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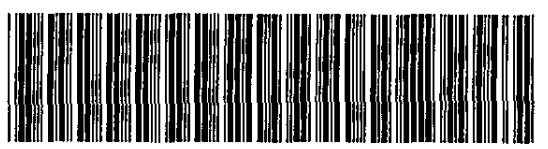
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April 19, 2006

Department of State, Florida  
Clifton Building  
2611 Executive Center Circle  
Tallahassee FL 32301

Re: Order #: 6621098 SO  
Customer Reference 1: None Given  
Customer Reference 2:

Dear Department of State, Florida:

Please obtain the following:

Brookfield Estates Homeowners Association of Pasco, Inc. (FL)  
Incorporation  
Florida

Brookfield Estates Homeowners Association of Pasco, Inc. (FL)  
Cert Copy of Articles of Inc  
Florida

Brookfield Estates Homeowners Association of Pasco, Inc. (FL)  
Certificate of Status/Authorization-Domestic  
Florida

Enclosed please find a check for the requisite fees. Please return document(s) to the attention of the undersigned.

If for any reason the enclosed cannot be processed upon receipt, please contact the undersigned immediately at (850) 222-1092. Thank you very much for your help.

*Thank You!  
Connie*

**ARTICLES OF INCORPORATION**

**BROOKFIELD ESTATES HOMEOWNERS ASSOCIATION OF PASCO, INC.**

I.

The name of the corporation is **Brookfield Estates Homeowners Association of Pasco, Inc.** (the "Association") which is the Association for Brookfield Estates, a residential subdivision development ("Development") located in Pasco County, Florida.

II.

The initial registered office of the Association shall be at 1200 South Pine Island Road, Plantation, Florida 33324. The initial registered agent of the Association shall C T Corporation System.

III.

The mailing address of the initial principal office of the Association is:

2801 West Busch Blvd.  
Suite 100  
Tampa, Florida 33618

IV.

The name and address of the incorporator is:

McCar Homes – Tampa, LLC  
2801 West Busch Blvd.  
Suite 100  
Tampa, Florida 33618

V.

The Association shall have one (1) class of membership as provided in the bylaws of the Association (the "Bylaws"). Members shall have the voting rights as provided in the Bylaws.

VI.

The Association shall have perpetual duration.

VII.

The purposes for which the Association are organized are to provide for the ownership, management and operation of the "Area of Common Responsibility" (as that term is defined in the Development's Declaration of Covenants, Restrictions and Easements ("Declaration")), to

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provide for the enforcement of the covenants and restrictions set forth in the Declaration; to levy assessments against the members of the Association in accordance with the terms and provisions of the Declaration in order to raise the funds required by the Association to defray expenses which the Association shall incur in carrying out such purposes; and to operate and maintain the Surface Water Management System Facilities.

#### VIII.

The Association is organized pursuant to the "Florida Not-For-Profit Corporation Act."

#### IX.

The Association is organized as a nonprofit, nonstock, membership corporation for the sole purpose of performing certain functions for the common good and general welfare of the residents of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the residents of the Development. To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Florida Not-For-Profit Corporation Act and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Bylaws. Unless otherwise defined herein, all capitalized terms in these Articles of Incorporation shall have the same meaning as ascribed to such capitalized terms in the Bylaws.

No part of the net earnings, gains or assets or assets of the Association shall inure to the benefit of or be distributable to its directors, officers, other private individuals, or organizations organized and operated for a profit (except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Association as herein stated). No substantial part of the activities of the Association shall be the direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles of Incorporation, the Association shall not carry on any activities not permitted to be carried on by a corporation exempt for federal income tax under Section 501(c)(6) of the Internal Revenue Code, or corresponding section of any future federal tax code.

#### X.

Directors of the Association shall be elected by the method of election of directors as set forth in the Association's Bylaws, as amended from time to time. The initial Board of Directors shall be: Kevin Robles and John Brian.

#### XI.

No director of the Association shall be personally liable to the Association or its members for monetary damages for breach of fiduciary duty of care or other duty as a director, except that this Article XI shall not eliminate or limit the liability of a director: (i) for any appropriation, in violation of his duties, of any business opportunity of the Association; (ii) for acts or omissions

not in good faith or which involve intentional misconduct or a knowing violation of law; or (iii) for any transaction from which the director derives an improper personal benefit. Neither the amendment nor repeal of this Article XI, nor the adoption of any provision of these Articles of Incorporation inconsistent with this Article XI, shall eliminate or reduce the effect of this Article XI in respect of any act or failure to act, or any cause of action, suit or claim that, but for this Article XI, would accrue or arise prior to any amendment, repeal or adoption of such an inconsistent provision. If the Florida Not-For-Profit Corporation Act is subsequently amended to provide for further limitations on the personal liability of directors of corporations for breach of duty of care or other duty as a director, then the personal liability of the directors of the Association shall be so further limited to the greatest extent permitted by the Florida Not-For-Profit Corporation Act.

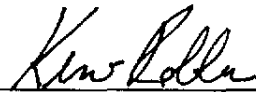
XII.

Prior to the dissolution of the Association, the control or right of access to any portion of the Property containing Surface Water Management System Facilities shall be conveyed or dedicated to an appropriate governmental unit or public utility and, if not accepted, then the Surface Water Management System Facilities shall be conveyed to a non-profit corporation similar to the Association and approved by the Southwest Florida Water Management District.

XIII.

These Articles of Incorporation may be amended only upon a resolution, duly adopted by the Board of Directors, the affirmative vote of members other than the Declarant (as that term is defined in the Declaration), who own at least two-thirds (2/3rds) of the Lots (as that term is defined in the Declaration), and the consent of the Declarant, so long as the Declarant owns any Lot.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation on April 18<sup>th</sup>, 2006.



Kevin Robles, President

CERTIFICATE DESIGNATING PLACE OF BUSINESS  
OR DOMICILE FOR THE SERVICE OF PROCESS  
WITHIN THIS STATE, NAMING AGENT UPON  
WHOM PROCESS MAY BE SERVED

In compliance with the laws of Florida, the following is submitted:

That desiring to organize under the laws of the State of Florida, the corporation named in the foregoing Articles of Incorporation has named C T Corporation System, 1200 South Pine Island Road, Plantation, Florida 33324, County of Broward, State of Florida, as its statutory registered agent. This address is identical with the registered office identified in said Articles. Having been named registered agent of said corporation at the place designated in this certificate, I state that I am familiar with and hereby accept the obligations of that position and agree to act in that capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.

Dated this 19<sup>th</sup> day of April, 2006.

By: Conie Brey

Registered Agent

CONIE BRYAN  
SPECIAL ASSISTANT SECRETARY

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T. J. ...

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## **LEGAL DESCRIPTION:**

The East 1/2 of the NE 1/4 of the SE 1/4, less and except one acre square in the Southeast corner thereof, in Section 13, Township 26 South, Range 20 East, Pasco County, Florida;

The East 1/2 of the NE 1/4 of the SE 1/4 of Section 18, Township 26 South, Range 21 East, Pasco County, Florida;

Less and except the following described parcel, to with: Commence at the Northeast corner of the Southwest 1/4 of said Section 18; thence along the North boundary line of the Southwest 1/4 of said Section 18, North 89°35'12" West, a distance of 25.01 feet to the Northeast corner of the Peeples Parcel as described in Official Record Book 420, Page 683 of the Public Records of Pasco County, Florida, for a Point Of Beginning; thence along the East boundary line of said Peeples Parcel, South 02°01'17" West, a distance of 1,295.97 feet to the North right-of-way line of State Road 54, Section 1409 as it is now established; thence along the North right-of-way of said State Road 54, South 89°58'21" West, a distance of 217.50 feet along the arc of a curve to the left, said curve having a radius of 2,246.00 feet and a chord of 217.46 feet which bears North 00°11'36" East; thence North 01°40'08" West, a distance of 427.76 feet to the north boundary line of the Southwest 1/4 of said Section 18; thence along the North boundary line of the Southwest 1/4 of said Section 18, South 89°35'17" East, a distance of 162.86 feet to the Point Of Beginning;

Tracts 19, 30, 35, 36, 45, and 46; Zephyrhills Colony Company Lands, in Section 21, Township 26 South, Range 21 East, as per plat thereof recorded in Plat Book 2, Page 1, Public Records of Pasco County, Florida; Less road right-of-way; Less and Except the South 25 feet of Tracts 45 and 46;

Lots 9, 10, 11, and 12; in Block 154, Town of Zephyrhills, as per map or plat thereof recorded in Plat Book 1, Page 54, Public Records of Pasco County, Florida;

Lots 1, 2, 4, 5, 6, and 7, Block 166, Town of Zephyrhills, as per map or plat thereof recorded in Plat Book 1, Page 54, Public Records of Pasco County, Florida.

OR BK 6782 PG 911  
3 of 4

**EXHIBIT "A"**

**Legal Description**

A portion of the Southwest ¼ of the Northeast ¼ of Section 25, Township 24 South, Range 16 East, Pasco County, Florida and being described as follows:

Commence at the Southwest corner of the Highland Estates Subdivision as recorded in Plat Book 6, page 55, public records of Pasco County, Florida; thence run along the South line of said subdivision, North 89 degrees 34' 50" East, 1318.89 feet to a concrete monument at the Northeast corner of the herein described parcel of land; thence South 00 degrees 06' 30" West, 995.62 feet; thence along the North line of the South 1/5 of the Southwest ¼ of the Northeast ¼ of said Section 25; South 89 degrees 42' 28" West, 1,319.58 feet to the North-South centerline of said Section 25; thence along said North-South centerline, North 00 degrees 09' 00" East, 992.70 feet to the Point of Beginning.

LESS those lands conveyed to Pasco County, Florida, as Parcel # 101.1, in Order of Taking recorded in O.R. Book 1975, page 747, Public Records of Pasco County, Florida.



**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
BROOKFIELD ESTATES HOMEOWNERS ASSOCIATION OF PASCO, INC.  
PASCO COUNTY, FLORIDA**

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**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
BROOKFIELD ESTATES HOMEOWNERS ASSOCIATION OF PASCO, INC.  
PASCO COUNTY, FLORIDA**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by McCAR HOMES, INC., a Georgia corporation (hereinafter referred to as the "*Declarant*").

**WITNESSETH:**

WHEREAS, Declarant is the owner, or has the consent of the owner, of all that tract or parcel of land lying and being in Land Lots 1-40 of Pasco County, Florida as more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (said property, together with any other real property that is hereafter submitted to the provisions of this Declaration, less and except any portions thereof dedicated to Pasco County, Florida or any municipality or other government entity, and less and except any real property withdrawn from the provisions of this Declaration in accordance with the terms and conditions contained herein, being herein referred to as the "Property"); and

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, in furtherance of such plan, it is desirable to create an association, incorporated under the laws of the State of Florida, as a non-for-profit corporation, to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below) and to administer and enforce the covenants and restrictions and design guidelines imposed hereby; and

WHEREAS, it is intended that every owner of any of the Lots automatically, and by reason of such ownership in this Declaration, become a Member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association;

NOW, THEREFORE, the foregoing recitals are hereby incorporated as if fully set forth hereinafter, and Declarant hereby declares that the Property identified in Article II hereof shall be held, transferred, sold, conveyed, leased, mortgaged, used occupied and otherwise dealt with subject to the terms of the covenants, conditions, restrictions, provisions, easements, charges and liens hereinafter set forth, all of which are created in the best interest of the owners and residents of the Property, and which will run with the land and shall be binding upon all persons having and/or acquiring any right, title or interest in the Property or any portion thereof, or shall occupy any portion of such Property, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the Property, or any portion thereof.

**ARTICLE I.  
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article, such definitions being cumulative of those set forth in the recitals and elsewhere in this Declaration.

*"Act"* shall mean Chapter 720, Florida Statutes, as existing on the date of recordation of this Declaration.

*"Additional Property"* shall mean any and all real property lying and being within five (5) miles of the Property.

*"Annual Assessment"* shall have the meaning specified in the Article entitled "ASSESSMENTS", and shall constitute the charges and obligation which, pursuant to the provisions of such Article, shall be levied by the Association

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against the Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in such Article).

**"Architectural Control Committee" ("ACC")** shall mean those individuals appointed to have jurisdiction over construction on or within any portion of the Property and responsibility for administration of design guidelines, as more fully described in the Article entitled "Architectural Control".

**"Area of Common Responsibility"** shall mean the Common Areas, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other person become the responsibility of the Association.

**"Articles of Incorporation"** shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

**"Association"** shall mean Brookfield Estates Homeowners Association of Pasco, Inc., a Florida non-for-profit corporation.

**"Board of Directors"** shall mean the board of directors responsible for the administration of the Association, selected as provided in the Bylaws.

**"Builder"** shall mean any person who purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers or who purchases one (1) or more parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Lot for residential purposes, except for a Lot on which a structure is being used as a Model Home as that term is defined below, shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

**"Bylaws"** shall mean the Bylaws of the Association, as the same may be amended from time to time.

**"Common Areas"** shall mean, singularly or collectively, as applicable, all land, improvements and other properties which hereafter shall be deeded to, or acquired by, the Association for the common use and enjoyment of the Owners.

**"Community Wide Standards"** shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by Declarant and may be more specifically determined by the Architectural Control Committee.

**"Clerk of the Court"** shall mean the Clerk of the Court of the county where the Property is located.

**"Declarant"** shall mean McCar Homes, Inc., a Georgia corporation, and shall include any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one "Declarant" hereunder at any one time.

**"Declaration"** shall mean this Declaration of Covenants, Restrictions and Easements, as the same may be hereafter amended in accordance with the terms hereof.

**"Development Period"** shall mean the period of time during which Declarant owns any property that is subject to this Declaration or has the unilateral right to subject Additional Property to this Declaration pursuant to Article II. Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the County Clerk.

**"Improved Lot"** shall mean a Lot (i) upon which there is located a structure for which a certificate of occupancy has been issued by the applicable governmental authority, and (ii) which has been sold to a Person who is not Declarant.

**"Lot"** shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family, as shown and indicated as a "Lot" on any of the Plats which are hereafter recorded.

**"Member"** shall mean a Person subject to membership in the Association pursuant to the Article entitled "The Association".

**"Model Home"** shall mean a Structure used by the Declarant or a Builder to show a prospective Buyer what a similar housing type will look like when constructed on a Lot.

**"Mortgage"** shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt. The term **"Mortgagee"** shall refer to a beneficiary or holder of a Mortgage.

**"Owner"** shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

**"Person"** shall mean a natural person, corporation, trust, partnership or any other legal entity.

**"Plats"** shall mean all plats for any portion of the Property that are recorded in the Public Records of Pasco County, Florida, that may be submitted at any time and from time to time, together with all amendments thereto, and any and all other plats, and amendments thereto, that are hereafter recorded in the Clerk' of the Court's plat book records for the purpose of subjecting any of the Additional Property to this Declaration

**"Property"** shall have the meaning given to it in the first recital paragraph of this Declaration

**"Supplemental Declaration"** shall mean an instrument filed with the County Clerk which imposes additional restrictions and/or obligations on the land described in such instrument.

**"Surface Water Management System Facilities"** shall mean and refer to all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas.

**"Unimproved Lot"** shall mean a Lot which is not an Improved Lot.

## ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION

**Section 1. Lots Hereby Subjected to this Declaration.** Declarant, for itself and its successors and assigns, does hereby submit the Property and the Lots, as is more fully described in the description attached hereto as Exhibit "A", to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

**Section 2. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration.** Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 3. Annexation of Additional Property. Declarant may, at any time, and from time to time, prior to ten (10) years from the date hereof, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the County Clerk an amendment to this Declaration describing the property being annexed. Declarant further has the right to convey to the Association additional Common Areas contained within such Additional Property, the maintenance of which may increase the amount of the Annual Assessment as provided elsewhere herein and may increase the amount of Annual Assessment which shall be levied against each Lot.

From and after such recording, the annexed property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall further have the right at its election, without the consent of any Owner or Owners, to subject any such annexed property to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens by filing a Supplemental Declaration with the Clerk of the Court covering only such annexed property. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, and developments contained in such additional declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the annexed property in order to reflect the different character and intended use of such property.

No approval from any member of the Association, or from anyone else whomsoever, shall be required for Declarant to subject additional property to this Declaration.

Section 4. Withdrawal of Property. Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property and is not contrary to the planned residential development requirements of the zoning ordinance in effect for the Property. This provision includes Declarant's right to deed over property to any governmental entity as required or deemed desirable in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not Declarant. If the property is part of the Common Areas, the Association shall also consent to the withdrawal.

Section 5. Submission to a Master Community and Other Acts of Declarant. Declarant reserves the right to amend this Declaration during the Development Period to submit the Property and the Additional Property to a larger planned community, to subject the Property to a master association and to consolidate the Association with other homeowners' or community associations.

### **ARTICLE III. ASSOCIATION PROPERTY**

Section 1. Common Areas and Association Property. Declarant shall have the right to transfer and convey to the Association, or cause the transfer and conveyance to the Association, any portion of the Property. All portions of the Property which are so transferred or conveyed to the Association shall thereafter constitute Common Areas. Said right may be exercised by Declarant any time, and from time to time, prior to ten (10) years from the date hereof. Common Areas shall be conveyed to the Association subject to the rights and easements set forth in this Article, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2. Member's Rights in Association Property. Every Owner of every Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. The right and easement of enjoyment and use of the



Common Areas is and shall be subject to the easements which are described in this Article and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the Owner(s) of any Lot during any period in which any assessment which is due to the Association from such Owner remains unpaid, and for such period as the Board of Directors may consider appropriate for any infraction of its rules and regulations. No such suspension, however, shall prohibit the Owner of any Lot from using the Common Areas to the extent necessary for such Owner to have access to and from his Lot.

The Board of Directors may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors.

Section 3. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all Mortgages encumbering any portion of the Property.

Section 4. Condemnation. In the event that any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of, and under threat of, condemnation by the Board of Directors acting on the written direction of the Owners of at least 67% of the Lots (and, if during the Development Period, the written consent of Declarant), the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent feasible unless, within 60 days after such taking, the Owners of at least 67% of the Lots (and Declarant, if during the Development Period) otherwise agree. The provisions of the subsection immediately below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board of Directors shall determine.

Section 5. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed on account of the occurrence of any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by the Owners of at least 67% of the Lots, and by Declarant, if during the Development Period, not to so repair or reconstruct such damage. In the event that it shall be so decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy special assessments to cover the shortfall.

Section 6. Permitted Actions. Notwithstanding anything to the contrary in this Article, however, the Association, acting through the Board of Directors, may dedicate portions of the Common Areas to any local, state or federal governmental or quasi-governmental entity and may grant easement over the Common Areas for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Areas, all without the approval of the Membership.

Section 7. Reconveyance of Common Areas. Upon request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Property originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments to property lines.

**ARTICLE IV.  
EASEMENTS OVER AND AGREEMENTS REGARDING THE PROPERTY**

Section 1. Easements and Agreements Regarding Association Property. In addition to all easements and agreements of record including any agreements or obligations regarding wetlands, the Property shall be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) Easements Shown on Plats. The Property shall be subject to all easements, dedications, borders, buffers, restrictions and the like which are shown and depicted on the Plats as affecting and burdening the Property.

(b) Use of Common Areas. Declarant hereby reserves an easement for the exclusive use of such portions of the Common Areas as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by Declarant and any and all persons who Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers, Builders, and their subcontractors, of residences upon the Lots, irrespective of whether such persons are affiliated with Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate one (1) year and thirty (30) days after the date that all of the Lots are Improved Lots. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(c) Declarant Activities. Notwithstanding any provision contained in this Declaration, the Bylaws or the Articles of Incorporation to the contrary, until the expiration of the Development Period, it shall be expressly permissible for Declarant, and any Person authorized by Declarant, to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as may reasonably be required by Declarant, including but without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property; the right to tie into any portion of the Property with driveways, parking, areas and walkways; the right to tie into and/or maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; the right to carry on sales and promotional activities on the Property; and the right to construct and operate business offices, signs, construction trailers, and Model Homes; and the right to exercise all rights reserved to Declarant in this Declaration.

Section 2. Easements Over Lots. The Lots shall be subjected to, and Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, any Builders and subcontractors authorized by Declarant, the Members, the Owners, and the successors-in-title of each:

(a) Easements Shown on Plats. Each Lot shall be subject to all easements, borders, buffers, restrictions and the like which are shown and depicted on the Plats as affecting and burdening such Lot

(b) Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration.

(c) Encroachments. Each Lot shall have a three (3) foot easement as measured from any point on the common boundary between such Lot and any adjoining Lot, or between such Lot and adjacent Common Areas, for driveway, HVAC or fence encroachments which may be erected in said easement areas, unless such encroachment was due to a willful act of the Lot Owner or the Association.

(d) Construction and Boundary Line Improvements. Each Lot shall be subject to a temporary construction easement in favor of Declarant, authorized builders and contractors, and adjoining Lot Owners for construction activities on any Lot, including but not limited to the installation of boundary line improvements such as walls,

fences and hedges. Any improvement made by an adjoining Lot Owner shall be subject to the architectural control provisions contained herein and must be approved by Declarant or the Association, as applicable, prior to installation.

(e) Slope Control. Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(f) Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over, under and across such Lot, including any runoff or carry over of water from one Lot to another, provided that such cross Lot drainage condition was created by Declarant or by a builder authorized by Declarant

(g) Utilities. Each Lot shall be subject to a perpetual easement in favor of the Declarant, the Association, authorized Builders and subcontractors, and adjoining Lot Owners, their contractors, or subcontractors where utilities are installed on said Owner's Lot, as well as any public utility company, water main, water services, sewer services or cable company, for the erection, installation, construction and maintenance, repair and replacement of wires, lines, conduits, sewer taps, and attachments appurtenant to, above, below ground and in connection with the transmission of electricity, gas, water, telephone, community antennae or satellite dish, television cables and other utilities.

(h) Entrance Monuments. Lots 26 and 62 shall be subject to a perpetual easement in favor of the Association for the repair and landscaping of the entrance monuments which is or will be located on the Lot and the repair and replacement of any electrical lines, drain pipes, etc. which are a part thereof. The Association shall have the right to cut, remove, and plant trees, shrubbery or flowers around entry features. The Owner of this Lot shall not remove, camouflage, damage or otherwise alter in any way said entrance monuments and landscaping. This Lot shall also be subject to a temporary easement for real estate sales signs which shall be exercisable by any and all persons who Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers. Such temporary easement shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate thirty (30) days after expiration of the Development Period.

## ARTICLE V. THE ASSOCIATION

Section 1. The Association. Prior to the date this Declaration has been filed for record with the Clerk of the Court, Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Area of Common Responsibility, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the Members of the Association.

Section 2. Membership. The Association shall have 2 classes of voting membership. The 2 classes of voting membership, and the voting rights related thereto, are as follows:

(a) Class A. The "Class A Members" shall be all of the Owners of the Property; provided, however, that so long as there is Class B membership, Declarant shall not be a Class A Member. "Class A Parcels" shall mean all Lots and other Parcels owned by the Class A Members. In no event shall such membership be severed from the Ownership of such Lot.

(b) Class B. The "Class B Member" shall be Declarant. "Class B Parcels" shall be all Parcels owned by Declarant which have not been converted to Class A membership. Upon transfer of control of the Association, Class B membership shall terminate and Declarant shall own portions of the Residential Property in the same manner as a Class A Member.

Section 3. Suspension of Membership Rights; Fines The Association shall have the power to suspend, for a reasonable period of time, the rights of an Member and/or such Member's tenants, guests or invitees to use the Common Areas, and to levy reasonable fines against same not to exceed the greater of \$100.00 per violation or the maximum amount allowed under applicable law for activities which violate the provisions of the Declaration, the By-Laws or any rules and regulations duly promulgated by the Association. No fine or suspension may be imposed except upon 14 days prior written notice to the person sought to be suspended or fined, and such person having an opportunity for a hearing before a committee of at least 3 Members of the Association. Such committee shall be appointed by the Board and shall not be composed of any officers, directors or employees of the Association, nor any spouse, parent, child, , brother or sister of any officer, director or employee. No fine or suspension may be imposed except upon majority approval of such committee. Suspension of rights to use the Common Property shall not include any right to restrict vehicles' and pedestrians' ingress and egress to "and from such offending person's Lot. The voting rights of a Member may not be suspended by the Association. Notwithstanding the foregoing, fines and suspensions can be otherwise imposed by the Association for failure to pay Assessments as imposed under the Declaration.

Section 4. Meetings of the Membership. All matters concerning the meetings of Members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to Members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 5. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association or the Owners of Lots must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been appointed by Declarant during the Declarant Control Period, as such term is defined in the Bylaws) shall be personally liable to any owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 6. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any Person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

## ARTICLE VI. ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for an Improved Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration. No assessments or charges will be levied against a Model Home when it is being used for such purposes. When a Model Home is no longer used for such purposes, and upon the first transfer of sale into a permanent residence, assessments and charges (including capital contributions) shall be levied against such Lot.

1.1 All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with *interest thereon and the costs of collection thereof*, shall, from the time the sums become due and payable, be the personal obligation of the Owner of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Lot; (2) The lien of any first priority Mortgage covering the Lot and the lien of any Mortgage recorded prior to the recording of this Declaration; and (3) The lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee of such Mortgage is the seller of the Lot. Said lien may be foreclosed in the same manner as a mortgage lien is foreclosed under applicable Florida law. The lien is effective from and after the recording of a claim of lien in the public records of the County, stating the description of the Lot or Property, the name of the Owner, the amount due, and the due

dates. The claim of lien must be signed and acknowledged by an officer or agent of the Association. Upon payment in full of all sums secured by the lien, the Owner or other person making the payment is entitled to a satisfaction of the lien recorded in the public records of the County. The covenant to pay assessments herein stated is and shall be a covenant running with land.

Section 2. Purposes of Assessments. The assessments levied by the Association pursuant to this Article shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to this Declaration, the Articles of Incorporation and the Bylaws and for such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its members (such costs and expenses being herein referred to as the "Annual Expenses"). If the Property has any on-site wetland mitigation areas, the Association shall allocate sufficient funds in its budget for monitoring and maintenance of such wetland mitigation area(s) each year until the Southwest Florida Water Management District determines that the area is successful in accordance with the applicable environmental resource permit.

Section 3. Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the Members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). The assessments provided for herein shall commence as to a Lot on the date that a Lot becomes an Improved Lot, with all Improved Lots being assessed equally. No Annual Assessment shall be assessed against any Lot owned by Declarant or by an authorized Builder of the Declarant, unless required as a matter of law or in another agreement between Declarant and a particular Builder. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments as the Board of Directors shall determine and shall be paid to the Association when due without further notice.

Section 4. Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefor, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this section shall be payable at such times and such installments as the Board of Directors shall determine. Each Improved Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section.

Section 5. Specific Assessments. The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, or of any monument, landscaping, detention pond or other thing maintained by the Association, which is occasioned by the act(s) of individual Owner(s) and not the result of ordinary wear and tear, (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder; or (iii) for any common expenses, other than expenses for the maintenance of the Common Areas, which benefit less than all of the Lots or which significantly disproportionately benefit all Lots (which expenses may be specially assessed equitably among all of the Lots which are benefited according to the benefit received); provided that in no event shall Declarant be obligated to pay any specific assessment. Failure of the Board of Directors to exercise its authority under this section

shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Director's right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Board of Directors shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 6. Special Assessment for Working Capital Reserve. Upon the first transfer of title to an Improved Lot and upon each resale of the Lot thereafter, there shall be levied against such Improved Lot and paid to the Association a special assessment as set from time to time by Declarant or the Board of Directors of the Association. Such amount shall not be less than 1/6 of the Annual Assessment or greater than the total amount of the Annual Assessment which shall have been levied against Improved Lots for the calendar year in which such transfer of title shall take place. Declarant or Board of Directors shall endeavor to collect such special assessment at the closing of the purchase of the Improved Lot; however, the failure to collect such special assessment at that time shall not excuse the obligation to make such payment.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. (a) In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual or special assessment, or any installment of any annual or special assessment which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent Member, which lien shall bind such Lot or Lots in the hands of the then Owner, and his heirs, devisees, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain his personal obligation and shall also pass to his successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which said Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and successors in title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. The Board of Directors may suspend water, electricity, heat, air conditioning or cable television service paid for as a Common Expense only to the extent permitted by applicable law and only after a final judgment or judgments in excess of a total of \$750.00, or such other amount are obtained in favor of the Association from a court of competent jurisdiction, the Association provides the notice required to be provided by the institutional provider of such service prior to suspension of such service, and the Association complies with any other requirements of Florida law. The utility services shall not be required to be restored until all judgments are paid in full and any reasonable utility provider charges or other reasonable costs incurred in suspending and restoring such services are paid in full, at which time the Association shall direct the utility provider to restore the service.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this section shall bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the Member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such Member, in either of which events such Member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

Section 8. Budget Deficits during Declarant Control Period. Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of Declarant and shall be paid back to Declarant if and to the extent that sufficient funds are generated by assessments in future years until such time as Declarant no longer has the authority to appoint the directors and officers of the Association.

Section 9. Failure to Assess. The failure of the Board of Directors to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation

to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## **ARTICLE VII. ARCHITECTURAL CONTROL**

**Section 1. Architectural Restrictions.** No Exterior Structure or Improvement, as defined herein, shall be placed, constructed, erected, installed or made on any Lot unless such Exterior Structure or Improvement meets all square footage and other requirements that may be set forth in the Plats and is in strict compliance with the provisions of this article.

**Section 2. Architectural Control Committee.** Responsibility for the review of all applications under this Article shall be handled by the Architectural Control Committee ("ACC"), the members of which need not be Members of the Association and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ACC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ACC in having any application reviewed by architects, engineers or other professionals.

The ACC shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property and shall be the sole arbiter of applications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations. ACC shall have the right, but not the obligation, to promulgate design guidelines and standards for the Property in order to provide guidance to Owners and builders regarding the approval process, which guidelines and standards may be amended by the ACC at any time and from time to time. Compliance with such guidelines and standards shall not guarantee approval of any application.

Until the termination of the Development Period, Declarant retains the right to appoint all members of the ACC, who shall serve at Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board of Directors shall appoint the members of the ACC, who shall thereafter serve and may be removed in the Board of Director's discretion.

It shall be the responsibility of each Owner at the time of construction of a residence, or other structure, to comply with the construction and other requirements of the Southwest Florida Water Management District.

**Section 3. Exterior Structure or Improvement.** The term "Exterior Structure or Improvement" shall mean an exterior construction, alteration, addition or change of any nature whatsoever on a Lot, including but not limited to: (i) a building, fence, wall, patio, playhouse, playground equipment, swimming pool, spa or other structure, (ii) staking, clearing, excavation, grading, or filling of land, (iii) change in color, type or material of any existing improvement (iv) planting or removal of landscaping materials (v) placement or installation of exterior lighting, statuary, flags, fountains and similar items, or (vi) modification of the interior of a porch, deck, patio or similar portion of a structure which is visible from outside the Lot. No Exterior Structure or Improvement shall be commenced, placed or maintained upon any Lot until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to and approved by the ACC as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography.

**Section 4. Approval Procedures.** The plans and specifications which must be submitted to the ACC prior to the commencement of any such work upon any Lot, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping and such other information as the

ACC may reasonably request in order to render a decision. Notwithstanding the above, however, the ACC, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided that such activities are undertaken in strict compliance with the requirements of such resolution.

In the event that the ACC fails to approve or disapprove any application within thirty (30) days after submission by Owner of all information and materials reasonably requested by the Association, the application shall be deemed approved.

The ACC shall, upon demand, furnish to any member of the Association a certificate in writing signed by a member of the ACC, stating that any Exterior Structure or Improvement that has been approved and built in accordance with the provisions of this section is in compliance with the provisions of this section, and such certificate shall be conclusive as to whether the same is in such compliance.

Section 5. Construction Period. Unless otherwise agreed to in writing by the ACC, any Exterior Structure or Improvement must be commenced within 30 days after ACC approval of the plans and specifications for same. After commencement of construction, the Owner or Builder shall diligently continue construction to completion in a timely manner and within the time limits and in the manner specified by the ACC at the time the project is approved.

Section 6. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 7. Variance. The ACC, in its sole discretion, may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ACC from denying a variance in other circumstances.

Section 8. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only, and shall not create any duty to any Person. Neither Declarant, the Association, nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, or for ensuring compliance with building codes and other governmental requirements or regulations. Neither Declarant, the Association, the ACC, nor any member of any of the foregoing, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the ACC and its members shall be defended and indemnified by the Association as provided in this Declaration and the Articles of Incorporation and Bylaws of the Association.

Section 9. Enforcement. Declarant, any member of the ACC, the Board of Directors, or the representatives of each, shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any Exterior Structure or Improvement is in violation of this Article. Any Exterior Structure or Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request by the ACC, the Owner shall, at its own cost and expense, remove such structure or improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work. Upon the failure or refusal of any person to perform the restoration required herein, the ACC, or their authorized agents or employees, may, after fourteen (14) days' notice to such person, enter upon the property upon which such unauthorized work has been performed, and make such restoration as the ACC, in the exercise of its discretion, may deem necessary or advisable. Entry for such purposes and in compliance with this Section shall not constitute a trespass. The person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, including without limitation attorneys' fees, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the person liable for the same



at the same time as the next due Annual Assessment payment, or at such earlier time, and in such installments, as the ACC shall determine.

Unless otherwise specified in writing by the ACC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a specific assessment pursuant to this Declaration.

Except to the extent prohibited by law, in the event of a violation or breach of the provisions contained herein by an Owner or a person acting by, through, or under an Owner, the Rules and Regulations, the ACC Guidelines, or other rules and regulations promulgated by the ACC or the Association (as may be applicable), the Association shall have the right to levy reasonable fines or suspend the privileges of the Owner or any person acting by, through, or under an Owner. Each fine shall be a Specific Assessment and enforceable pursuant to the provisions of this Declaration and the By-Laws. Each day of an Owner's failure to comply with this Declaration, the Rules and Regulations, the ACC Guidelines, or other rules and regulations promulgated by the ACC shall be treated as a separate violation and shall be subject to a separate fine. The decisions of the Association as to the levying of a fine shall be final. Fines shall be in such reasonable and uniform amounts as the Association shall determine from time to time in its sole discretion. Suspensions and fines shall be imposed in the manner provided in Section 720.305, Florida Statutes, as amended from time to time. The Board shall have the authority to promulgate additional procedures from time to time.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board of Directors and the ACC.

Section 10. Declarant Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article shall be construed as prohibiting any construction, alteration, addition or removal by Declarant upon any Lot while such Lot is owned by Declarant or, with Declarant's consent, by an approved Builder while such Lot is owned by the Builder. Any construction, alteration, addition or removal performed by Declarant or, with Declarant's consent, by an approved Builder, upon any Lot while such Lot is owned by Declarant or such Builder shall be exempt from the provisions of this Article.

## **ARTICLE VIII. RESTRICTIONS**

In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the applicable zoning ordinances with respect to the Property and the following provisions:

Section 1. Residential Use. All of the Lots shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Lot shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this section shall prohibit: (a) Declarant from conducting such sales, leasing and promotional activities on any Lot as said Declarant shall determine; or (b) the owner of any Lot from using a portion of a building located on such Lot as an office, provided that such use does not create regular customer, client or employee traffic to and from such Lot and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Lot.

Section 2. Prohibited Activities. No noxious, offensive, unsightly or unkempt activity shall be conducted on any Lot. Each owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property

which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot. Storage or placement of furniture, potted plants, fixtures, appliances, machinery, bicycles, towels, clotheslines, equipment, or other goods or chattels not in active use on any Lot which is visible from outside the Lot is prohibited except as specifically permitted in this Declaration. No nuisance shall be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, or any portion thereof.

Section 3. Animals. No Owner may keep any pets on any portion of the Property other than dogs, cats and other customary household pets. No Owner or occupant may keep, breed or maintain any pet for any commercial purpose. No Owner or occupant may keep or maintain a dog whose persistent barking causes annoyance or nuisance to any other resident of any other Lot. Animals must be kept on a leash and be under the physical control of a responsible person at all times while outdoors unless contained within a fenced area. Any feces left upon the Common Areas by an animal must be removed by the owner of the animal or the person responsible for the animal.

No animal determined to be dangerous, in the Board of Director's sole and absolute discretion, may be brought onto or kept on the Property at any time. The Board of Director may have removed by the local authorities, without notice to the animal's owner, any animal that presents an immediate danger to the health, safety or property of any person.

Each Owner who keeps an animal on the Property agrees to indemnify and hold the Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such animal.

Section 4. Antennas; Aerials; Satellite Dishes. No transmission antenna of any kind may be erected anywhere on a Lot without the prior written consent of the ACC. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter may be placed, allowed or maintained upon any Lot. A DBS or MMDS antenna one (1) meter or less in diameter or television broadcast service antenna may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association as authorized by the FCC, as both may be amended from time to time. HAM radios, two way radios and other hobby or professional radio communication transmission equipment are prohibited.

Declarant or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus of any size for a master antenna, cable, or other communication system for the benefit of all or a portion of the Property.

Section 5. Drainage. Catch basins, retention ponds, detention ponds, drainage easement areas and any other related drainage facilities are for the purpose of controlling the natural flow of water only. No obstruction or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article VII hereof.

Section 6. Energy Conservation Equipment No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless approved in accordance with the provision of Article VII hereof.

Section 7. Entry Features Street Signs. Owners shall not alter, remove or add improvements to any entry features or street signs constructed or erected by the Declarant or the Association on any Lot, or any part of any easement area associated therewith without prior approval in accordance with the provision of Article VII hereof.

Section 8. Firearms. The use of firearms on the Property is prohibited. The term "firearms" includes, without limitation, B-B guns, pellet guns, archery equipment and firearms of all types.

Section 9. Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) one approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Property; (5) seasonal decorative lights; or (6) front house illumination of Model Homes.

Section 10. Mailboxes. No change or addition, other than by the Board of Directors, shall be made to the design, materials or location of the original mailboxes installed by Declarant for the benefit of the Lots.

Section 11. Outbuildings. Any outbuilding or storage building must be approved by the ACC. Any such buildings may be used for storage purposes only and not for other activities, such as wood working shop, machine shop or other home hobby activities. Such buildings are to be built of similar material as the house on the Lot and painted the same color. Approved storage buildings or outbuildings are to be sited at rear of the house, may not be sited beyond rear building set back line and may not be over one story in height. If any area under a deck attached to a home is used for storage (such as for garden equipment, etc.), such area and storage must be screened from view of other Lots and any street, as approved herein.

Section 12. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Board of Directors, except for customary name and address signs, one customary "for sale" sign advertising a Lot for sale and any sign required by legal proceedings. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Lot in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle.

Section 13. Storm and Screen Doors and Windows. Owners shall not add storm and screen doors and storm windows on any Lot without prior approval in accordance with the provisions of Article VII hereof.

Section 14. Swimming Pools. In no event shall any above ground swimming pool be permitted.

Section 15. Trash Containers, Garbage Cans, Woodpiles etc.. All trash containers, garbage cans, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and the Property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned on the Property. Garbage cans and recycling receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Garbage pick up shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt.

Section 16. Trees. No healthy living trees having a diameter of six (6) inches or more measured from a point two (2) feet above the ground, and no flowering tree, shrub, evergreen, or natural ground cover, shall be removed after the Lot is an Improved Lot, unless such removal is approved by the ACC.

Section 17. Vehicles and Parking. The term "vehicles" as used in this section shall include without limitation automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles. No vehicle may be left upon any portion of the Property except upon a driveway, a designated parking space or within a garage. With the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Lot or the Property, no person shall park any commercial vehicles (including but not limited to any type of vehicle with advertising or lettering), recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles or unlicensed or inoperable vehicles within the Property except within a garage.

All Owner and occupant vehicles must be kept and stored when not in use within the Lot's garage space or driveway. Garage doors must remain closed at all times except for entry and exit by vehicles and except for periods not to exceed two (2) consecutive hours for homeowner related maintenance activities. Noconversion of garage space to living space shall be permitted.

The Association may promulgate and enforce additional rules and restrictions regarding vehicles and parking privileges on the Lots and Common Areas.

If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked on any landscaped area, or otherwise creates a hazardous condition, no notice shall be required and the Board of Directors, agent of the Association may have the vehicle towed or booted immediately. If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of such towing or booting. Notwithstanding anything to the contrary herein, the Board of Directors may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 18. Window Air-Conditioners. No air-conditioner shall be installed in any window of any building located on any Lot, nor shall any air-conditioner be installed on any building located on any Lot so that the same protrudes through any exterior wall of such building.

Section 19. Window Treatments. Except as may be otherwise approved in accordance with the Architectural Control provisions contained in the previous Article, all window treatments visible from the outside of a Lot shall be white or off-white in color. No bed sheets, newspaper, tin foil, or similar materials may be used as window treatments.

Section 20. No Subdivision of Lots or Timesharing. No Lot may be further subdivided into any smaller Lot. No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 21. No Combination of Lots. Contiguous Lots may not be combined together without prior written consent of the Board of Directors. In the event that the Board of Directors does approve such a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots which were so combined would have been liable had such combination not taken place.

Section 22. Surface Water Management System Facilities. The Association shall maintain the Surface Water Management System Facilities. No construction activities may be conducted relative to any portion of the Surface Water Management System Facilities. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Surface Water Management System Facilities. If the Property includes a wetland mitigation area, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the Southwest Florida Water Management District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the Southwest Florida Water Management District in any applicable environmental resource permit may be conducted without specific written approval from the District. The Southwest Florida Water Management District shall have the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel it to correct any outstanding problems with the Surface Water Management System Facilities. If the Association ceases to exist, all of the Lot Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water Management System Facilities in accordance with the requirements of any applicable environmental resource permit, unless and until an alternate entity assumes responsibility therefor.

Section 23. Declarant Control Period. During the Declarant Control Period, no amendment to or modification of any use restrictions, rules or design guidelines shall be adopted without the prior written consent and approval of Declarant. The Association shall not exercise any authority that would impair the rights of the Declarant under this Declaration or interfere with Declarant's development of, construction on, or marketing of any portion of the Property, or diminish the level of services being provided by the Association.

Section 24. Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Article and the Board of Directors' duty to exercise business judgment and reasonableness, the Board of Directors may modify, cancel, limit, create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board of Directors shall send notice to all Owners concerning any new or amended restrictions or rules prior to the date that such restrictions or rules go into effect. For this purpose, notice may be sent to each Owner by U.S. mail, hand delivery, electronic telecommunication or publication in a community notice or newsletter delivered or mailed to each Owner.

## **ARTICLE IX. MAINTENANCE**

Section 1. Association's Maintenance Responsibility. The Association shall maintain the Area of Common Responsibility (whether or not constituting Common Areas), including: (a) all entry features to the Property, including any electrical and irrigation systems; (b) all streets and sidewalks within the Property; (c) any landscaping, irrigation systems or other improvements installed by the Declarant or the Association in the Common Areas; (d) storm water detention or drainage facilities, wetland areas (unless conveyed to the County or another governmental entity for maintenance), open spaces, ponds and the PVC yard drains and pipes serving the Property, and (e) any and all recreational facilities, including but not limited to tennis courts and pool located on the Common Areas. In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed to the Owner as a specific assessment. The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such property is dedicated to any local, state or federal government or quasi-governmental entity and said entity accepts the responsibility for maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board of Directors determines that such maintenance is desirable or necessary to maintain the Community Wide Standards.

The Association shall, at all times and at the Association's expense, operate and maintain the surface water management system as permitted by the Southwest Florida Water Management District. Said operation and maintenance shall include the inspection of said system by a Florida registered professional engineer to assure that said system is being properly operated and maintained. A written report of the findings of said inspections shall be filed with the Southwest Florida Water Management District as required by said district.

The Board of Directors, in its sole discretion, may leave portions of the Property as undisturbed natural areas and may change the landscaping on the Area of Common Responsibility at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers.

Section 2. Owner's Maintenance Responsibility. All maintenance and repair of each Lot and all improvements thereon (unless specifically addressed as being the responsibility of the Association in Section 1 above) shall be the sole responsibility of the Owner thereof, who shall maintain such Lot and improvements in a manner consistent with this Declaration and the Community Wide Standards. Such maintenance obligation shall include, without limitation, the following: prompt removal of litter and waste; keeping improvements, roofs and exterior structures and lighting in good working order and repair and neat and clean condition; complying with all governmental health and police requirements; and repair of exterior damage to improvements

In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly such Owner's obligations hereunder, the Board of Directors shall have the right, exercisable by it or through its agents or employees, and after giving to the Owner of such Lot at least fourteen (14) days' notice and an opportunity to correct the unsatisfactory condition (except in the event of an emergency situation, which shall be solely determined by the Board of Directors, in which case no notice and opportunity to correct shall be required), to enter upon such Lot and correct the

unsatisfactory condition. The Owner of the Lot upon which such maintenance work is performed by the Association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all the liens, and shall be subject to the same means of collection, as are the other assessments and charges provided for in this Declaration. In addition, all such costs shall be paid to the Association by such Owner at the same time as the next due Annual Assessment payment, or at such other time, and in such installments, as the Board of Directors shall determine.

Section 3. Damage or Destruction. In the event of the occurrence of any damage or destruction by fire or other casualty to the improvements on a Lot, such damage or destruction shall be repaired or rebuilt, as applicable, in all events. All repair, reconstruction or rebuilding of the improvements shall be substantially in accordance with the plans and specifications for such damaged or destroyed Improved Lot prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by the Owner of such Lot and the Board of Directors. The Owner of such damaged or destroyed Improved Lot shall be responsible for ensuring that the work of repairing, reconstructing or rebuilding a damaged or destroyed Improved Lot is completed as soon after the occurrence of such damaged or destruction as is reasonably practicable, at no cost or expense to the Association.

## **ARTICLE X. INSURANCE**

Section 1. Insurance on Common Areas. The Association shall obtain and maintain casualty insurance for all insurable improvements located on the Common Areas. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy with a combined single limit of at least One Million (\$1,000,000.00) Dollars applicable to the Common Areas covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

Section 2. Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner will maintain at all times all-risk casualty insurance on the Lot and all structures constructed thereon, as well as a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of a covered item in the event of damage or destruction from any such hazard.

The Board of Directors has the right, but not the obligation, to require the Owner to furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this section, the Association has the right, but not the obligation, to purchase such insurance on behalf of the Owner and to assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments herein.

Upon request by the Board of Directors, the Owner shall furnish a copy of such insurance policy or policies to the Association.

### Section 3. Additional Insurance Requirements

The Board of Directors shall utilize reasonable efforts to include the following provisions in the policies that the Association obtains: (a) waiver of the insurer's rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, occupants, and their respective household members; (b) an agreed value endorsement and an inflation guard endorsement.

All policies of insurance shall be written with a company licensed to do business in the State of Florida. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

Additionally, the Association shall obtain such insurance coverage as is necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, if and to the extent applicable to the Property.

Nothing contained herein requires the Association to make a claim under the insurance policies upon the occurrence of an insured event. The Association has the right to exercise reasonable business judgment in all insurance decisions.

#### **ARTICLE XI. MORTGAGEE PROVISIONS**

Section 1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "Eligible Holder"), will be entitled to timely written notice of: (a) any condemnation loss of any casualty loss which affects a material portion of the Development or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder where such delinquency has continued for a period of sixty (60) days; (c) any default in the performance by the Owner of such encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (d) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Audit. Upon written request of an Eligible Holder and upon payment of all necessary costs, such Eligible Holder shall be entitled to receive a copy of audited financial statements of the Association within 90 days of the date of the request.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds.

Section 4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board of Directors to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### **ARTICLE XII. AMENDMENT**

Until the termination of the Development Period, the Declaration may be amended only by Declarant, who may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) enable an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to make, purchase, insure or guarantee mortgage loans on the Lots, (d) an

amendment is necessary to enable any governmental agency or private insurance company, including but not limited to the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Lots. However, any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing,

After the termination of the Development Period, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of 2/3 of the Lot Owners.

Anything to the contrary contained herein notwithstanding, any amendment which would affect the Surface Water Management System Facilities must have the prior written approval of the Southwest Florida Water Management District.

Any amendment shall become effective upon the recording with the Clerk of the Court of the instrument evidencing such change unless a later effective date is specified therein. If an Owner consents to an amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any procedural challenge to an amendment must be made within six months of the recording of the amendment or such amendment shall be presumed to have been validly adopted.

Every Owner, by taking record title to a Lot, and each holder of a mortgage upon any portion of any Lot, by acceptance of such mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

### **ARTICLE XIII. MISCELLANEOUS**

**Section 1. Failure of Enforcement.** In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the Owner of any Lot, then the Owner of any other Lot shall have the right to file an action in the Superior Court of the county where the Property is located for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

**Section 2. No Waivers.** In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

**Section 3. Duration.** This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of fifty-one percent of the record Owners of the Lots.

**Section 4. Notices.** Any notice required or permitted to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member or Owner to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the



Secretary of the Association, at the address of the Lot owned by such member. The date of service shall be the date of mailing. The address of Declarant or the Association shall be the address of its respective registered agent on file with the Secretary of State of Florida. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 6. Judicial Proceedings. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots, to enforce any liens created by this Declaration. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Lot Owners. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including the foreclosure of liens); (b) the collections of assessments; (c) proceeding involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 7. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of Declarant by operation of law or through purchase of Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of Declarant.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers on the day and year set forth below.

DECLARANT:

McCar Homes, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signed, sealed and delivered this  
16<sup>th</sup> day of APRIL, 2006  
in the presence of:

Unofficial Witness

Notary Public

[NOTARY SEAL]

[CORPORATE SEAL]

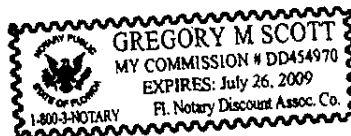


EXHIBIT "A"  
LEGAL DESCRIPTION