article 5.

1.1.47. "Special Assessment" means an Assessment levied by the Board against a Dwelling for the purposes described in Section 7.10.

1.1.48. "Sub-Association" means a condominium association or a homeowners' association that is responsible for the operation of a Sub-Association Parcel which has been submitted to condominium ownership or which is subject to Chapter 720 of the Florida Statutes. Additionally, solely for purposes of this Declaration, the term "Sub-Association" shall also be deemed to include the Owner or Owners of an entire Sub-Association Parcel, provided however, that the foregoing is for reference purposes only and in no event shall it require any such owner or owners to form an association for the operation or management of such property or result in any such parties, or any portion of their property, becoming subject to any requirements of Chapters 718 or 720 of the Florida Statutes.

1.1.49. "Sub-Association Parcel" means any portion of the Properties that is governed by a Sub-Association including condominium units and townhomes. For purposes of this Declaration, the term "Sub-Association Parcel" shall include a portion of the Properties that is developed or is intended to be developed for multi-family apartments. All portions of a Sub-Association Parcel that are within a single Condominium, or that are governed by a single homeowners' association, shall be deemed a single Sub-Association Parcel hereunder.

1.1.50. "Surface Water Management System" means and refers to those portions of the Properties which the CDD is required to maintain pursuant to the SFWMD Permit, as provided in Section 6.4 of this Declaration.

1.1.51. "SFWMD" means the South Florida Water Management District.

1.1.52. "SFWMD Permit" means SFWMD Permit No's 50-06822-W and 50-06827-W, which is made a part of this Declaration.

1.1.53. "Special Assessment" means an Assessment levied by the Board against a Dwelling for the purposes described in Section 7.10.

1.1.54. "Supplemental Declaration" means an instrument executed by the Declarant and recorded in the Public Records for the purpose of adding to the Properties, or withdrawing any portion(s) thereof from the effect of this Declaration, or designating a portion of the Properties as Common Areas, Limited Common Areas or Maintenance Association Property hereunder, or for any other purposes provided in this Declaration.

1.1.55. "Voting Member" or "Voting Members" means those Members who have voting rights, as provided in Section 2.4.

1.2. The foregoing definitions shall be applicable to this Declaration and to any amendment to this Declaration or Supplemental Declaration, unless otherwise expressly provided herein or therein to the contrary.

ARTICLE 2 THE MAINTENANCE ASSOCIATION

2.1. Formation. Prior to the recording of this Declaration, Declarant has caused the Maintenance Association to be formed, by the filing of the Articles of Incorporation in the office of the Secretary of State of Florida. The purpose and powers of the Maintenance Association shall be all of the purposes and powers set forth in this Declaration and in the Articles and By-Laws. The Maintenance Association shall be responsible for the execution, performance, administration and enforcement of all the terms and conditions of this Declaration.

2.2. Not a Condominium Association. The Maintenance Association is not intended to be an association regulated under Chapter 718, Florida Statutes or any related administrative rules or regulations (collectively, the "Condominium Act"). Anything in this Declaration to the contrary notwithstanding, the existence or exercise of any easement, right, power, authority, privilege or duty, which would cause the Maintenance Association to be subject to the Condominium Act, shall be null, void and of no effect to the extent, but only to the extent, that such existence or exercise is finally determined by a court or administrative hearing officer of competent jurisdiction (after all appellate rights have been exercised or waived) to subject the Maintenance Association to said provisions. It is the intent of this provision that the Maintenance Association shall not be deemed to be an association that is subject to the Condominium Act, and that the Common Areas shall not be deemed to be common elements of a condominium and that nothing in this Declaration shall be deemed to make the Maintenance Association a condominium association within the meaning of the Condominium Act.

2.3. Membership. The Owners of the Dwellings shall automatically be Class A Members of the Maintenance Association. An Owner of more than one Dwelling is entitled to one membership for each Dwelling owned (subject to Section 2.6 below). Each membership is appurtenant to the Dwelling for which it is based and is transferred automatically by conveyance of title to any Dwelling, and by filing of record therefor a deed in the Public Records evidencing such transfer of ownership. Membership shall continue until such time as the Member transfers or conveys its interest in the Dwelling of record or the interest is transferred and conveyed by operation of law. No person other than a Sub-Association, an Owner of a Dwelling, or the Declarant may be a Member of the Maintenance Association, and membership in the Maintenance Association may not be transferred except by the transfer of title to a Dwelling; provided, however the foregoing does not prohibit the assignment of membership and voting rights by any Owner who is a contract seller to such Owner's vendee in possession or by an Owner to an Institutional Mortgagee. In the absence of an assignment from the Owner thereof, no person or entity holding an interest of any type or nature whatsoever in a Dwelling only as the security for performance of an obligation shall be a Member of the Maintenance Association.

2.4. Voting. The Maintenance Association shall have two (2) classes of voting memberships: Class A and Class B. The Class A Members shall be the Owners of the Dwellings. The Class B Member shall be the Declarant. Each Class A Member shall be a Voting Member and shall be entitled to cast one (1) vote for each Dwelling owned. Until such time as the Class B membership has terminated, and to the fullest extent permitted under Applicable Law, the Class B Member is entitled to cast five hundred (500) votes and to elect all of the members of the Board of Directors. At such time as the Class B membership terminates, the entire Board of Directors shall be elected by the Class A Members. When reference is made herein, or in the Articles, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the total voting interests of all Voting Members.

2.5. Litigation. Notwithstanding anything in this Declaration to the contrary, no judicial or administrative proceeding shall be commenced or prosecuted by the Maintenance Association unless approved by a vote of seventy-five percent (75%) of the Voting Members other than the Declarant. This Section shall not apply, however, to (i) actions brought by the Maintenance Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) proceedings involving challenges to ad valorem taxation, or (iii) counterclaims brought by the Maintenance Association in proceedings instituted against it. This Section shall not be amended unless any such amendment is made by the Declarant or

is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

2.6. Co-Ownership. Notwithstanding anything herein to the contrary, if more than one person owns an interest in a Dwelling, there shall only be one Voting Member and that Member shall be entitled to cast the vote of the Dwelling. Such vote may be exercised as the co-Owners determine among themselves but no split vote is permitted among co-Owners. Prior to any meeting at which a vote is to be taken, the co-Owners must file with the Secretary of the Maintenance Association the name of the Voting Member to be entitled to vote at such meeting, which shall be applicable to all votes at all meetings until rescinded.

2.7. Class B Termination. The Class B membership will terminate and convert automatically to a Class A membership (to the extent the Declarant then owns any Dwellings) upon the happening of any of the following, whichever occurs first:

2.7.1. The Declarant records a disclaimer of its Class B membership in the Public Records; or

2.7.2. Three (3) months after ninety percent (90%) of the existing and proposed Dwellings in the Properties have been conveyed or assigned, as applicable, to Owners other than the Declarant.

Upon termination of the Class B membership, all provisions of this Declaration, the Articles, or By-Laws referring to Class B membership will be of no further force or effect.

2.8. Administration of the Maintenance Association. The affairs of the Maintenance Association shall be administered by the Board of Directors in accordance with this Declaration and the Articles, By-Laws and Rules and Regulations. The Articles, By-Laws and Rules and Regulations may be amended, from time to time, in the manner set forth therein.

2.9. Scope of Power. The Maintenance Association, acting through the Board, shall also have the power and duty to:

2.9.1. Maintain, repair, reconstruct, replace, landscape and otherwise manage the Common Areas and such improvements thereon as the Maintenance Association considers necessary or appropriate in accordance with the provisions of this Declaration; provided, however, that in the case of Limited Common Areas, such work may, at the option of the Maintenance Association, be done at the expense of (and all other expenses of such Limited Common Areas may be specifically charged to) only those Owners who are holders of exclusive use rights in such Limited Common Areas.

2.9.2. Maintain the Access Areas, including cleaning and periodic resealing and resurfacing.

2.9.3. Obtain, for the benefit of the Common Areas, all commonly metered water, sanitary sewage and electric services, and provide for all refuse collection and cable or master television service (if any), as necessary.

2.9.4. Grant easements, rights of way or strips of land, where necessary, for utilities, telephone, cable or satellite television, water and sewer facilities and other services over the Common Areas to serve the Common Areas and other portions of the Properties.

2.9.5. Maintain such policy or policies of liability, casualty and other insurance with respect to the Common Areas, and the personal property located thereon or used in connection therewith, if any, owned by the Maintenance Association or the Declarant as provided herein, as well as directors and officers insurance, in furthering the purposes and in protecting the interests of the Maintenance Association and its members as otherwise directed by this Declaration or the By-Laws.

2.9.6. Employ or contract with a management company (which may be an affiliate of the Declarant) to perform all or any part of the duties and responsibilities of the Maintenance Association and delegate, at the option of the Board, its powers to committees, officers and employees (which may also be employees of one or more of the Sub-Associations, in which case compensation shall be equitably apportioned).

2.9.7. Install and maintain the Access Control Facilities and any such other safety devices, detectors and communications facilities, and employ or contract for employment of such access control services, guards and watchmen for the Common Areas as the Maintenance Association considers necessary or appropriate, though it does not guarantee and shall not be liable for damages suffered by anyone as a result of the inadequacy of any such services.

2.9.8. Enter into leases and other agreements with a Sub-Association or the Owners (and/or groups or councils thereof), any governmental entity or third party pursuant to which any Amenities, Access Areas, Access Control Facilities, entry features, lighting and other "infrastructure" improvements and systems common to the Properties, and any landscape buffers, roadway right-of-ways or other areas in its vicinity are to be operated and maintained by the Maintenance Association. Any and all sums paid or required to be paid or incurred by the Maintenance Association under or pursuant to such agreements shall be deemed for all purposes to be Common Expenses hereunder.

2.9.9. Own, operate, maintain and, if necessary, replace the Surface Water Management System, in perpetuity, and take any actions against Owners necessary to enforce the conditions of the SFWMD Permit; maintain copies of the SFWMD Permit and any future permit actions of the SFWMD, which shall be maintained by the registered agent of the Maintenance Association for the benefit of the Maintenance Association; perform any monitoring and maintenance required in the SFWMD Permit; complete any mitigation required to satisfy permit conditions; and maintain in perpetuity any signage required by the SFWMD Permit. All costs and expenses incurred in connection with such obligations shall be Common Expenses of the Maintenance Association except any such expenses incurred for maintaining CDD Property.

2.9.10. Perform any monitoring and maintenance required under any approval or permit issued by, or agreement with, any governmental agency, including, without limitation, any monitoring requiring in connection with any prior, existing or suspected environmental contamination within all or any portion of the Properties. All costs and expenses incurred in connection with such obligations shall be Common Expenses of the Maintenance Association.

2.9.11. Acquire or divest itself of such interests in real and personal property as it may, in its sole discretion, deem beneficial to its Members as permitted in Article 12. Such interest, if any, may include fee simple or other absolute ownership interests, leaseholds or such other possessory use interests as the Maintenance Association may, in its sole discretion, determine to be beneficial to its Members, including, without limitation, the assumption of any leases entered by the Declarant for lands adjacent to or nearby to the Properties.

2.9.12. Assume, perform and abide by the obligations of the Declarant under that certain Development Agreement between the City of Riviera Beach, a municipal subdivision of the State of Florida and Marsh Harbour Associates, Ltd. (the "Development Agreement"), including, without limitation, and to indemnify, defend and hold harmless the Declarant and its affiliates from and against any losses, damages, claims and expenses, including, without limitation, attorneys' fees and costs incurred at all trial and appellate levels, arising out of any failure of the Maintenance Association to perform or otherwise abide by such obligations. The provisions of this Section may not be amended without the consent of the Declarant, which may be withheld in its sole and absolute discretion, and shall inure to the benefit of the Declarant's successors and assigns.

2.9.13. Enter into agreements with the CDD or its Board of Supervisors for the maintenance of all or any portions of the CDD Property, which maintenance shall be the sole cost and expense of the CDD. Any and all sums paid or required to be paid, incurred by, or advanced by the Maintenance Association under or pursuant to such agreements shall not be deemed Common Expenses hereunder.

2.9.14. Take such other action which the Board shall deem advisable with respect to the Properties as may be permitted hereunder or under Applicable Law.

ARTICLE 3
MAINTENANCE ASSOCIATION PROPERTY, COMMON AREAS, LIMITED COMMON AREAS AND ACCESS CONTROL FACILITIES

3.1. Maintenance Association Property and Common Areas. Except as set forth in Section 3.2, the Common Areas are intended for the use and benefit of all Community Beneficiaries. The Common Areas shall include only such property that is designated as Common Areas in this Declaration, or in any future recorded Supplemental Declaration, or that is deeded to the Maintenance Association, or that is deemed to be Common Areas under Applicable Law, provided however, in no event shall the Common Areas be deemed to include the CDD Property. Declarant will endeavor to specifically identify (by recorded legal description, signage, physical boundaries, site plans or other means) the Common Areas, but such identification shall not be required in order for a portion of the Properties to be Common Areas hereunder. Without limiting the generality of Article 12, in the event that Declarant determines that a particular portion of the Properties is or is not Common Areas hereunder (in the manner provided in Article 12), such determination shall be binding and conclusive. In the event that the Maintenance Association accepts an easement or similar grant over, under or through any portion of the Properties or any property adjacent thereto or in the vicinity thereof, the area subject to such easement shall be deemed Common Areas for the purposes of, but only for the purposes of, the Maintenance Association performing whatever duties or obligations are stated therein, or are implied by Applicable Law with respect to such easement or other grant.

3.2. Limited Common Areas. The Declarant shall have the right, from time to time, and in its sole discretion and for so long as it owns one or more Dwellings, to assign or to otherwise designate Parking Spaces and other portions of the Common Areas as Limited Common Areas, the use of which shall be restricted to one or more Owners to the exclusion of others, and the Declarant shall be entitled to retain any and all consideration paid in connection therewith. For so long as the Declarant owns any Dwelling or Sub-Association Parcel, the Declarant shall be entitled to receive compensation in exchange for assignments of Parking Spaces and thereafter the Maintenance Association shall be entitled to receive compensation therefor. Any Parking Space so assigned will be a Limited Common Area of the Dwelling to

which it is assigned. Without limiting the generality of the foregoing, the Maintenance Association shall be entitled to relocate assigned Parking Spaces at any time, and from time to time, to comply with Applicable Law regarding handicap accessibility.

3.3. Title to the Common Areas. The Declarant may, from time to time, in its sole discretion, convey all or any portion of its right, title and interest in the Properties to the Maintenance Association (but in no event shall it be obligated to do so). Such conveyance shall be by quit-claim deed, which shall become effective upon recordation in the Public Records, or by quit-claim bill of sale, as appropriate. The Maintenance Association shall be automatically deemed to have accepted any such conveyance. The Common Areas shall, upon the later of completion of the improvements thereon or the date when the last Dwelling has been conveyed to a purchaser (or at any time sooner and from time to time sooner at the sole election of Declarant and in whole or in part), be conveyed by quit claim deed to the Maintenance Association, which shall be deemed to have automatically accepted such conveyance. The Maintenance Association shall pay all documentary stamp taxes and other costs of such conveyances.

3.4. Access Control Facilities. The Common Areas may include certain Access Control Facilities. Notwithstanding the foregoing, no representations have been made as to what, if any, Access Control Facilities will be provided, or as to the nature or effectiveness thereof and, without limiting the generality of Article 13 of this Declaration, the Declarant and the Maintenance Association do not guarantee and shall not be liable for damages suffered by anyone as a result of the inadequacy of any such services or devices. Access control personnel, if any, engaged by the Maintenance Association shall have the right to stop and question persons within the Properties and to require satisfactory evidence of any such person's right to be where he or she is stopped. Any person who fails to establish that right may be required to leave (even if he or she actually is entitled to be where he is stopped but fails to satisfactorily prove that he or she is). The Maintenance Association may, at any time and from time to time, in its sole and absolute discretion, alter the design, layout, location and other characteristics of the Access Areas and the Access Control Facilities, if any, existing from time to time on or in connection with the Properties for use by access control personnel. The cost of any such alteration shall be borne, at the Maintenance Association's option, by any or all of the Owners (as determined by the Maintenance Association and based upon the extent to which the Maintenance Association determines any such alteration benefits such Owners). Notwithstanding anything contained herein to the contrary, the Declarant shall pay any and all costs associated with the initial construction and installation of the Access Areas and the Access Control Facilities, if any.

ARTICLE 4 EASEMENTS

4.1. Easement Grants. Declarant hereby establishes, creates and grants the easements in, to, over, across and through those portions of the Properties, including (without limitation, each Dwelling and Sub-Association Parcel) as provided below. The easements described below shall be perpetual and, unless otherwise stated, nonexclusive and shall be appurtenant to any Dwelling or Sub-Association Parcel benefited thereby, but shall not be deemed to grant or convey any ownership interest in the Common Areas or other property subject thereto. All rights to use the easements granted herein shall be subject to the provisions of this Declaration and to the Rules and Regulations. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

4.1.1. Easements for Access. Easements in favor of all Owners and other Community Beneficiaries for ingress and egress, to provide pedestrian and vehicular access to and from the adjacent dedicated public rights-of-way and all portions of the Common Areas, including the Access Areas and the Amenities.

4.1.2. Easements for Encroachments. If any portion of the Properties (including, without limitation, any Dwelling or other improvement constructed thereon) encroaches upon any other portion of the Properties (including, without limitation, any Dwelling or other improvement constructed thereon); or if any encroachment shall hereafter occur as the result of construction of any Dwelling or other improvement, settling or shifting of any Dwelling or other improvement; any alteration or repair to any portion of the Properties (or improvements thereon) or after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any improvement or portion of the Properties, a valid easement is granted and shall exist for such encroachment and for the maintenance of the same so long as the structure causing said encroachment shall exist.

4.1.3. Easements for Support. Whenever any structure included in the Properties adjoins any structure included in any other portion of the Properties, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure.

4.1.4. Public Easements. Fire, police, health and sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Properties, but to only to the extent required for the performance of their respective duties.

4.1.5. Easements for Utility Facilities. Each portion of the Properties, including a Dwelling and a Sub-Association Parcel, shall have an easement in common with all other portions thereof to use, maintain, repair, alter and replace all pipes, wires, ducts, vents, cables, conduits, utility lines, and similar or related facilities located in the Dwellings, Sub-Association Parcels and other portions of the Properties.

4.1.6. Easements for Maintenance, Operation, Repair and Rebuilding. Easements in favor of Declarant, each Owner of Dwelling, the Maintenance Association, the CDD, the Sub-Associations, and their agents and contractors, over, under, through and across such portions of the Properties as may be necessary or desirable to perform their obligations to maintain, modify, repair, restore, refurbish, replace or rebuild (including but not limited to, painting and other decorating), those portions of the Properties which are to be administered or maintained by such party pursuant to this Declaration.

4.1.7. Easements for Signage. Easements in favor of the Declarant and the Maintenance Association for directional, advertising, promotional or other signage, architectural features, and other structures overhanging or on a Dwelling or other portions of the Properties, as initially constructed by Declarant or as approved by the Maintenance Association, including the right of the to move, repair, replace, alter, add to or expand the same.

4.1.8. Construction, Sales and Leasing. The Declarant (and its agents, employees, contractors, subcontractors and suppliers) shall have an easement of ingress and egress over and across the Properties for construction purposes and to erect, maintain, repair and replace, from time to time, one or more signs on the Properties for the purposes of marketing or advertising the sale or lease of Dwellings or other portions of the Properties.

4.1.9. Amenities. The Community Beneficiaries shall have an easement for the use and enjoyment of the Amenities. Such rights shall be subject to rules and regulations that may be created by the Board with respect thereto. Any Owner of a Dwelling shall be deemed to have fully delegated its right of enjoyment of the Amenities to its tenant, subject to reasonable regulation and approval by the Board (provided that same is not discriminatory against one or more types of users).

4.1.10. Additional Easements in favor of Declarant. The Declarant and its affiliates shall have the right from time to time to enter upon the Common Areas and any other portions of the Properties (including, without limitation, the Dwellings) for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion and/or alteration of any improvements or facilities elsewhere on the Properties that Declarant and its affiliates or designees elect to effect, and to use, without charge, for sales, displays and signs or for any other purpose during the period of construction, sale and leasing of Dwellings or Sub-Association Parcels. Without limiting the generality of the foregoing, Declarant and its affiliates shall have the specific right to maintain upon any portion of the Properties sales, brokerage, administrative, construction or other offices and exclusive and nonexclusive easements of access and use are expressly reserved unto Declarant and its affiliates, and their successors, assigns, employees and contractors, for these purposes. Any obligation (which shall not be deemed to be created hereby) to complete, repair and maintain portions of the Properties shall, at all times, be subject and subordinate to these rights and easements and to the above-referenced activities. Accordingly, Declarant shall not be liable for delays in completion of all or any portion of the Properties resulting from the need to complete any of the above-referenced activities prior to such completion.

4.2. No Easement Grantee. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant or purported grant of easement shall nevertheless be considered as having been granted directly to the Maintenance Association, as agent for such intended grantees, for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners designate the Maintenance Association as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

4.3. Extent of Easements. The rights and easements of enjoyment of Owners and other Community Beneficiaries created hereby shall be subject to the following:

4.3.1. The right and duty of the Maintenance Association to levy Assessments against each Dwelling for the purpose of maintaining the Common Areas in compliance with the provisions of this Declaration.

4.3.2. The right of the Maintenance Association to borrow money for the purpose of maintaining or improving all or any portion of the Properties, and to mortgage any portion of the Common Areas or Maintenance Association Property.

4.3.3. The right of the Maintenance Association and the CDD to take such steps as it may determine are reasonably necessary to protect, maintain and operate the Properties.

4.3.4. The right of the Maintenance Association to adopt, to amend and to enforce, at any time and from time to time, Rules and Regulations governing the use of the Common Areas, including the right to fine Owners as hereinafter provided. Any rule and/or regulation so adopted by the Maintenance Association shall apply until rescinded or modified as if originally set forth at length in this Declaration.

4.3.5. The right of the Maintenance Association to suspend the enjoyment rights of any Community Beneficiary, including, without limitation, the right to use the Common Areas, as provided in Section 11.9.

4.3.6. The right to the use and enjoyment of the Common Areas shall extend to all Community Beneficiaries, subject to regulation from time to time by the Maintenance Association as set forth in the Rules and Regulations.

4.3.7. The right and duty of the CDD to maintain CDD Property and to levy assessments against each Dwelling as part of the non-ad valorem taxes for such purpose.

4.3.8. The right of Declarant to permit such persons as it may, from time to time, designate to use the Common Areas.

4.3.9. The rights of the Declarant, and its successors and assigns, and the Maintenance Association to sell, transfer, convey or dedicate all or any part of the Properties, or to impose or grant covenants, restrictions and easements (blanket or specific) in favor of any public agency, authority or utility for such purposes and subject to such conditions as it may determine, in its sole discretion.

4.3.10. The Declarant's reservations of all other rights of ownership in and to the Properties which are not inconsistent with the foregoing easements, including, without limitation, the right to grant further easements on, over, under and/or across the Properties, the right to improve the Properties (or any portions thereof), the right to subject portions of the Properties to condominium ownership or governance by a Sub-Association, the right to raze, alter or modify any improvements now or hereafter constructed within the Properties (or any portions thereof), the right of the Declarant, during the period in which it is entitled to appoint a majority of the Members of the Board of Directors, to unilaterally designate and re-designate from time to time the portions of the Properties to be used by Community Beneficiaries, and the right of the Declarant to add or withdraw portions of the Properties and Common Areas, to create, designate and assign Limited Common Areas, to reserve or assign all or any portion of its rights under this Declaration and to transfer development rights, as provided herein.

ARTICLE 5 RULES AND REGULATIONS

5.1. Rules and Regulations Governing Use of the Properties. The Maintenance Association shall have the absolute right to regulate the use of the Properties, and may from time to time modify, amend and supplement the Rules and Regulations. A current copy of all Rules and Regulations established hereunder, and any modifications, amendments or supplements thereto, shall be made available at the request of any Owner or other Community Beneficiary.

5.2. Enforcement of Rules and Regulations. The Maintenance Association shall have the authority to enforce the Rules and Regulations, and the other restrictions imposed by this Declaration, in any manner provided in Article 11.

ARTICLE 6 MAINTENANCE

6.1. Maintenance Association's Responsibilities. Except for any portions of the Properties to be maintained by a Sub-Association pursuant to Section 6.2, by the Owners pursuant to Section 6.3, or by the CDD pursuant to Section 6.4, the Maintenance Association shall be responsible to, and shall at all times manage, operate and maintain in good condition and shall replace as often as necessary all Common Areas within the Properties, and any and all other Maintenance Association Property, whether or not conveyed to the Maintenance Association, and to maintain certain portions of the Dwellings that are not governed by a Sub-Association, as hereinafter provided. All expenses for maintenance performed pursuant to this Section shall be paid for by the Maintenance Association through Assessments. These responsibilities include, but are not limited to, the following:

6.1.1. Access Areas and Amenities. Maintenance of all Access Areas and Amenities.

6.1.2. Access Control Facilities. Maintenance of any and all Access Control Facilities, which the Maintenance Association may from time to time, in its sole and absolute discretion, consider necessary or appropriate.

6.1.3. Common Areas. Maintenance of all outside areas including, without limitation, all landscaping, open areas, fountains, pools, sprinklers and irrigation, drainage structures, meters, fire pump and safety equipment, mail boxes, generators and other electrical and mechanical equipment now or hereafter located within the Properties (except public utilities, to the extent same have not been made Common Areas, and except those Limited Common Areas, if any, to be maintained by Owners) and located in the Common Areas (without imposing any obligation on the Declarant or the Maintenance Association to provide such services).

6.1.4. Exterior Portions and Roofs of Dwellings. Maintenance and repair of the roofs and exterior portions of the Dwellings (other than those Dwellings located within a Sub-Association Parcel), including, without limitation, the doors, windows and any other improvement covered by the Maintenance Association's insurance policies. Such maintenance shall be conducted utilizing such materials and such colors and quality as that originally utilized by the Declarant or later specified by the Maintenance Association as appropriate. The cost of such maintenance shall be a Dwelling Maintenance Expense and shall be assessed, in the manner provided in Section 7.12, only against those Dwellings not located within a Sub-Association Parcel.

6.1.5. Maintenance of Off-Site Improvements. Maintenance any off-site landscaping and other improvements adjacent to or nearby the Properties, to the extent the Declarant or the Maintenance Association is obligated to do so by, or otherwise agrees with any governmental authority or other third party, and the assumption and performance of any obligations under any leases and other agreements entered into by the Maintenance Association or the Declarant with a Sub-Association (and/or groups or councils thereof), any governmental entity or third party pursuant to which any Amenities, Access Areas, Access Control Facilities, entry features, lighting and other "infrastructure" improvements and systems common to the Properties, and any landscape buffers, roadway right-of-ways or other areas in its vicinity are to be operated

and maintained. Any and all sums paid or required to be paid by the Maintenance Association under such leases or other agreements shall be deemed for all purposes to be Common Expenses hereunder.

6.1.6. Maintenance of CDD Property. Perform any maintenance and repairs required under any separate maintenance agreement or other agreement entered into with the CDD (including, to the fullest extent permitted under Applicable Law, any maintenance and repairs to the Surface Water Management System required thereunder).

6.1.7. Governmental Compliance. Perform any monitoring and maintenance required under any approval or permit issued by, or agreement with, any governmental agency, including, without limitation, any monitoring requiring in connection with any prior, existing or suspected environmental contamination within all or any portion of the Property.

6.1.8. Maintenance of Surface Water Management System. Perpetually maintain the Surface Water Management System and take action against Owners as necessary to enforce the conditions of the SFWMD Permit. Copies of the SFWMD Permit and any future permit actions of the SFWMD shall be maintained by the registered agent of the Maintenance Association for the benefit of the Maintenance Association. Any monitoring and maintenance required in the SFWMD Permit shall be the responsibility of the Maintenance Association. The Maintenance Association shall successfully complete the mitigation and satisfy permit conditions. The success criteria are described in the SFWMD Permit. The Maintenance Association shall also be responsible for the perpetual maintenance of any signage required by the SFWMD Permit.

6.1.9. Taxes. Payment of all ad valorem real and personal property taxes, if any, assessed to the Properties, other than those taxes which are separately assessed to the Dwellings, or to all or any portion of a Sub-Association Parcel.

6.1.10. Utilities and Other Expenses. Payment of all expenses for the removal of trash from the Properties, and any and all water, sewer, electrical and other utility charges incurred by any Dwellings, Sub-Association Parcels or other portions of the Properties which are tied to central utility meters, other than any such expenses that are tied to a central utility meter covering only a Sub-Association Parcel.

6.2. Sub-Association Responsibilities. Each Sub-Association shall maintain or shall cause to be maintained all common elements and all limited common elements, and all common areas and limited common areas, as applicable, located within a Sub-Association Parcel in a neat, orderly and attractive manner. Each Sub-Association shall be responsible for payment of any and all ad-valorem real and personal property taxes, if any, governmental assessments, trash removal expenses, and water, sewer, electrical and other utility charges tied to central utility meters which cover only such Sub-Association Parcel.

6.3. Owner Responsibilities. Each Owner of a Dwelling shall maintain or shall cause to be maintained all portions of its Dwelling in a neat, orderly and attractive manner and shall pay all ad valorem real and personal property taxes, if any, governmental assessments, trash removal expenses, and water, sewer, electrical and other utility charges not tied to central utility meters which are attributable solely to the Dwelling. Notwithstanding the foregoing, the Maintenance Association shall be responsible for maintaining the exterior portions and roof of those Dwellings that are not located within a Sub-Association Parcel, in accordance with Section 6.1.4.

6.4. CDD Responsibilities. Perpetually maintain the Surface Water Management System and take action against Owners and the Master Association as necessary to enforce the conditions of the SFWMD Permit. Copies of the SFWMD Permit and any future permit actions of the SFWMD shall be maintained by the registered agent of the CDD or its designee for the benefit of the CDD. Any monitoring and maintenance required in the SFWMD Permit shall be the responsibility of the CDD; provided, however, the CDD may delegate its authority. The CDD shall successfully complete (or cause to be completed) any required mitigation and satisfy all permit conditions. The success criteria are described in the SFWMD Permit. The CDD shall also be responsible for the perpetual maintenance of any signage required by the SFWMD Permit.

6.5. Master Life Safety Systems. No Owner shall make any additions, alterations or improvements to the Master Life Safety Systems, and/or to any other portion of the Properties which may impair the Master Life Safety Systems or access to the Master Life Safety Systems, without first receiving the prior written approval of the Maintenance Association. In that regard, no lock, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Identification and emergency signage shall not be altered or removed by any Owner whatsoever. No barrier including, but not limited to, personal property, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

6.6. Contractors. The Maintenance Association shall have the right to contract with other parties, including affiliates, management companies and other service providers, for providing services to perform any or all of its responsibilities set forth in this Section. All costs and expenses incurred by the Maintenance Association pursuant to any such contracts shall constitute Common Expenses.

6.7. Responsibility for Wrongful Acts. Notwithstanding anything contained in this Declaration, the expense of any maintenance, repair or construction of the any portion of the Properties, necessitated by the negligent or willful acts of any Owner or other Community Beneficiary, or their family or guests shall be borne solely by such Owner or other Community Beneficiary and their Dwelling, if any, shall be subject to an Individual Assessment for such expense.

6.8. Failure to Maintain. If a Sub-Association, an Owner or any other party shall fail to maintain any portion of the Properties in the manner required hereunder, the Maintenance Association may send written notice to such defaulting party and, if such obligations are not performed by the defaulting party within thirty (30) days from the receipt of such notice, or such additional time as may be reasonably required to cure such failure then, in addition to such other remedies as may be available under this Declaration, the Maintenance Association shall have the right (without limiting any other rights that may be available) to enter upon the property in question and perform such duties; provided, however, that such entry shall be during reasonable hours and only after five (5) days' prior written notice. The party having failed to perform its maintenance duties shall be liable to the Maintenance Association for the costs of performing such remedial work and shall pay a surcharge of not more than twenty-five percent (25%) of the cost of the applicable remedial work, all such sums to be payable upon demand and to be secured by the lien provided for in Section 7.15.1 hereof. No bids need be obtained for any of the work performed pursuant to this Article and the person(s) or company performing such work may be selected by the Maintenance Association in its sole discretion. There is hereby created an easement in favor of the Maintenance Association, and its applicable designees over each applicable portion of the Properties for the purpose of entering onto

thereon in the performance of the work herein described, provided that the notice requirements of this Section are complied with.

6.9. Common Expenses. All expenses of every kind and nature which the Maintenance Association incurs or shall incur in connection with its maintenance and other obligations under Section 6.1 shall constitute Common Expenses. Common Expenses shall also include reserves, if any, required by the Maintenance Association for future expenditures to be incurred in the repair and replacement of various improvements to the Properties, provided however, that, to the fullest extent provided under Applicable Law, the Declarant shall have the right to waive such reserves at any time during which it is the Class B Member of the Maintenance Association. Common Expenses shall include, without limitation, any and all costs of maintaining, managing, insuring, repairing and replacing the Access Areas and the Amenities and/or other facilities to be maintained by the Maintenance Association. Maintenance and management expenses referred to herein include, but are not limited to, reserves for maintenance, repairs and capital improvements, the cost and expense of operation, maintenance and management of the Properties, including, without limitation, the buildings and mechanical systems thereon, and those portions of those Dwellings that are to be maintained by the Maintenance Association (including salaries and employment related costs of all employees and personnel employed by the Maintenance Association); property taxes and assessments on the Properties; insurance on the Properties; legal and accounting fees; management fees; normal repairs and replacements; charges for utilities used upon the Properties; expenses and liabilities incurred by the Maintenance Association in the enforcement of its rights and duties under this Declaration; and all other expenses deemed by the Maintenance Association to be necessary and proper for its management, maintenance, repair, operation and governance of the Properties. Common Expenses shall not include costs relating to initial design and construction of improvements to the Properties.

ARTICLE 7 ASSESSMENTS

7.1. Common Expenses. As additional consideration for the execution of this Declaration, each of the Owners shall pay its Percentage Share of the Common Expenses.

7.2. Rate of Assessments. The Assessments shall be allocated and assessed among the Dwellings, at a uniform rate, based on their Percentage Shares, as determined and adjusted from time to time pursuant to Section 7.4. Notwithstanding the foregoing, the Dwelling Maintenance Assessments shall be allocated and assessed only to those Dwellings that are not with a Sub-Association Parcel and the Percentage Shares of such Assessments shall be determined pursuant to Section 7.4.1.

7.3. Incomplete Dwellings. Notwithstanding anything to the contrary in this Declaration, or in the Articles or the By-Laws, Assessments shall only be imposed against those Dwellings for which a Certificate of Completion or its equivalent has been issued by the City at the time of such Assessments and Assessments of the Maintenance Association shall not be imposed against any other portions of the Properties. Liability for Assessments shall commence sixty (60) days after a Certificate of Completion or its equivalent has been issued by the City.

7.4. Percentage Shares of Assessments.

7.4.1. Percentage Shares for Dwelling Maintenance Assessments. The Percentage Share of Dwelling Maintenance Assessments of a Dwelling that is not within a Sub-Association Parcel shall, at any time and from time to time, be equal to the percentage obtained

by dividing one (1) by the total number of Dwellings within the Properties for which a Certificate of Completion or its equivalent has been issued by the City at the time of such Assessments. For example, the Percentage Share of Dwelling Maintenance Assessments of a Dwelling that is not within a Sub-Association Parcel, during a period in which there are 100 Dwellings within the Properties that are not within a Sub-Association Parcel, shall be one percent (1%).

7.4.2. Percentage Shares for General Assessments. The Percentage Share of a Dwelling of all General Assessments shall, at any time and from time to time, be equal to the percentage obtained by dividing one (1) by the total number of Dwellings within the Properties at such time for which a Certificate of Completion or its equivalent has been issued by the City at the time of such General Assessments. For example, the Percentage Share of Assessments of a Dwelling during a period in which there are 200 Dwellings within the Properties shall be one half percent (.50%).

7.4.3. Adjustments to Percentage Shares. To the extent permitted under Applicable Law, the Maintenance Association shall have the power and authority, from time to time, to modify the Percentage Shares based upon the state and extent of development of certain Common Areas and other portions of the Properties, the levels of services being provided to the Dwellings and other relevant factors. In the event of a dispute as to the Percentage Shares of Assessments, the determination of the Declarant shall be dispositive.

7.5. The Declarant's Obligations for Assessments. Notwithstanding anything in this Declaration to the contrary, during the period in which the Declarant is entitled to elect a majority of the Directors of the Maintenance Association, the Declarant, shall not be liable for the payment of any Assessments imposed upon Dwellings, which are owned by the Declarant or its affiliates, for any period during which the Declarant elects, at its sole option, to be responsible for the payment of any Common Expenses incurred that exceed the Assessments receivable from other Owners and other income of the Maintenance Association for any, for such time period(s). In determining the Assessments against the Dwellings during any such period, such Assessments may be determined on the basis of the estimated actual expenses of the Maintenance Association for any fiscal year as compared with the average number of Dwellings anticipated to be built during such year, or on the basis of what the Assessments would be if all of the development contemplated by Declarant for the Properties were completed, at the discretion of the Declarant. In calculating the Common Expenses for purposes of this Section 7.5, only actual current expenses (and not capital expenses and reserves) shall be computed. The Declarant may, at any time and from time to time, be relieved of all obligations to fund deficits as aforesaid by electing, for any assessment or installment period or periods, that it or its affiliated developers will pay Assessments imposed on Dwellings owned by each of them on the same basis as any other Owner. The deficits payable hereunder shall be computed and paid on the basis of the calendar year. The Declarant's responsibility for payment of the Maintenance Association's operating deficit shall automatically terminate (if not sooner terminated) on the date that Owners other than the Declarant are entitled to elect a majority of the Board pursuant to the terms of this Declaration or otherwise under Applicable Law. As of the first day of the first calendar month immediately following the termination of the Declarant's responsibility for the payment of the Maintenance Association's operating deficit(s), if any, the Declarant shall, commencing with that date, be responsible for the payment of periodic and Special Assessment payments for any Dwellings owned by it as are normally required to be made by any other Owner of a Dwelling under the terms of this Declaration from and after that date. Notwithstanding the foregoing, the Declarant shall be entitled, if it so elects, to provide services and receive credit for the value of said services towards any contributions due from it, rather than make such contributions as might be due from it in cash.

7.6. Special Allocations. If any provision hereof or in any Supplemental Declaration provides for an allocation of the Assessments provided for herein or therein among the Dwellings in a manner other than as set forth above, then the allocation provided for elsewhere herein or in such instrument shall apply to that portion of the Common Expenses attributable to those Assessments.

7.7. Lien Rights. The Maintenance Association shall have the power and authority to make and collect Assessments, and the lien rights against the Dwellings, as hereinafter set forth and subject to the applicable provisions of the Act.

7.8. Liability for Assessments and Charges.

7.8.1. An Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments and other charges coming due with respect to its Dwelling while it is the Owner. The Declarant shall be liable for all unpaid Assessments and charges against each Dwelling which it owns, up to the time of its conveyance, without prejudice to any right the Declarant may have to recover from the Owner any amounts paid by the Declarant. No Owner may waive or otherwise escape liability for assessments by non-use (whether voluntary or involuntary) of the Common Areas or abandonment of the right to use the Common Areas. No Institutional Mortgagee shall be liable for any Assessments unless and until it acquires title to one or more Dwellings, at which time any such Institutional Mortgagee shall be liable for all Assessments accruing to such Dwelling or Dwellings after the date it acquires title.

7.8.2. All Assessments shall be a superior lien to all other liens, save and except tax liens including (but not limited to) liens arising from nonpayment of non-ad valorem taxes for the CDD and first mortgage liens in favor of Institutional Mortgagees.

7.8.3. The Declarant shall be responsible for the payment of its pro rata share of the Assessments for all Dwellings it owns. The Declarant may take credits against any unpaid Assessments for monies the Declarant previously advanced on behalf of the Maintenance Association. These items shall specifically include, but are not limited to, insurance premiums and utility deposits, as well as those items disclosed in the operating budget.

7.9. General Assessments.

7.9.1. General Assessments shall be determined annually for the purpose of payment of Common Expenses.

7.9.2. The Maintenance Association shall annually estimate the Common Expenses for the upcoming year and may assess the Owners, based upon their Percentage Shares, sufficient monies to meet this estimate. Should the Maintenance Association at any time determine that the Assessments are not sufficient to pay the Common Expenses, the Maintenance Association shall have the authority to levy and collect Special Assessments and Emergency Special Assessments, as applicable for such purpose. All notices of Assessments from the Maintenance Association to the Owners shall designate when they are due and payable. All General Assessments shall be charged based upon the Percentage Shares of the Dwellings as set forth in Section 7.2. Notwithstanding anything contained to the contrary in this Declaration, any Dwellings owned by the Declarant or its affiliates shall not be subject to Assessments for capital improvements without the Declarant's prior written consent.

7.9.3. General Assessments shall be collectible in advance for each applicable period. A General Assessment shall be considered delinquent if not paid within ten (10) days after the due date specified by the Maintenance Association.

7.10. Special Assessments.

7.10.1. The Maintenance Association may levy a Special Assessment against all Owners for any of the following purposes: the acquisition of personal property; defraying the cost of construction of capital improvements, capital repairs, or other capital expenditures to the Properties, including, without limitation, any portions of those Dwellings to be maintained and repaired by the Maintenance Association, except for those capital improvements which are initially constructed by the Declarant; and the cost and other expenses of design, construction, reconstruction, unexpected substantial repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto. Notwithstanding anything contained to the contrary in this Declaration, any Dwellings owned by the Declarant or its affiliates shall not be subject to Special Assessments for capital improvements without the Declarant's prior written consent.

7.10.2. Special Assessments shall be payable in such a manner as the Maintenance Association shall determine and all notices of Special Assessments from the Maintenance Association to the Owners shall designate when the Special Assessment is due and payable. All Special Assessments shall be charged based upon the Percentage Shares of the Dwellings as set forth in Section 7.4.2. Notwithstanding the foregoing, all Special Assessments for Dwelling Maintenance Expenses shall be charged based upon the Percentage Shares of the Dwellings that are not governed by a Sub-Association, as set forth in Section 7.4.1. Special Assessments shall be collectible in such manner as the Maintenance Association shall determine. A Special Assessment shall be considered delinquent if not paid within ten (10) days after the due date specified by the Maintenance Association.

7.11. Emergency Special Assessments.

7.11.1. The Maintenance Association may levy an Emergency Special Assessment when, in its sole determination, there is potential danger or damage to persons or property. The Maintenance Association shall not be required to obtain the approval of the membership of the Maintenance Association in connection with an Emergency Special Assessment. Such Assessments may be utilized to pay for preventative, protective or remedial design, construction, reconstruction, improvements, repairs or replacements. Events justifying Emergency Special Assessments include, but are not limited to, hurricanes, floods and fires. Notwithstanding anything contained to the contrary in this Declaration, any Dwellings owned by the Declarant or its affiliates shall not be subject to Emergency Special Assessments for capital improvements without the Declarant's prior written consent.

7.11.2. Emergency Special Assessments shall be payable in such a manner as the Maintenance Association shall determine and all notices of Emergency Special Assessments from the Maintenance Association to the Owners shall designate when the Assessment is due and payable. All Emergency Special Assessments shall be charged based upon the Percentage Shares of the Dwellings as set forth in Section 7.4.2. Notwithstanding the foregoing, all Emergency Special Assessments for Dwelling Maintenance Expenses shall be charged based upon the Percentage Shares of the Dwellings that are not within a Sub-Association Parcel, as set forth in Section 7.4.1. An Emergency Special Assessment shall be considered delinquent if not paid within ten (10) days after the due date specified by the Maintenance Association.

7.12. Dwelling Maintenance Assessments.

7.12.1. Dwelling Maintenance Assessments shall be determined annually for the purpose of payment of Dwelling Maintenance Expenses and shall be assessed only against those Dwellings that are not within a Sub-Association Parcel.

7.12.2. The Maintenance Association shall annually estimate the Dwelling Maintenance Expenses for the upcoming year and may assess sufficient monies to meet this estimate against the Dwellings that are not within a Sub-Association Parcel. Should the Maintenance Association at any time determine that the Dwelling Maintenance Assessments are not sufficient to pay the Dwelling Maintenance Expenses, the Maintenance Association shall have the authority to levy and collect Special Assessments and Emergency Special Assessments, as applicable for such purposes. All notices of Dwelling Maintenance Assessments from the Maintenance Association to the Owners shall designate when such Assessments are due and payable. All Dwelling Maintenance Assessments shall be charged based upon the Percentage Shares of the Dwellings as set forth in Section 7.4.1. Notwithstanding anything contained to the contrary in this Declaration, any Dwellings owned by the Declarant or its affiliates shall not be subject to Assessments for capital improvements without the Declarant's prior written consent.

7.12.3. Dwelling Maintenance Assessments shall be collectible in advance for each applicable period. A Dwelling Maintenance Assessment shall be considered delinquent if not paid within ten (10) days after the due date specified by the Maintenance Association.

7.13. Individual Assessments. The Maintenance Association may levy an Individual Assessment against a particular Dwelling or Sub-Association Parcel for the cost of:

7.13.1. Any maintenance, repairs, replacements performed by the Maintenance Association when, in its sole judgment, an Owner's failure or refusal to perform has impaired the use or value of any portion of the Properties, or poses a safety hazard;

7.13.2. Any insurance premiums owed by a Sub-Association pursuant to Article 9;

7.13.3. An Individual Assessment shall include an administrative fee charged by the Maintenance Association in an amount to be determined from time to time by the Board in its sole discretion; and

7.13.4. The Maintenance Association has a right of entry into all portions of the Dwellings and Sub-Association Parcels to perform repairs, replacements, or to cure any violation of this Declaration or the Rules and Regulations, including the right to abate or eliminate any nuisance;

7.14. Sub-Association Parcels. At the option of the Maintenance Association, Each Sub-Association shall, initially, collect all Assessments and other sums due the Maintenance Association and the Sub-Association from the Owners of the Dwellings therein. Each Sub-Association will remit the Assessments so collected to the respective payees pursuant to such procedures as may be adopted from time to time by the Maintenance Association. The sums so collected shall be applied first to the Assessments of the Maintenance Association and then to the assessments of the Sub-Association.

7.15. Effect of Non-payment of Assessments.

7.15.1. Any Assessment that is unpaid for more than ten (10) days after the date it is due shall bear interest, from date when due, until the date it is paid, at a rate equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate allowable under Applicable Law. In addition, the Owner of any Dwelling, with respect to which an Assessment is overdue by more than ten (10) days, will be required by the Maintenance Association to pay a late charge equal to the greater of (i) five percent (5%) of the amount of the delinquent Assessment or (ii) Twenty-Five Dollars (\$25.00), to compensate the Maintenance Association for the added administrative expense resulting from the delinquency. Any and all such amounts shall become a continuing lien on the Dwelling against which the Assessment is made upon recording of a claim of lien in the Public Records, and shall also be the continuing personal obligation of the Owner of such Dwelling at the time of the Assessment.

7.15.2. If the Assessment is not paid within thirty (30) days after the due date, the Maintenance Association may, at any time thereafter, accelerate the entire amount due for the period for which the Assessment was made, and declare the same immediately due and payable. The Maintenance Association may also record a claim of lien in the Public Records setting forth the amount of the unpaid Assessment and the rate of interest due thereon. The Maintenance Association may at any time thereafter bring an action to foreclose the lien against the Dwelling and/or a suit on the personal obligation against the Owner or Owners thereof, and there shall be added to the amount of such Assessment the cost of such action (including reasonable attorneys' fees and costs through all appellate levels) and, in the event a judgment is obtained, such judgment shall include interest on the Assessment and late charges as provided above and reasonable attorneys' fees through all appellate levels, together with the costs of the action.

7.15.3. In the event that a check given to the Maintenance Association for payment of an Assessment, or for payment of any sums due hereunder, shall be dishonored for any reason whatsoever, the Maintenance Association shall have the right, in its sole discretion, to charge an administrative fee which shall initially be One Hundred Dollars (\$100.00) and may be adjusted by the Maintenance Association from time to time. This fee shall be deemed to be a part of the Assessment, shall be secured by the lien of the Assessment against the affected Dwelling, and may be enforced in the same manner as any other Assessment, as provided hereinabove.

7.16. Lien of Mortgages. Except as hereafter provided, any mortgagee or its successors or assignees who acquire title to a Dwelling by foreclosure or by deed in lieu of foreclosure is liable for the unpaid Assessments that became due prior to the mortgagee's acquisition of title. Notwithstanding the foregoing, in no event shall an Institutional Mortgagee, which is the holder of a first mortgage on a Dwelling, be liable for more than the Dwelling's unpaid Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title to the Dwelling by the Institutional Mortgagee, and for which payment in full has not been received by the Maintenance Association, or one percent (1%) of the original mortgage debt, whichever amount is less. The limitations contained in this Section shall not apply unless the Institutional Mortgagee joins the Maintenance Association as a defendant in the foreclosure action. Joinder of the Maintenance Association is not required if, on the date the complaint is filed, the Maintenance Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee. The person acquiring title shall pay the amount owed to the Maintenance Association within thirty (30) days after the transfer of title. Failure to pay the amount owed to the Maintenance Association when due shall entitle the Maintenance Association to record a claim of lien against the Dwelling and proceed in the same manner as

provided in this Section for unpaid Assessments. The foregoing limitation of liability shall apply to any purchaser at a foreclosure sale of a first mortgage held by an Institutional Mortgagee, regardless of whether the purchaser is the holder of the foreclosed mortgage. A mortgagee acquiring title to a Dwelling as a result of foreclosure or deed in lieu thereof may not during the period of its ownership of such Dwelling, whether or not such Dwelling is unoccupied, be excused from the payment of any of the Assessments coming due during the period of such ownership. No sale or transfer shall relieve any Dwelling from liability for any Assessment thereafter becoming due, or from the lien of any such subsequent Assessment.

7.17. Certificate of Assessments. The Maintenance Association shall prepare a roster of the Dwelling and the Assessments applicable thereto, which shall be kept in the office of the Maintenance Association and shall be open to inspection by any Owner. The Maintenance Association shall, upon demand, furnish an Owner a certificate in writing signed by an officer of the Maintenance Association, setting forth whether the Owner's Assessments have been paid and/or the amount which is due as of any date, provided, however, that the Maintenance Association shall charge One Hundred Dollars (\$100.00), as adjusted from time to time by the Maintenance Association, for each certificate requested by an Owner in excess of two (2) during any calendar year. As to parties without knowledge of error, who rely thereon, such certificates shall be presumptive evidence of payment or partial payment of any Assessments therein stated.

7.18. Estoppel Certificate. At the request of an Owner or the Declarant, the Maintenance Association shall prepare an Estoppel Certificate which shall set forth any Assessments and charges due upon any Dwelling at the time of conveyance and certify as to whether or not there are violations of this Declaration or the Rules and Regulations with respect to the Dwelling as of the date of preparation of such Certificate.

ARTICLE 8 INDEMNIFICATION OF OFFICERS AND DIRECTORS/INDEMNIFICATION OF DECLARANT

8.1. Indemnity. Each Owner hereby indemnifies and saves harmless all other Owners, from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from the Dwelling or Sub-Association Parcel that is owned by it, or with respect to which it has easement rights, except to the extent caused by the act or negligence of another Owner and in such event only as to such other Owner whose act or negligence is excepted.

8.1.1. Indemnification of Officers and Board of Directors. Every officer and member of the Board of Directors of the Maintenance Association shall be indemnified by the Maintenance Association and the other Community Beneficiaries against all expenses and liability, including attorneys' fees through all appeals, reasonably incurred by or imposed upon such person in connection with any proceeding to which such person may be a party or in which such person may become involved by reason of their being or having been an officer or member of the Board of Directors, whether or not such person is an officer or member of the Board of Directors at the time such expenses are incurred, except in such cases wherein the officer or member of the Board of Directors is adjudged guilty of willful misfeasance or malfeasance in the performance of such person's duties, provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the officer or member of the Board of Directors seeking such reimbursement or indemnification herein shall apply only if the Maintenance Association approves such settlement and reimbursement as being in the best

interest of the Maintenance Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such officer or member of the Board of Directors may be entitled under the Articles or By-Laws of the Maintenance Association.

8.1.2. Indemnification of Declarant. Each Owner, by acceptance of a deed to one or more Dwellings or Sub-Association Parcels, and each other Community Beneficiary, by the use of any easements relating to the Properties, shall indemnify and hold the Declarant and its affiliates, the Maintenance Association and the Board of Directors harmless from and against any and all claims, demands, fines, suits, actions, decrees and judgments (and any and all costs and expenses including attorneys' fees through all appeals relating thereto) resulting from or in connection with loss of life, bodily or personal injury or property damage arising (directly or indirectly) out of or on account of any occurrence in, at or about the Properties, or occasioned (in whole or part) by use of the Properties or any improvement thereon, while it owns, occupies or manages any portion of the Properties, except to the extent the loss of life, injury or damage results from the gross negligence or willful misconduct of any such indemnified party. Any amounts owed the Declarant or the other indemnified parties by Owners pursuant to this Section shall be levied against them as Individual Assessments.

ARTICLE 9 INSURANCE AND CONDEMNATION

9.1. Insurance. Upon the issuance of the initial Temporary Certificate of Completion or its equivalent for a Dwelling, the Maintenance Association shall maintain comprehensive public liability insurance (from a company rated with a current A.M. Best Company, Inc. rating of B+ or better), throughout the term of this Declaration, in an amount not less than Five Million Dollars (\$5,000,000), combined single limit, which names the Owners (and their mortgagee(s), if so requested) as additional insured(s) and shall furnish each other written proof thereof promptly upon request. Except to the extent prohibited under Applicable Law, the Maintenance Association and a Sub-Association may agree that the Maintenance Association shall purchase any or all insurance policies and coverage required under the governing documents for such Sub-Association and that it shall name the Sub-Association as a named insured thereunder.

9.2. Authority to Purchase, Named Insured. Notwithstanding anything to the contrary in any Declaration of Condominium or any other documents governing any of the Sub-Associations to the fullest extent permitted under Applicable Law, all insurance policies upon the Properties shall be purchased by or at the direction of the Maintenance Association and shall be placed in a single agency or company, if possible. Additionally, the Maintenance Association may elect (but shall not be obligated) to insure any structure or other improvement which does not lie entirely within a Sub-Association Parcel and the cost of any such insurance shall be a Common Expense. The named insureds under any such policies purchased by the Maintenance Association shall be the Maintenance Association and the applicable Sub-Association(s) (and their officers, directors, agents and employees), without naming them, and their respective mortgagees, and such other parties, if any, which the Maintenance Association may determine, from time to time, should be added thereon. Provisions shall be made for the issuance of mortgagee endorsements, certificates and memoranda of insurance to any mortgagees, including those holding mortgages on Sub-Association Parcels.

9.3. Coverage.

9.3.1. Casualty Insurance. All buildings and insurable improvements located within the Common Areas, and the roofs and exterior portions of the Dwellings which are not located within a Sub-Association Parcel, including, without limitation, the doors and windows,

shall be insured for fire and extended coverage perils, excluding foundation and excavation costs, and all personal property owned by the Maintenance Association shall be insured for its full insurable value, with such deductibles as may be determined by the Board, in its sole and absolute discretion, all as determined annually by the Board. When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk; and (ii) avoid liability for a loss that is caused by an act of the Maintenance Association, or a Sub-Association, or an officer thereof, or by one or more Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Owners that are not under the control of the Maintenance Association, or the Sub-Associations, and that the policy shall be primary, even if an Owner or Sub-Association has other insurance that covers the same loss.

9.3.2. Endorsements. Every casualty insurance policy obtained by the Maintenance Association, and by a Sub-Association, if desired by the Maintenance Association, or if required by Federal National Mortgage Association or Federal Home Loan Mortgage Corporation ("FNMA/FHLMC"), shall have the following endorsements: (i) agreed amount and inflation guard; and (ii) steam boiler coverage (providing at least Fifty Thousand Dollars (\$50,000) coverage for each incident at each location), if applicable.

9.3.3. Public Liability Insurance. The Maintenance Association shall obtain public liability and property damage insurance covering all of the Properties and insuring the Maintenance Association, the Sub-Associations, and such other parties, if any, as the Maintenance Association may, from time to time, determine should be added thereon, as their interests appear, in such amounts and providing such coverage as the Maintenance Association may determine, from time to time, provided that the minimum amount of coverage shall be Five Million Dollars (\$5,000,000). The liability insurance shall include, but not be limited to, hired and non-owned automobile coverage.

9.3.4. Worker's Compensation Insurance. The Maintenance Association shall obtain Worker's Compensation Insurance in order to meet the requirements of law, as necessary.

9.3.5. Flood Insurance. If any portion of the Property is in the flood zone the Maintenance Association shall obtain flood insurance to meet the requirements of federal, state or local law, or any regulation enacted pursuant to federal, state or local law, as necessary, for the Common Areas and those Dwellings which are not within a Sub-Association Parcel, as well as the Maintenance Association Property, if any.

9.3.6. Fidelity Insurance. The Maintenance Association shall obtain fidelity insurance covering all persons who control or disburse funds on behalf of the Maintenance Association, such insurance to be in an amount not less than three (3) times the total monthly Assessments plus the amount estimated to be held in reserve accounts at the end of the then current calendar year.

9.3.7. Other Insurance. The Maintenance Association shall obtain such other insurance as the Maintenance Association shall determine from time to time to be desirable including, but not limited to, acts and omissions coverage for members of the Board of Directors and officers of the Maintenance Association, windstorm coverage for Common Area buildings and those Dwellings which are not within a Sub-Association Parcel, as well as the Maintenance Association Property; and

9.3.8. Subrogation Waiver. If available at commercially acceptable rates, the Maintenance Association shall obtain policies which provide that the insurer waives its right to subrogation as to any claim against Sub-Associations, Owners and other Community Beneficiaries and their respective employees, agents and guests.

9.4. Premiums. Premiums upon insurance policies purchased by the Maintenance Association shall be paid by the Maintenance Association. The cost of insurance premiums and other incidental expenses incurred by the Maintenance Association in administering and carrying out any of the provisions of this Article shall be assessed against and collected from Owners as part of General Assessments. Notwithstanding the foregoing, the premiums for any insurance for any Condominium or other Sub-Association Parcel for which such insurance is being obtained by the Maintenance Association pursuant to Section 9.1 shall be assessed to any such Condominium or other Sub-Association Parcel as an Individual Assessment pursuant to Section 7.13. Additionally, the premiums for any insurance for those Dwellings which are not within a Sub-Association Parcel shall be assessed to any such Dwellings as a Dwelling Maintenance Assessment pursuant to Section 7.12.

9.5. Shares of Proceeds. All insurance policies purchased by the Maintenance Association shall be for the benefit of the Maintenance Association, and the Owners, and their mortgagees, as their interests may appear, and shall provide that all proceeds covering losses shall be paid to the Maintenance Association or at its option, to an insurance trustee. In the event a mortgagee endorsement has been issued regarding any improvement on the Properties, the share of the Owner, if any, shall be held in trust for each mortgagee and the Owner, as its interest may appear, provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged improvement shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except distribution of such proceeds made to the Owner and the mortgagee pursuant to the provisions of this Declaration.

9.6. Distribution of Proceeds. Proceeds of insurance policies received by the Maintenance Association, shall be held by the Maintenance Association, or at its option, by any such insurance trustee, and distributed to or for the benefit of the Owners and other Community Beneficiaries in the following manner:

9.6.1. Reconstruction or Repair. If the damage for which proceeds are paid is to be repaired or reconstructed, such proceeds shall be paid to defray the cost of such repairs and reconstruction in accordance with the provisions of Section 9.12. Any proceeds which remain after defraying such costs shall be distributed to the Owners of the Dwellings based upon their Percentage Shares.

9.6.2. Failure to Reconstruct or Repair. If it is determined in the manner provided in Section 9.8 that the damage for which proceeds are paid shall not be reconstructed or repaired, such proceeds, subject to the following, shall be distributed to the Owners based upon their Percentage Shares. There shall be no distribution of such proceeds until all debris, remains and residue have been cleared and removed, and the damaged area has been properly landscaped. In the event of loss or damage to personal and/or real property belonging to the Owners, and should the Maintenance Association determine not to replace such personal and/or real property as may be lost or damaged, the proceeds shall be distributed to the Owners of the Dwellings based upon their Percentage Shares. Notwithstanding the foregoing, any proceeds of insurance purchased on behalf of the Sub-Association shall be distributed to the Sub-Association. Further, any proceeds of insurance purchased on behalf of those Dwellings

which are not within a Sub-Association Parcel shall be distributed to the Owner(s) of such Dwellings.

9.6.3. Certificate. In making the distribution to Owners, the Maintenance Association may rely upon a certificate of a Sub-Association as to the names of the Owners and their respective shares of the distribution. Each Sub-Association shall fully cooperate with and assist the Maintenance Association in making any such distributions.

9.7. Maintenance Association's Power to Compromise Claims. The Board of the Maintenance Association is hereby irrevocably appointed as agent for each Owner, and Sub-Association, and for each holder of a mortgage or other lien, for the purpose of compromising and settling all claims arising under insurance policies purchased by the Maintenance Association, and to execute and deliver releases therefore upon payment of claims.

9.8. Determination to Reconstruct or Repair. If any part of the Properties shall be damaged by casualty, the damaged property shall be reconstructed or repaired unless it is determined by at least seventy-five percent (75%) of the Owners, and by the Maintenance Association, that it shall not be reconstructed or repaired. The Maintenance Association may rely upon a certificate of the President or Secretary of a Sub-Association to determine the number of Owners within its Sub-Association Parcel electing whether or not the damaged property is to be reconstructed or repaired.

9.9. Plans and Specifications. Subject to requirements imposed by applicable governmental rules and regulations, any reconstruction or repair of all or any portion of the Properties must be substantially in accordance with the plans and specifications for the original buildings; or, if not, then according to the plans and specifications approved by the Maintenance Association.

9.10. Estimates of Costs. Immediately after a determination is made to rebuild, replace or repair damage to property for which the Maintenance Association has the responsibility of reconstruction, repair or replacement, the Maintenance Association shall obtain reliable and detailed estimates of the cost to rebuild, repair or replace. Such costs may include professional fees and premiums for such bonds as the Maintenance Association requires.

9.11. Special Assessments. The amount by which an award of insurance proceeds paid to the Maintenance Association is reduced on account of a deductible clause in an insurance policy shall be assessed against the Owners of the Dwellings based on their Percentage Shares. If the proceeds of such Assessments and the insurance are not sufficient to defray the estimated cost of reconstruction, repair or replacement by the Maintenance Association, or if at any time during reconstruction, repair or replacement, or upon completion of reconstruction, repair or replacement, the funds for the payment of the costs of reconstruction and repair are insufficient, Special Assessments shall be made against the Owners in sufficient amounts to provide funds for the payment of such costs.

9.12. Construction Funds. The funds for the payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Maintenance Association and funds collected by the Maintenance Association from Special Assessments against Owners, shall constitute a construction fund which shall be disbursed in payment of the costs of repair and construction in the following manner and order:

9.12.1. Maintenance Association - Lesser Damage. If the amount of the estimated cost of reconstruction, repair and replacement that is the responsibility of the

Maintenance Association is less than Fifty Thousand Dollars (\$50,000.00) as adjusted by the Board from time to time, the construction fund shall be disbursed in payment of such costs upon the order of the Maintenance Association.

9.12.2. Maintenance Association-Major Damage. If the amount of the estimated cost of reconstruction, repair and replacement that is the responsibility of the Maintenance Association is Fifty Thousand Dollars (\$50,000.00) as adjusted by the Board from time to time or more, then the construction funds held by the Maintenance Association shall be disbursed in payment of such costs in the manner required by the Maintenance Association, and upon approval by an architect or engineer qualified to practice in the state of Florida and employed by the Maintenance Association to supervise the work.

9.12.3. Surplus. It shall be presumed that the first monies disbursed in payment of the costs of reconstruction, repair and replacement shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction, repair and replacement for which the fund is established, such balance shall be distributed equally to the Owners paying assessments for such expenses. Notwithstanding the foregoing, any portions thereof which the Maintenance Association determines are attributable solely to insurance proceeds or funds provided by a Sub-Association or to one or more Owners shall be distributed to the Sub-Association or Owners. Additionally, any portion of the surplus which the Maintenance Association determines are attributable solely to insurance proceeds or funds provided by those Dwellings which are not within a Sub-Association Parcel shall be distributed to the Owner(s) of any such Dwellings.

9.13. Condemnation. In the event any portion of the Properties is condemned or taken through eminent domain, the Owner of the property so taken shall be entitled to the full award therefore as if this Declaration were not in existence and the other Owner(s) shall not be entitled to share in any portion of the award as a result of the existence of this Declaration; provided, however, that the foregoing shall not prevent an award to any other Owner(s) for the diminution in value of the property of the other Owner(s), provided same does not reduce the award payable to the Owner whose property was condemned or taken.

9.14. Sub-Association Documents. Except to the extent prohibited by any Applicable Law, and without limiting the generality of Section 14.5 of this Declaration, the provisions of this Article shall supersede and prevail over any contrary provisions in the documents governing the Sub-Associations.

ARTICLE 10 USE RESTRICTIONS

10.1. Nuisances. Nothing shall be done or maintained on any Dwelling or Sub-Association Parcel which may be or become an annoyance or nuisance to the occupants of other Dwellings or Sub-Association Parcels. Any activity on a Dwelling or Sub-Association Parcel which interferes with television, cable or radio reception on another Dwelling or Sub-Association Parcel shall be deemed a nuisance and a prohibited activity. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

10.2. Parking and Prohibited Vehicles. No person shall park any vehicle so as to obstruct or otherwise impede ingress or egress to any Dwelling or Sub-Association Parcel. Parking in the Properties shall be restricted to private automobiles and passenger-type vans,

jeeps and pick-up trucks and sport utility vehicles, motorcycles, motor scooters, small trailer and jet ski trailers (all of which are collectively referred to herein as "vehicles"). No person shall park, store or keep any small jet ski or boat trailers so as to be visible from the Access Areas. No person shall park, store or keep on any portion of the Properties any commercial vehicle (including dump truck, motor home, trailer, cement mixer truck, oil or gas truck, delivery truck), except temporarily in designated guest parking locations, nor may any person keep any other vehicle on the Properties which is deemed to be a nuisance by the Board. No trailer, camper, motor home or recreational vehicle shall be used as a residence, either temporarily or permanently, or parked on the Properties. The Board shall have the authority to prohibit any vehicle, including any motorcycle or motor scooter, which it determines constitutes a nuisance due to its noise level, particularly where such vehicle is operated in the early morning or late evening hours. No vehicle is permitted within the Properties which leaks oil, brake fluid, transmission fluid or other fluids. No Owner, occupant or other person shall conduct repairs or restorations on any motor vehicle, or other vehicle, or race the engine of any vehicle, upon any portion of the Properties. For so long as the Declarant conducts any sales or leasing activities on the Properties, its use of Parking Spaces shall not be impeded or restricted. The prohibitions on parking contained in this Section shall not apply to temporary parking of: (a) commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services; (b) any vehicles of the Declarant, or its affiliates or designees, used for construction, maintenance, repair, decorating, sales or marketing purposes; or (c) service vehicles operated in connection with the Maintenance Association, a Sub-Association, or their management companies. Subject to Applicable Law, any vehicle, boat, motorcycle or trailer parked in violation of these or other restrictions contained herein or in the Rules and Regulations may be towed by the Maintenance Association at the sole expense of the owner of such vehicle. The Maintenance Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor shall it be guilty of any criminal act, by reason of such towing.

10.3. Visibility at Intersections. No obstruction to visibility at street intersections or Common Areas intersections shall be permitted; provided that the Maintenance Association shall not be liable in any manner to any person or entity, including Owners and other Community Beneficiaries, for any damages, injuries or deaths arising from any violation of this Section.

10.4. Exterior Antennas. No exterior antennas, satellite dishes or similar equipment shall be permitted on any Dwelling or Sub-Association Parcel or improvement thereon, except that Declarant and its affiliates shall have the right to install and maintain community systems. Notwithstanding the foregoing, upon obtaining the prior written consent of the Maintenance Association, satellite dishes and other devices permitted under Section 207 of the Telecommunications Act of 1996, as amended from time to time, may be installed within the Dwellings or within any limited common elements of a condominium or any Limited Common Areas, as applicable, appurtenant thereto, provided however, that in no event shall any such device be installed in or on any other portion of the Common Areas or the Maintenance Association Property. To the extent permissible under Applicable Law, the Maintenance Association may enact Rules and Regulations requiring that any such devices which may be permitted under Applicable Law are comparable in size, weight and appearance, are installed and maintained in a manner designed to protect the safety of the Properties and its occupants, and satisfy any standards established by the Maintenance Association for architectural appearance purposes.

10.5. Signs. No sign, poster, display, billboard or other advertising device of any kind including, without limitation, "FOR SALE," "FOR RENT," or construction signs shall be displayed

to the public view on any portion of the Common Areas or Limited Common Areas, without the prior written consent of the Maintenance Association, except: (i) signs, regardless of size, used by the Declarant, its successors or assigns or a party developing or marketing any portion of the Property, including signs used for construction or repairs, advertising, marketing, sales or leasing activities; (ii) signs installed as part of the initial construction of the Dwellings and replacements of such signs (similar or otherwise); (iii) bulletin boards, entrance, directional, informational and similar signs used by the Maintenance Association; (iv) signs, of reasonable size, provided by a contractor for security services within ten (10) feet of any entrance to the home; and (v) as may be required by legal proceedings, it being understood that the Maintenance Association may not grant permission for signs unless their erection is reasonably necessary to avert serious hardship to the applicable Owner. Furthermore, the size and design of all signs, house numbering, outside lamp posts, and other such materials shall be approved by the Maintenance Association and shall display continuity and conformity throughout the entire Community. If permission is granted, the Maintenance Association reserves the right to restrict size, color, content and location of signs. No sign shall be nailed or attached to a tree.

10.6. Animal Restrictions. No animals, livestock, reptiles or poultry of any kind shall be raised, bred, or kept on or in any Common Areas. No dog, cat or other pet may run loose (unleashed) on the Common Areas and all pets must be on a leash not more than six (6) feet long or carried when outside of the Dwellings. The Maintenance Association may from time to time limit the areas designated for walking pets.

10.7. Trash. No Dwelling or Sub-Association Parcel shall be used or maintained as a dumping ground for rubbish, trash or other waste. All trash, garbage, grass, shrub or tree clippings and other waste shall be kept in sanitary containers and, except during pickup, all containers shall be kept within enclosures within each Dwelling or Sub-Association Parcel. No containers shall be placed along the roadway prior to 7:00 p.m. of the day prior to each scheduled pick up. No odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any Dwelling or Sub-Association Parcel in the vicinity thereof or to its occupants. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, except within an enclosed structure appropriately screened from view erected for that purpose, if any, and otherwise in accordance with the approval of the Maintenance Association.

10.8. Temporary Structures. Except as may be used or permitted by the Declarant during periods of construction or renovation, no structure of a temporary nature (including, without limitation, trailers, tents, shacks or mobile offices) shall be located or used within the Properties. Nothing herein shall prevent the owner or occupant of a Dwelling from the display of one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display in a respectful manner portable, removable official flags, not larger than 4 1/2 feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations and provided such flag is not consistently stored in the front porch, terrace, balcony or otherwise visible from the roadway.

10.9. Hurricane Evacuation Procedures. Upon notice of approaching hurricanes, all furniture, plants, objects, and plants must be removed from any balconies or terraces. IN THE EVENT THAT AN EVACUATION ORDER IS ISSUED BY ANY APPLICABLE GOVERNMENTAL AGENCY, ALL OWNERS MUST PROMPTLY COMPLY WITH SAID ORDER. The Maintenance Association shall have the right from time to time to establish

hurricane preparedness and evacuation policies, and each Owner and Sub-Association shall fully comply with same.

10.10. Exterior Alterations. No Owner or occupant of a Dwelling shall cause or allow improvements or changes to the structure or exterior of any Dwelling or in any manner change the appearance of any portion of the exterior of their Dwelling, without obtaining the prior written consent of the Maintenance Association (in the manner specified in herein).

10.11. Variances. The Board of Directors of the Maintenance Association shall have the right and power to grant variances from the provisions of this Article 10 and from the Rules and Regulations (as they may relate to the Common Areas) for good cause shown, as determined in the reasonable discretion of the Board. No variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article 10 in any instance in which such variance is not granted.

10.12. Declarant Exemption. Except as may be expressly provided to the contrary in this Declaration and to the extent permitted under Applicable Law, the Declarant shall be exempt from all restrictions set forth in this Declaration to the extent such restrictions interfere in any matter with Declarant's plans for construction, repair, development, use, sale or other disposition of the Properties, or any part thereof. In order that the development of the Properties may be undertaken and the Properties established as a fully occupied community, neither any Owner, the Maintenance Association, nor a Sub-Association, shall do anything to interfere with Declarant's activities. Without limiting the generality of the foregoing, nothing in this Declaration shall be understood or construed to:

10.12.1. Prevent Declarant, its successors or assigns, or its contractors or subcontractors, from doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of the development, construction or repairs of the Properties, or the future development, construction or repairs thereof, if any, including, without limitation, alteration of its construction plans and designs as Declarant deems advisable in the course of development (and all models or sketches showing plans for future development of the Properties, as same may be expanded, may be modified by the Declarant at any time and from time to time, without notice); or

10.12.2. Prevent Declarant, its successors or assigns, or its contractors, subcontractors, from erecting, constructing and maintaining on any property owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said development, or any future development, and establishing the Properties as a community and disposing of the same by sale, lease or otherwise; or

10.12.3. Prevent Declarant, its successors or assigns, or its contractors or subcontractors from conducting on any property owned or controlled by Declarant, or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements in the Properties and of disposing of Dwellings or Sub-Association Parcels, or interests therein, by sale, lease or otherwise; or

10.12.4. Prevent Declarant, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be initially constructed, or that may in the future be constructed, as part of the Properties; or

10.12.5. Prevent Declarant, its successors or assigns or its contractors or subcontractors, from maintaining such sign or signs on any property owned or controlled by any of them as may be necessary in connection with the operation of any portion of the Properties owned by Declarant (its successors or assigns) or the sale, lease or other marketing of Dwellings and/or Sub-Association Parcels, or otherwise from taking such other actions as they deem appropriate; or

10.12.6. Prevent Declarant, or its successors or assigns, from filing Supplemental Declarations which modify or amend this Declaration, or which add or withdraw additional property as otherwise provided in this Declaration; or

10.12.7. Prevent Declarant from modifying, changing, reconfiguring, removing or otherwise altering any improvements located on the Common Areas; or

10.12.8. Prevent Declarant from exercising or otherwise utilizing or benefiting from any future development rights or other reserved rights which it may have retained with respect to all or any portion of the Properties.

ARTICLE 11 ENFORCEMENT AND REMEDIES

11.1. Enforcement. This Declaration, the Articles and the By-Laws may be enforced by the Maintenance Association as follows:

11.1.1. Breach of any of the covenants contained in this Declaration or the By-Laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by the Declarant, the Maintenance Association or their successors-in-interest.

11.1.2. The result of every act or omission whereby any of the covenants contained in this Declaration or the By-Laws are violated in whole or in part is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity with respect to nuisances either public or private shall be applicable and may be exercised by the Declarant or the Maintenance Association or their successors-in-interest.

11.1.3. The remedies herein provided for breach of the covenants contained in this Declaration or in the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

11.1.4. The failure of the Maintenance Association to enforce any of the covenants contained in this Declaration or in the By-Laws shall not constitute a waiver of the right to enforce the same thereafter.

11.1.5. A breach of the covenants, conditions or restrictions contained in this Declaration or in the By-Laws shall not affect or impair the lien or charge of any Institutional Mortgage made in good faith and for value on any Dwelling or Sub-Association Parcel; provided, however, that any subsequent Owner of such Dwelling shall be bound by said covenants, conditions and restrictions, whether such Owner's title was acquired by foreclosure sale or otherwise.

11.2. Fines. In addition to all remedies, in the sole discretion of the Board, a fine or fines may be imposed upon an Owner and his Dwelling for failure of an Owner, his Family, guests,

invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Articles or By-Laws, provided the following procedures are adhered to:

11.2.1. Notice: The Maintenance Association shall notify the Owner or occupant of the infraction or infractions. Included in the notice shall be a date and time of the next Board meeting at which time the Owner or occupant shall present reasons why fines should not be imposed. A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended

11.2.2. Hearing: The non-compliance shall be presented to a committee of at least three (3) members appointed by the Board who are not Officers, Members of the Board of Directors, or employees of the Maintenance Association, or the spouse, parent, child, brother, or sister of an Officer, Member of the Board of Directors, or employee. The committee shall hear reasons why fines should not be imposed. A written decision of the committee shall be submitted to the Owner or occupant by not later than twenty-one (21) days after the Board's meeting. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

11.3. Penalties: The committee may levy reasonable fines, not to exceed One Hundred Dollars (\$100) per violation or any greater amount permitted under Applicable Law, against any Member, Owner or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed the maximum amount, if any, permitted under Applicable Law. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorneys' fees and costs from the non-prevailing party as determined by the court.

11.4. Payment of Penalties: Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.

11.5. Collection of Fines: If and to the extent permitted under Applicable Law, fines shall be treated as an Assessment subject to the provisions for the collection of Assessments (including, without limitation, those as to liens), as set forth in this Declaration and in the By-Laws.

11.6. Application of Penalties: All monies received from fines shall be allocated as directed by the Board.

11.7. Suspension. In addition to fines, the Maintenance Association may suspend, for a reasonable period of time, the rights of a Member or an Owner, or an Owner's tenants, guests, or invitees, or both, to use Common Areas and other facilities. Any suspension of Common Area use rights shall not impair the right of an Owner or a tenant of a Dwelling to have vehicular and pedestrian ingress or egress.

11.8. Assessments. The requirements of this Section do not apply to the imposition of suspensions or fines upon any Owner because of the failure of the Owner to pay assessments or other charges when due, provided, however, that the Maintenance Association may suspend the voting rights of an Owner for the nonpayment of any Assessments that are delinquent in excess of ninety (90) days.

11.9. Remedies. Anything to the contrary contained in this Declaration notwithstanding, in the event of a violation or breach of any of the provisions contained in this Declaration, specific performance and/or injunctive relief shall be available, it being agreed that damages would, at best, be difficult to ascertain and would be an inadequate remedy in any

event. The fines provided for in this Section shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Maintenance Association may be otherwise legally entitled; however, any penalty paid by the offending Owner or occupant shall be deducted from or offset against any damages which the Maintenance Association may otherwise be entitled to recover by law from such Owner or occupant.

11.10. Attorneys' Fees. The prevailing party in any action brought in connection with this Section (whether in tort, contract or otherwise) shall be entitled to the award of court costs and reasonable attorneys' and paralegals' fees at all trial and all appellate levels and in connection with all proceedings, whether or not suit is instituted.

ARTICLE 12 MODIFICATIONS, SUPPLEMENTS, AMENDMENTS, ASSIGNMENTS AND RESERVATIONS

12.1. Legal Descriptions. It is understood that this Declaration is being executed prior to the construction of the improvements on certain portions of the Properties, and prior to recordation of any Declaration of Condominium or any other documents governing a Sub-Association Parcel. Any legal descriptions attached hereto for any portion of the Properties are based on a surveyor's determination of the lines dividing a Sub-Association Parcel from the remainder of the Properties, and the actual location may vary somewhat. Therefore, Declarant reserves the right, power and authority by itself, without the joinder or any person or entity whatsoever other than its mortgagee, if any, to modify the legal descriptions of the dividing lines between Sub-Association Parcels and the remainder of the Properties, to conform to the "as built" improvements by recording a Supplemental Declaration in the Public Records of the County, in which event the legal descriptions for any Sub-Association Parcel, and the remainder of the Properties, set forth in or attached to the Supplemental Declaration in the Public Records of the County, shall supersede those attached hereto.

12.2. Relocation of Utility Facilities. If either the Declarant, the CDD or the Maintenance Association needs or desires from time to time to relocate or add to any of the existing utility facilities serving any Dwelling or Sub-Association Parcel or other portion of the Properties (including easement areas), the party so adding to, changing, rearranging, altering, modifying, relocating or building upon said facilities shall be responsible, at its cost, for adding to, changing, rearranging, altering, modifying, relocating or building upon such utility facilities, and same shall be accomplished in a manner so as to minimize inconvenience to the Owners and the other Community Beneficiaries.

12.3. Modification of Easements. Subject to the provisions in this Declaration, the Maintenance Association reserves the right at any time and from time to time, without the need for obtaining consent or approval from the Owner(s) of any Dwellings, or the Owners of any Sub-Association Parcels, to change, rearrange, alter, modify or otherwise reduce any easements created hereby, provided same does not materially and adversely affect any such other Owner(s). In the event any of same are accomplished with respect to the easement areas located on any Dwelling or Sub-Association Parcel, same shall automatically release the area which is so changed, rearranged, altered, modified, or otherwise removed from this Declaration.

12.4. Modifications to the Properties. The buildings and other improvements on a Dwelling or Sub-Association Parcel shall not be modified in such a way as to materially and adversely affect an Owner of another Dwelling or Sub-Association Parcel. Therefore it is understood and agreed that, after initial construction, the improvements on a Dwelling or Sub-Association Parcel shall not be altered to: (a) materially increase the size or volume, (b) materially change the configuration, or (c) increase the square footage, height or setbacks

without, in any such case, the consent of the applicable Owner and any mortgagee of the Dwelling or Sub-Association Parcel. In addition, the exterior portions of a Dwelling or Sub-Association Parcel shall be maintained substantially in the manner in which they were originally constructed and no material change in or to the exterior portions (such as the color or finishes) of the improvements in a Dwelling or Sub-Association Parcel shall be permitted without the prior written consent of the Maintenance Association.

12.5. Supplements. During the period in which the Declarant is the Class B Member of the Maintenance Association, and thereafter, to the fullest extent permitted by Applicable Law, the Declarant may, in its sole discretion, from time to time add other property under the provisions of this Declaration by Supplemental Declaration (which shall not require the consent of then existing Owners, the Maintenance Association, any Sub-Association, or any other Community Beneficiaries) and thereby add to the Properties. Nothing in this Declaration shall, however, obligate Declarant to add to the Properties, nor to prohibit Declarant from rezoning and changing its development plan with respect to such future portions. All Owners, by acceptance of a deed to or other conveyance of their Dwelling or Sub-Association Parcel and all mortgagees of Owners, by acceptance of a mortgage on any Dwelling or Sub-Association Parcel, thereby automatically consent to any such rezoning, change, addition or deletion thereafter made by the Declarant and shall evidence such consent in writing if requested to do so by the Declarant at any time (providing, however, that the refusal to give such written consent shall not obviate the general effect of this provision).

12.6. Withdrawal. During the period in which the Declarant is the Class B Member of the Maintenance Association, and thereafter, to the fullest extent permitted by Applicable Law, the Declarant reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for the Properties desired to be effectuated by the Declarant.

12.7. Declarant Amendments. During the period in which the Declarant is the Class B Member of the Maintenance Association, and thereafter, to the fullest extent permitted by Applicable Law, this Declaration may be amended by the Declarant to correct any errors or omissions or to effect any other amendment, provided such other amendment does not, in the Declarant's sole reasonable judgment, have a materially adverse effect on substantial rights of any Institutional Mortgagee who has not consented in writing to the amendment. In addition, during the period in which the Declarant is the Class B Member of the Maintenance Association, and thereafter, to the fullest extent permitted by Applicable Law, the Declarant shall have an absolute right to make any amendments to this Declaration (without any other party's consent or joinder) that are requested or required by an Institutional Mortgagee holding a mortgage from Declarant or any affiliate thereof, or by the FNMA/ FHLMC, the Government National Mortgagee or any other governmental, quasi-governmental or governmental-chartered entity which owns or expects to own one or more Institutional Mortgages encumbering the Properties, or any portion thereof, or to insure the payment of one or more such mortgages, or that are requested or required by any Institutional Mortgagee or prospective Institutional Mortgagee to enhance the marketability of its mortgages to one or more of the foregoing.

12.8. Owner Amendments. This Declaration may also be amended by an instrument signed by the President of the Maintenance Association, attested to by its Secretary and certifying that the amendment set forth in such instrument was adopted by a vote of at least seventy-five percent (75%) of the votes to be cast by all Voting Members, at a duly called

meeting thereof, provided that so long as Declarant or any of its affiliates is the Owner of any Dwelling or Sub-Association Parcel affected by this Declaration, and unless prohibited under Applicable Law, Declarant's consent must be obtained if such amendment, in the sole opinion of Declarant, affects its interest.

12.9. CDD Approval. Notwithstanding anything to the contrary in this Declaration, any amendment proposed to this Declaration, the Articles of Incorporation and/or By-Laws which would affect the Surface Water Management System, including environmental conservation areas, if any, shall be submitted to the CDD for review prior to finalization of the amendment. The CDD shall determine if the proposed amendment will require a modification of the environmental resource permit (if any) or SFWMD permit and if a modification is necessary, CDD shall advise the SFWMD. If a permit modification is necessary, the modification must be approved by CDD and SFWMD prior to the amendment of this Declaration, the Articles of Incorporation and/or the By-Laws.

12.10. Declarant Assignments. The Declarant may assign all or any portion of its rights hereunder, or all of a portion of such rights in connection with a portion of the Properties. In the event of a full ("blanket") assignment of all of the Declarant's rights (or remaining rights) hereunder to a successor, assignee or pledgee, the result of which is that the Declarant named herein shall no longer have any rights hereunder (whether immediately, because the assignment is absolute, or after foreclosure of the assignee's security instrument, because the assignment is collateral in nature), such assignee (or the purchaser at the foreclosure sale, if that is the case) shall be deemed the Declarant for all purposes hereunder. In the event of an assignment of less than all of the rights of the Declarant, as aforesaid, the assignee shall not be deemed the Declarant, but may exercise such rights of the Declarant as are specifically assigned to it. Any partial (but not "blanket") assignment of the Declarant's rights may be made on a nonexclusive basis and/or for a limited purpose or period of time. The Declarant may not assign all (or all its remaining) rights hereunder to more than one person or party hereunder at any one time unless the only such prior "blanket" assignment(s) are collateral in nature (as security for a loan), in which event the Declarant may make subsequent "blanket" collateral assignments which shall be subject and subordinate to the security interest(s) of the prior collateral assignee(s). Any person or entity to whom or which all or certain of the Declarant's rights hereunder have been assigned may further assign such assignee's rights, in whole or in part, unless restricted or prohibited in the assignment made by the Declarant or a successor assignor thereof. Nothing contained in this Declaration shall be effective or construed to limit any of the foregoing rights of the Declarant (or its or any other assignees or successors) to make any or all of the assignments provided for in this Section. If any assignment of all (or all then remaining) or a portion of the Declarant's rights is given as security for a loan (whether by pledge, mortgage or other device which creates a security interest in all or a portion of such rights), such assignee shall not have the right to exercise such rights of the Declarant except as provided in the instrument of such assignment or, after foreclosure of such security interest, in accordance with Applicable Law. Such assignee's rights will inure to the benefit of any purchaser at a foreclosure sale which includes such rights; provided, however, that such purchaser shall become the Declarant, as provided herein, only if the aforesaid instrument of assignment is a full ("blanket") assignment of all of the Declarant's rights (or remaining rights) hereunder.

12.11. Declarant's Reservation of Rights. Notwithstanding anything to the contrary in this Declaration, and to the fullest extent permitted under Applicable Law, the Declarant reserves unto itself, and its successors and assigns, the ownership of the air space and air rights arising above the level of the roof of the structures constructed within the Properties,

having the exterior dimensions of the perimeter walls of each building and extending vertically into infinity, and all transferable and non-transferable development rights relating in any way to the Properties, and any portions thereof, and the development or proposed development thereof. The Maintenance Association and each Owner and Sub-Association do hereby further give and grant to the Declarant, and the Declarant does hereby reserve unto itself, and its successors and assigns, such easements on, over, under, through and across the Properties as may be necessary for the installation, repair, replacement and maintenance of all improvements and installations placed and constructed by the Declarant, or any successor or assign thereof, upon the roof of the Dwellings or the buildings within any Sub-Association Parcel or other buildings within the Properties. The Declarant, and its successors and assigns, shall also have an easement of subjacent lateral support and all other support in every portion of a Dwelling or Sub-Association Parcel which contributes to the support of any improvements constructed on or above the roof of the buildings thereon. The rights and privileges reserved by the Declarant in this Section may be assigned (in whole or in part), leased, transferred and/or conveyed by the Declarant. The provisions contained in this Section may not be amended, modified or deleted, in whole or in part, without the written consent of the Declarant.

12.12. Development Agreement. Each Owner understands and agrees that that the Declarant is reserving unto itself and its successors and assigns, all of its rights under that certain Development Agreement between the City of Riviera Beach, a municipal subdivision of the State of Florida and Marsh Harbour Associates, Ltd. (the "Development Agreement"), including, without limitation, all right, title and interest of the Declarant, and its successors and assigns, whether now existing or hereafter arising, in and to the "City Subsidies," as described therein, and any and all other credits, fees, reimbursements, rebates and other sums payable thereunder (collectively, the "Subsidies"). Each Owner, by acceptance of title to its Dwelling or Sub-Association Parcel, and each Sub-Association, automatically and unconditionally waives, relinquishes and quit claims unto the Declarant, and its successors and assigns, any and all right, title and interest that it may now or hereafter have in the Incentives and any other rights arising under the Development Agreement. At the Declarant's request, each Owner agrees to execute and deliver any instruments or other documents that may be necessary or desirable to effectuate the purpose and intent of this Section (provided, however, that the refusal to execute any such instrument or other document shall not obviate the automatic effect of this provision) and each Owner hereby designates the Declarant to act on its behalf, as agent and attorney-in-fact, to execute and deliver any such instruments or other documents. The foregoing Power of Attorney is irrevocable and is coupled with an interest. Notwithstanding the foregoing reservations, from and after the recordation of this Declaration, and to the fullest extent permitted therein, the Maintenance Association shall assume and abide by all obligations of the Declarant under the Development Agreement and shall indemnify, defend and hold harmless the Declarant and its affiliates from and against any losses, damages, claims and expenses, including, without limitation, attorneys' fees and costs incurred at all trial and appellate levels, arising out of any failure of the Maintenance Association to perform or otherwise abide by such obligations. The provisions of this Section may not be amended without the consent of the Declarant, which may be withheld in its sole and absolute discretion, and shall inure to the benefit of the Declarant's successors and assigns.

12.13. Effects of Amendments. Any duly adopted amendment to this Declaration shall run with and bind the Properties for the same period and to the same extent as do the covenants and restrictions set forth herein.

ARTICLE 13
MARSH HARBOUR COMMUNITY DEVELOPMENT DISTRICT

13.1. Formation. Prior to the recording of this Declaration, Declarant has created the Marsh Harbour Community Development District (the "CDD"). The purpose and powers of the CDD shall be all of the purposes and powers set forth by the City in Ordinance 2992 (the "Ordinance"), and this Declaration.

13.2. Administration of the CDD. The affairs of the CDD shall be administered by the Board of Supervisors in accordance with Chapter 190, Florida Statutes, the Ordinance, and this Declaration. Owners within the CDD will elect a Board of Supervisors for the CDD. The Board of Supervisors is required to advertise its meetings in advance and all board meetings are required to be open to the public. Each fiscal year the Board of Supervisors will prepare a budget and adopt said budget in an open public meeting.

13.3. CDD Property and Common Areas. Portions of the Properties, such as the Surface Water Management System, water and sewer systems and/or utilities, will be operated and maintained by the CDD (the "CDD Property"). As part of the CDD such portions of the Properties will not be part of the Common Areas and the CDD Property shall include only such property that is designated as such, or that is deeded, dedicated by plat or otherwise reserved for the CDD, or that is deemed CDD Property under Applicable Law, and shall include any landscaping and any improvements (existing or proposed) thereon.

13.4. Title to the CDD Property. The CDD may, from time to time and in its sole discretion, delegate all or any portion of its rights and obligations to operate and maintain the CDD Property to the Maintenance Association (but in no event shall it be obligated to do so). Such delegation may be by a maintenance agreement, which shall become effective upon execution by both parties and shall be kept in the offices of the CDD and Maintenance Association.

13.5. Water Management Areas. The CDD Property includes the lakes, which have been designed as part of the Surface Water Management System and not as an aesthetic feature. Due to fluctuations in seasonal rainfall and ground water elevations within the immediate area, the water level of the lakes will rise and fall. Each Owner understands that neither the Declarant, its affiliates, nor the CDD have control over such elevations and there is no guarantee that water levels will be constant or aesthetically pleasing at any particular time of the year. Each Owner, by accepting and acquiring title to a Dwelling and/or a Sub-Association Parcel, or any portions thereof, and each other person having an interest in or lien upon, or making any use of, any portions of the Properties, hereby agrees to release and discharge the Declarant, its affiliates, and the CDD from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind, including, without limitation, attorneys' fees and costs and appellate fees and costs and costs related to or arising out of any claim against the Declarant and its affiliates as a result of water and groundwater levels, if any. Each Owner further agrees not to alter, modify, expand, or fill any lakes located within the Community or in the vicinity of the Community, without the prior written approval of the SFWMD, the U.S. Army Corps of Engineers, and any other local, state, and federal authorities as may have relevant jurisdiction over such matters.

13.6. CDD Assessments. The CDD will impose and levy taxes or assessments, or both taxes and assessments which will pay for the construction, operation, and maintenance costs of certain public facilities, including, but not limited to, the Surface Water Management System, sewer system, drainage system and water system. These taxes and assessments shall

be non-ad valorem taxes and will appear on the annual real estate tax bill for each Dwelling in addition to county and other local governmental taxes and assessments and all other taxes and assessments.

ARTICLE 14 DISCLAIMERS

14.1. GENERAL DISCLAIMER. DECLARANT HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE DWELLINGS AND THE COMMUNITY, EXCEPT AS MAY BE REQUIRED BY LAW, TO THE EXTENT APPLICABLE. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND AS TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL, SPECIAL, PUNITIVE AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

14.2. SPECIFIC ADDITIONAL DISCLAIMERS OF REPRESENTATIONS, WARRANTIES AND LIABILITY. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT, THE MAINTENANCE ASSOCIATION, THE CDD OR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") UNLESS EXPRESSLY SET FORTH IN THIS DECLARATION OR IN ANY PURCHASE AGREEMENT DELIVERED BY DECLARANT TO A PURCHASER OF A DWELLING OR SUB-ASSOCIATION PARCEL, AND THE LISTED PARTIES HEREBY SPECIFICALLY DISCLAIM ANY LIABILITY OR RESPONSIBILITY FOR THE FOLLOWING:

14.2.1. ANY MATTERS RELATING TO THE VIEW, SECURITY, PRIVACY, LOCATION, DESIGN, DENSITY OF THE PROPERTIES.

14.2.2. THE PREVENTION OF TORTIOUS ACTIVITIES, THE SECURITY, HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR OTHER COMMUNITY BENEFICIARY OR FOR ANY PROPERTIES OF ANY SUCH PERSONS OR THE USE OF ANY OTHER PORTION OF THE PROPERTIES, INCLUDING, WITHOUT LIMITATION, THEIR TENANTS, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS. ANY PROVISIONS OF THIS DECLARATION, OR OF THE ARTICLES OR BY-LAWS, SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE RECIPIENT OF SUCH ASSESSMENT FUNDS TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENTS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

14.2.3. THE PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAW, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OF ANY PORTION OF THE COMMON AREAS OR OTHER PORTIONS OF THE PROPERTIES, INCLUDING, WITHOUT LIMITATION, THE SALE, OPERATION, LEVEL OR COST OF MAINTENANCE, TAXES OR REGULATION THEREOF.

14.2.4. BOWING AND/OR DEFLECTION OF MATERIALS, AND CRACKING AND SETTLEMENT OF IMPROVEMENTS, WHICH EACH OWNER

RECOGNIZES AND AGREES IS TYPICAL OF THE TYPE OF IMPROVEMENTS IN THE PROPERTIES.

14.2.5. MOLDS, MILDEW, TOXINS AND FUNGI WHICH, GIVEN THE CLIMATE AND HUMID CONDITIONS IN FLORIDA, MAY EXIST AND/OR DEVELOP WITHIN THE DWELLINGS OR THE SUB-ASSOCIATION PARCELS AND/OR OTHER PORTIONS OF THE PROPERTIES. EACH OWNER IS HEREBY ADVISED THAT CERTAIN MOLDS, MILDEW, TOXINS AND/OR FUNGI MAY BE, OR IF ALLOWED TO REMAIN FOR A SUFFICIENT PERIOD MAY BECOME, TOXIC AND MAY POTENTIALLY POSE A HEALTH RISK. EACH UNIT OWNER AGREES TO REGULARLY INSPECT THEIR DWELLINGS FOR PLUMBING LEAKS, WATER ACCUMULATION, AND WATER INTRUSION THROUGH WINDOWS, DOORS, AND ROOFS FOR ANY SIGNS OF MOLD AND REGULARLY MAINTAIN ADEQUATE AIR CIRCULATION AND VENTILATION BY CONTINUOUSLY OPERATING THE HVAC SYSTEM.

14.2.6. NOISE, COMMOTION, ODOR AND OTHER UNPLEASANT EFFECTS OF NEARBY CONSTRUCTION ACTIVITY, WHICH MAY IMPEDE THE USE OF PORTIONS OF THE DWELLINGS, THE SUB-ASSOCIATION PARCELS AND THE REMAINDER OF THE PROPERTIES FOR SOME TIME IN THE FUTURE.

14.2.7. NOISE, MUSIC, VIBRATIONS, ODORS, COMMOTION AND OTHER UNPLEASANT EFFECTS EMANATING FROM OTHER PORTIONS OF THE PROPERTIES AND THE SURROUNDING AREAS INCLUDING, WITHOUT LIMITATION, THE NEARBY ROADWAYS WHICH, BECAUSE OF THEIR PROXIMITY TO THE PROPERTIES AND THE DWELLINGS, MAY CREATE DISTURBANCES.

14.2.8. THE EXTERIOR LIGHTING SCHEME FOR THE IMPROVMENTS WITHIN THE PROPERTIES, WHICH MAY CAUSE EXCESSIVE ILLUMINATION AND MAY REQUIRE INSTALLATION OF WINDOW TREATMENTS.

14.2.9. ACTS OF GOD AND UNCONTROLLABLE EVENTS AND, GIVEN THE PROXIMITY OF THE PROPERTIES TO THE WATER, EXPOSURE TO POTENTIAL DAMAGES FROM FLOODING, TROPICAL STORMS, AND FROM HURRICANES, INCLUDING, WITHOUT LIMITATION, DAMAGES FROM STORM SURGES AND WIND-DRIVEN RAIN. EACH OWNER ACKNOWLEDGES THAT PORTIONS OF THE IMPROVEMENTS ARE LOCATED ARE BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY PROPERTY THEREIN IS SUSCEPTIBLE TO WATER DAMAGE.

14.2.10. ALLIGATORS, POISONOUS SNAKES, AND OTHER WILDLIFE WHICH MAY INHABIT OR ENTER INTO THE WATERBODIES AND NATURAL AREAS WITHIN THE CDD PROPERTY AND THE PROPERTIES AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

14.2.11. MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATERBODY ADJACENT TO OR WITHIN THE CDD PROPERTY AND THE PROPERTIES AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH WATERBODIES, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY.

14.2.12. LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE CDD PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY ACCEPTANCE OF A DEED TO, OR USE OF, ANY DWELLING OR OTHER PORTION OF THE CDD PROPERTY, ALL OWNERS OR USERS OF SUCH CDD PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR LAKE BOTTOMS LOCATED THEREIN.

14.3. EACH OWNER, BY ACCEPTING AND ACQUIRING TITLE TO A DWELLING AND/OR A SUB-ASSOCIATION PARCEL, OR ANY PORTIONS THEREOF, AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES), SHALL BE BOUND BY THIS ARTICLE, SHALL BE DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH EACH OF THE ABOVE MATTERS AND OCCURRENCES AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE DECLARANT AND THE MAINTENANCE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE AFOREMENTIONED PARTIES HAS BEEN DISCLAIMED IN THIS ARTICLE.

14.4. LIMITATION OF DAMAGES. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL, SPECIAL, PUNITIVE AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. ALL OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE DWELLINGS AND/OR OTHER SUB-ASSOCIATION PARCELS (WHETHER FROM THE DECLARANT OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND ANY AND ALL CLAIMS INCIDENTAL, SPECIAL, PUNITIVE AND CONSEQUENTIAL DAMAGES.

14.5. REFERENCES TO DECLARANT AND MAINTENANCE ASSOCIATION. AS USED IN THIS ARTICLE, REFERENCES TO DECLARANT SHALL INCLUDE WITHIN THEIR MEANING ALL OF ITS MEMBERS, PARTNERS, AND SHAREHOLDERS, DIRECTORS, OFFICERS, BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, AFFILIATES AND SUCCESSORS AND ASSIGNS. REFERENCES TO THE "MAINTENANCE ASSOCIATION" SHALL INCLUDE WITHIN THEIR MEANING ALL OF ITS DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

ARTICLE 15 GENERAL PROVISIONS

15.1. Cooperation; Execution of Documents and Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to a Dwelling or Sub-Association Parcel, and each Sub-Association, shall be deemed to have acknowledged and agreed (a) that all of the provisions of this Declaration, and the Articles and By-Laws, and Rules and Regulations, are fair and reasonable in all material respects, and (b) to automatically

consent to any rezoning, replatting, waiver of plat, covenant in lieu of unity of title, easement, revised site plan, change, addition or deletion made in, on or to the Properties, or any transfer of density, use or other development rights, by the Declarant, or by any affiliate thereof, and in such regard, each Owner and each Sub-Association hereby designates the Maintenance Association to act on their behalf, as agent and attorney-in-fact, to consent to any of the foregoing. If requested by the Declarant, each Owner and each Sub-Association shall evidence its consent to a rezoning, replatting, covenant, revision, change, addition or deletion or transfer in writing (provided, however, that the refusal to give such written consent shall not obviate the automatic effect of this provision). The foregoing Power of Attorney is irrevocable and is coupled with an interest. The provisions of this Section may not be amended without the consent of the Declarant.

15.2. Institutional Mortgagee Protection. The following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this Declaration, these added provisions shall control):

15.2.1. The Maintenance Association shall be required to make available to all Owners and Institutional Mortgagees, and to insurers and guarantors of any first Institutional Mortgage, for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of this Declaration (with all amendments) and the Articles, By-Laws, Rules and Regulations and the books and records of the Maintenance Association. Furthermore, such persons shall be entitled, upon written request (which request is hereby deemed given by Declarant's Mortgagee), to (i) receive a copy of the Maintenance Association's financial statement for the immediately preceding fiscal year, (ii) receive notices of and attend the Maintenance Association meetings, (iii) receive notice from the Maintenance Association of an alleged default by an Owner in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations, which default is not cured within thirty (30) days after the Maintenance Association learns of such default, and (iv) receive notice of any substantial damage or loss to the Common Areas.

15.2.2. Any holder, insurer or guarantor of an Institutional Mortgage on a Dwelling or Sub-Association Parcel shall have, if first requested in writing (which request is hereby deemed given by Declarant's Mortgagee), the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Common Areas, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Sub-Association Parcel Dwelling, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Maintenance Association, and (iv) any proposed action which requires the consent of a specified number of Institutional Mortgage holders.

15.2.3. Any holder, insurer or guarantor of an Institutional Mortgage on a Dwelling shall have the right to pay, singly or jointly, taxes or other charges that are delinquent and have resulted or may result in a lien against any portion of the Common Areas and receive immediate reimbursement from the Maintenance Association.

15.2.4. Any holder, insurer or guarantor of a Institutional Mortgage on a Dwelling or Sub-Association Parcel shall have the right to pay, singly or jointly, any overdue premiums on any hazard insurance policy covering the Common Areas or obtain, singly or jointly, new hazard insurance coverage on the Common Areas upon the lapse of a policy and, in either case, receive immediate reimbursement from the Maintenance Association.

15.2.5. Notwithstanding anything to the contrary contained herein, no portion of the Properties may be withdrawn from the effect of this Declaration without the prior written consent of Declarant's Institutional Mortgagee.

15.3. Sub-Associations. Upon any portion of the Properties being submitted to a declaration creating a Sub-Association, then the following special provisions shall apply:

15.3.1. A single Sub-Association Parcel shall not lose its character as such for the purposes of this Declaration by virtue of being subdivided into a Sub-Association Parcel by a declaration of condominium, or subject to any other recorded declaration creating a Sub-Association. An Owner shall be deemed, for purposes of this Declaration, to include the Sub-Association for the Sub-Association Parcel, even though same may not actually be the owner of the Sub-Association Parcel.

15.3.2. For the purposes of complying with and enforcing the standards of maintenance contained herein, the building or buildings within the Sub-Association Parcel and any appurtenant facilities shall be treated as a structure or structures and any other portions thereof shall be treated as an unimproved portion of the Sub-Association Parcel, with each Sub-Association to have the maintenance duties of an Owner as set forth herein. Each Sub-Association shall also be jointly and severally liable with its members for any violation of the use restrictions set forth in this Declaration or of the Rules and Regulations.

15.3.3. Each Sub-Association shall be liable and responsible to the Maintenance Association hereunder for its and its constituents' compliance with the covenants, restrictions and requirements of this Declaration and the Articles of Incorporation, By-Laws, and Rules and Regulations of the Maintenance Association. Accordingly, while the Maintenance Association shall have the right (exercisable at its sole option) to proceed against such a constituent for a violation of this Declaration, it shall have a direct right to do so against each Sub-Association (even if the violation is not caused by such Sub-Association or by all of its constituents).

15.3.4. Each Sub-Association shall be a non-Voting Member of the Maintenance Association, and its constituents who are Owners shall not be deemed to be Voting Members, unless expressly provided herein.

15.4. Term. Subject to the amendment provisions of Article 12 hereof, the easements, covenants and restrictions of this Declaration shall run with and bind the properties covered hereby, and shall inure to the benefit of and be enforceable by the Maintenance Association, the Declarant, and their respective successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions, easements, reservations of easements, equitable servitudes and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, approved by seventy-five percent (75%) of the Owners and seventy-five percent (75%) (in dollar amount) of the first Institutional Mortgagees of record, has been recorded revoking said covenants. If revoked in any other manner while the Declarant owns any portion of the Properties, title to the Common Areas shall remain vested in the name of the Declarant and the Declarant shall be free to erect barricades and prevent use of all or any portion thereof. No prescriptive rights shall be established regardless of the nature or duration of use of the Common Areas or any portion thereof.

15.5. Interpretation and Conflicts. The provisions of this Declaration as well as those of the Articles, By-Laws and Rules and Regulations shall be interpreted by the Maintenance Association. Any such interpretation of the Maintenance Association which is rendered in good

faith shall be final, binding and conclusive if the Maintenance Association receives the confirming consent of Declarant and a written opinion of legal counsel to the Maintenance Association, or the counsel having drafted this Declaration or other applicable document, that the interpretation is not unreasonable, which opinion may be rendered before or after the interpretation is adopted. Notwithstanding any rule of law to the contrary, the provisions of this Declaration and the Articles, By-Laws and Rules and Regulations shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Maintenance Association and the Properties, the preservation of the values of the Dwellings and Sub-Association Parcels and the protection of Declarant's rights, benefits and privileges herein contemplated. Section and subsection headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter genders shall each include the others. This Declaration shall be read as cumulative to and not in limitation of any other applicable declaration of covenants and restrictions or declaration of condominium and exhibits thereto, but in the event of any conflict therewith, this Declaration shall take precedence over all such other declarations. Notwithstanding anything contained herein to the contrary, the powers and duties of the condominium association, and the rights and remedies of the Unit Owners as provided in the Condominium Act shall not be limited or abridged. As used in this Section, the words "its successors and assigns" specifically do not include purchasers of completed Dwellings or Sub-Association Parcels. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws and said Articles shall take precedence over the By-Laws. The Board shall be the ultimate interpreter of this Declaration, and the Articles, By-Laws and Rules and Regulations, and an opinion of counsel from counsel engaged by the Board for such purpose, stating that any such interpretation is not unreasonable, shall establish the validity of any such interpretation.

15.6. No Public Dedication or Grant of Riparian Rights. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Areas to the public, or for any public use. Nothing in this Declaration shall be construed to expressly or impliedly grant to any Owner, the Maintenance Association or any other owner(s) of property within the Properties any riparian rights appurtenant to any portion of the Properties.

15.7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Dwelling, Sub-Association Parcel or other portion of the Properties shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference hereto is contained in the instrument by which such person acquired an interest in such Dwelling, Sub-Association Parcel or other property.

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

15.9. Covenant Running With the Land. All covenants and provisions of this Declaration, the Articles, By-Laws and Rules and Regulations, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, construed to be covenants running with the land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Declarant and subsequent owner(s) of the land or any part thereof, or interest therein, and their respective heirs, personal

representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Owners, tenants and occupants of Dwellings shall be subject to and shall comply with the provisions of this Declaration and the Articles, By-Laws and applicable Rules and Regulations, all as may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy, of any Dwelling shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and Rules and Regulations, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

15.10. Standards for Consent, Approval and Other Actions. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Declarant or its affiliates, the Maintenance Association, the Board, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Declarant or its affiliates or the Maintenance Association shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Declarant or the Maintenance Association, as appropriate.

15.11. Litigation/Waiver of Jury Trial. As to any claim arising from or connected with the Declarant's construction, development, repair, replacement or maintenance of the Properties, or the Declarant's operation of the Maintenance Association (the "Development Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Development Matters that (i) the party or parties bringing same shall have first given notice to the Declarant or other party against whom/ which relief or recovery is sought (the "Defendant") of the specific Development Matters complained of and what actions are necessary to cure or correct same and (ii) the Defendant shall have been given at least forty-five (45) days (subject to extension by reason of matters beyond the control of the Defendant or because of the nature of the applicable Development Matter(s) and the time necessary to cure or correct same) in which to cure or correct the applicable Development Matter(s) and shall have materially failed to do so. **THE DECLARANT, THE MAINTENANCE ASSOCIATION, AND ALL OWNERS AND OTHER PERSONS ACQUIRING ANY RIGHT, TITLE OR INTEREST IN OR TO ANY DWELLING OR SUB-ASSOCIATION PARCEL, EACH HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM PERTAINING TO THIS DECLARATION AND TO ANY AND ALL MATTERS PERTAINING TO THE DEVELOPMENT MATTERS OF THE PROPERTY.** Without limiting the general binding effect of this Declaration, each Owner and other person acquiring any right, title or interest in or to any Dwelling or Sub-Association Parcel shall be deemed, by virtue of the acceptance of the conveyance, grant, transfer or assignment thereof, to be fully bound by the provisions of this Section 14.11, as shall the Declarant, the Maintenance Association and the Sub-Associations.

15.12. Waiver; Modifications. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of occurrences, violations or breaches which may occur.

15.13. Severability. The invalidity or unenforceability of any one of these covenants or restrictions or any article, section, subsection, paragraph, subparagraph, sentence, clause, phrase or word, or any other provision of this Declaration, or the Articles, By-Laws or Rules and Regulations, as the same may be amended from time to time, shall not affect the validity and

enforceability of the remaining portions hereof or thereof, all of which shall remain in full force and effect.

15.14. Effective Date. This Declaration shall become effective upon its recordation in the Public Records.

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CONSENT OF MORTGAGEE

THIS CONSENT is given as of the 8 day of June, 2006, by OCEAN BANK, a state bank organized under the laws of Florida ("Mortgagee"), being the owner and holder of that certain Mortgage dated August 7, 2004 from Marsh Harbour Associates, Ltd., a Florida limited partnership, to Mortgagee in the principal amount of \$4,032,000.00 recorded on September 17, 2004, in Official Records Book 17534 at Page 1980, as modified by that certain Future Advance Consolidation, Modification and Ratification of Mortgage and Note Agreement recorded January 11, 2005 in Official Records Book 17997, Page 848, of the Public Records of Palm Beach County, Florida, as further modified by that certain Future Advance, Consolidation, Modification and Ratification of Mortgage and Note Agreement dated March 21, 2005 and recorded March 25, 2005 in Official Records Book 18312, at Page 608, of the Public Records of Palm Beach County, in the original principal amount of \$33,203,655.00, for a loan total of \$38,182,655.00.

WHEREAS, Mortgagor has requested Mortgagee to consent to the recording of the Declaration of Covenants, Restrictions and Reciprocal Easements (the "Declaration").

NOW, THEREFORE, Mortgagee consents to the recordation of the Declaration.

Mortgagee makes no warranty or any representation of any kind or nature concerning the Declaration, any of its terms or provisions, or the legal sufficiency thereof, and disavows any such warranty or representation as well as any participation in the development of MARSH HARBOUR (the "Community"), and does not assume and shall not be responsible for any of the obligations or liabilities of the developer contained in the Declaration or other documents (if any) issued in connection with the promotion of the Community. None of the representations contained in the Declaration or any other document shall be deemed to have been made by Mortgagee, nor shall they be construed to create any obligation on Mortgagee to any person relying thereon. This consent does not affect or impair the rights and remedies of Mortgagee as set forth in the Mortgage or in the Declaration.

Witnessed by:

Aurora Sanchez
Print Name: AURORA Sanchez

Cesar R. Bernal Jr.
Print Name: CESAR R. BERNAL JR.

OCEAN BANK, a state bank organized under the laws of Florida

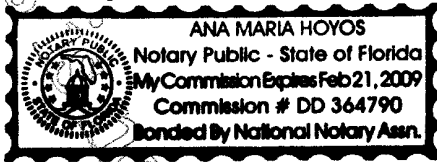
By: *Lester D. Arana*
Lester D. Arana, Vice President

Address: 708 NW 42nd Avenue
Miami, FL 33126

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing joinder was acknowledged before me this 8 day of June, 2006, by Lester D. Arana, as Vice President of Ocean Bank, a state bank organized under the laws of Florida. Such person is personally known to me or produced a driver's license as identification.

[NOTARIAL SEAL]



Notary: Ana Maria Hoyos

Print Name: Ana Maria Hoyos
Notary Public, State of Florida

My commission expires: 2/21/2009

This is not a certified copy

EXHIBIT "A"

All of MARSH HARBOUR, according to the Plat thereof, recorded in Plat Book 107, at Pages 189-192, of the Public Records of Palm Beach County, Florida.

This is not a certified copy